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RR3
Reducing Reoffending
Third Sector Advisory Group

RR3 Special Interest Group on Commissioning Family Services: How to improve commissioning

Lessons learned from the commissioning of prison family services

Introduction

The 2016 Ministry of Justice (MoJ) white paper *Prison Safety and Reform* outlined plans to empower prison governors through providing mechanisms for a more localised and innovative approach to commissioning services for prisons.¹ The voluntary sector has extensive knowledge around re-offending and desistance as well as strong connections to the local communities that people in prison will return to. We believe that better engagement with voluntary organisations provides an opportunity for the MoJ and prison governors to explore more effective and innovative strategies for reducing reoffending and procure services that will support people's desistance from crime.²

In 2016, the Reducing Reoffending Third Sector Advisory Group (RR3)³ convened a Special Interest Group to work with officials from HM Prison and Probation Service (HMPPS). This was to ensure the process of commissioning family services for prisons in England and Wales was accessible to voluntary sector organisations and gave HMPPS the broadest possible choice of high quality providers to choose from.

With the changes proposed by the white paper in mind, the RR3 group has developed this paper to support future commissioning processes by the MoJ and HMPPS. The recommendations made mainly represent the learning from the Special Interest Group's engagement with HMPPS and the commissioning process that followed. Clinks, as the secretariat to the RR3, has met with MoJ officials to discuss the problems that occurred during the commissioning of prison family services and how the MoJ can work with the voluntary sector to improve commissioning processes in the future. Clinks and the RR3 will continue to engage with the MoJ and HMPPS to inform the development of commissioning processes and support for providers entering into these processes.

Five core principles for better commissioning

This paper provides five core principles to guide the MoJ and HMPPS officials when commissioning services for and with prisons:

1. Market engagement
2. Market stewardship
3. Developing high quality services
4. Service user involvement
5. Equalities.

This paper identifies opportunities for improvement in the MoJ’s engagement with the voluntary sector throughout commissioning processes and explores how this engagement can support the MoJ to access a range of high quality services. It offers recommendations that we believe will improve commissioning and deliver better outcomes. For each recommendation we give an explanation based on the experience and learning from the family services commissioning process.

Core principle 1: Market engagement

The voluntary sector has much more to offer than simply delivering services.⁴ Many voluntary organisations are embedded in local communities and have long track records of effectively supporting people in contact with the criminal justice system. Increasingly, these organisations have experience with diverse forms of national and local commissioning practices, making them well-placed to support and advise commissioners on the design of commissioning processes. They can also provide crucial insight throughout the commissioning process, such as identifying needs, designing services, and providing evidence on effectiveness.

As has been demonstrated in particular by previous national commissioning processes, it is vital that the MoJ engages directly with existing and potential voluntary sector providers as early as possible before a commissioning process. This direct engagement is equally important in commissioning models that use a prime organisation to sub-contract to smaller organisations.

Recommendation 1

The MoJ and HMPPS should consult with existing and potential providers on the commissioning or re-commissioning of services before procurement begins and in a transparent manner. This consultation should begin as early as possible to allow time for officials to utilise the guidance provided by the voluntary sector in designing the commissioning process.

Consultation with voluntary organisations delivering family services before the family services commissioning process was crucial in identifying issues with the proposed process and rectifying these in order to improve the quality of the service being commissioned and to allow a broader range of providers to bid. A lack of engagement with the voluntary sector can lead to unanticipated problems in the commissioning process such as inaccurate budgeting and contract sizes that are inaccessible to potential providers. As these problems can significantly affect the quality of outcomes that the contracted service is able to deliver, it is essential that MoJ/HMPPS engage early with the voluntary sector. While a focus on fair competition can lead commissioners to be reluctant to engage with potential bidders, HMPPS’s engagement with the RR3 Special Interest Group on Commissioning Family Services demonstrated that potential issues can be avoided by conducting a transparent consultation process before tendering.

Good practice: In 2016, the RR3 convened the Special Interest Group on Commissioning Family Services. This has provided a forum for voluntary organisations who provide family services to engage in the design of the commissioning process and give ongoing feedback to HMPPS on its implementation. In October 2017, Clinks brought together HMPPS officials with those organisations contracted to deliver family services to enable effective management of these contracts and monitoring of the quality of services.

Recommendation 2

The MoJ and HMPPS should design commissioning timelines in partnership with potential providers to ensure that sufficient time is given for organisations to develop high quality bids. This should be a minimum of two months, but may need to be considerably longer based on the service being commissioned. Where partnership work is required or encouraged for bidders, timescales should be longer in order to accommodate this.

Different commissioning processes may require different timescales. Timescales allotted for commissioning processes are often not sufficient for organisations to prepare a good quality bid. Bidding for services is a resource intensive process and organisations need plenty of advance warning to prepare for commissioning processes and time to complete their bids. While commissioners often encourage partnership work, timescales are rarely sufficient for organisations to build effective partnerships. The timescales allocated to each commissioning process should only be decided upon after consultation with voluntary organisations and other stakeholders to ensure that they are reasonable, appropriate, and will allow organisations every opportunity to tender for the work.

Recommendation 3

As far as possible, published timescales should be strictly adhered to. If it is necessary to make changes then these changes should be communicated to all stakeholders at the earliest opportunity, as well as the reasons behind the changes where possible. If delays encroach on the time allotted for developing bids, deadlines should be extended where possible to allow sufficient time for organisations to develop high quality bids.

Changes to commissioning timescales are hugely disruptive to all organisations involved in the commissioning process; for smaller organisations it can be particularly disruptive due to their limited resources. Changes to timescales can leave organisations with unexpected gaps in funding, leading to redundancies, high staff turnover and difficulties in financial planning. This lack of continuity has an overall impact on the services available to support people in contact with the criminal justice system, due to the impact on organisations' ability to retain experienced staff and to effectively plan delivery.

Recommendation 4

The MoJ and HMPPS should ensure that clear, consistent and timely information is available to potential bidders throughout the commissioning process. There should be a named point of contact within the procurement team who is available throughout the commissioning process. The MoJ/HMPPS should ensure there is a guaranteed response time to clarification questions, appropriate to the specific process being undertaken, and this should be clearly communicated to potential bidders. It is important that any mechanism used to undertake a commissioning process (e.g. the Bravo Solutions portal) is properly resourced to ensure timely and accurate communication.

experienced inconsistent and unclear communication from the MoJ and HMPPS. This included missing information from service specifications, delayed responses to clarification questions and unclear timelines. Poor communication and lack of information can hinder the ability of voluntary organisations to produce high quality bids.

Recommendation 5

The MoJ and other criminal justice agencies involved in commissioning should develop flexible ways of engaging potential providers and service users throughout each commissioning process. This would better enable potential providers and service users to share intelligence about emerging needs, pitch ideas and advocate for service improvements.

There are several important stages at which to involve the voluntary sector during a commissioning process. Voluntary organisations should be engaged before the commissioning process has begun to support commissioners to identify needs and to understand the voluntary sector in either the region or area of expertise they are commissioning for. The voluntary sector should also be involved in the design of the commissioning process to ensure that this process is accessible to potential bidders and that it adequately meets the needs of the target service users. During the family services commissioning process, a contract value was incorrectly calculated by HMPPS and was not rectified before tendering began. This led to lengthy conversations with the successful bidder and significant difficulties in setting up the service within the given timeline. With more in-depth engagement with voluntary organisations in this specific region, this issue could have been flagged up earlier in the process and rectified.

It is similarly important to continue to engage with the voluntary sector after the commissioning process has ended and the resulting service is up and running. Voluntary organisations, whether they are current or prospective providers of commissioned services, can provide important feedback on the quality of the services being delivered and operational issues that develop within services. Ongoing engagement with the voluntary sector and service users is important to maintain and improve the quality of a service.

Good practice: While commissioners can be hesitant to engage with potential providers due to competition regulations, the Special Interest Group on Commissioning Family Services demonstrated that this engagement can be conducted in a transparent and mutually beneficial manner. There was an open recruitment process for the Special Interest Group, which brought together potential providers for the family services contracts. Notes of each meeting were published on Clinks' website and updates were reported back to the RR3, allowing the group to maintain oversight of the process. Clear timelines were set to ensure that engagement did not continue past an appropriate point in the process and the group will be reconvened once services are being delivered to provide ongoing feedback on the results of the commissioning process. Having clearly defined parameters and providing transparent updates to the broader voluntary sector and the public allowed HMPPS to benefit from the expertise of voluntary organisations without impeding competition.

Core principle 2: Market stewardship

Commissioners must recognise their role in forming and shaping the market. Research by Clinks^{5,6,7} has shown that the shift towards the use of large contracts has a significant impact on the market of providers. It is preventing smaller organisations

from accessing funding and in some cases is leading to established providers being replaced by organisations without specialist knowledge in the area of delivery.

As well as impacting on the breadth and quality of services for people in contact with the criminal justice system in a specific area, this shift can also cause difficulties for commissioners in trying to tender for new services. Where the market consists of a very small number of large organisations, this limits the choice of commissioners in selecting the best provider to achieve the stated outcomes.

In extreme cases, where long-term use of very large contracts has reduced the market to a very small number of potential providers, commissioners can find themselves unable to attract a competitive range of bidders. Where smaller, often specialist, organisations have been excluded from the commissioning process and have been forced to close down due to lack of funding, the value added by their expertise as well as the additional funding (such as match funding) brought in by these organisations has also been lost. Commissioners can stimulate the market by developing flexible ways to involve and fund smaller and specialist organisations. This can ensure that diversity in the market remains.

Recommendation 6

Before commissioning a service, the MoJ/HMPPS's consultation process should aim to understand the make-up and health of the voluntary sector operating in that area (either a geographical area or a specialist area of service delivery), as well as the resources these organisations have. This will enable a better understanding of existing services and any potential bidders for a contract. This should be included as a step in the MoJ's commissioning strategy.

MoJ staff involved in and overseeing commissioning processes may not always have access to important knowledge about the specific market they are trying to access. A lack of understanding about existing services and organisations in a specific area can lead to duplication of services, remaining gaps in provision and commissioning processes that are not accessible to the key potential bidders.

Recommendation 7

Following consultation to understand the market of potential providers in any given area, the MoJ/HMPPS should design commissioning processes with the aim of ensuring these are accessible to all potential providers with relevant expertise. This may include changing the way contract lots are divided and considering the use of grants to support innovation or growth in an emerging market or area of service delivery.

Standard commissioning processes can drive a one-size-fits-all approach that does not take into account the local context or the existing market of providers. This can mean that organisations with key expertise are unable to bid for contracts, or that requirements for bidding are not applicable to the local context (for example, requiring detailed evidence of success in an area where the specified service does not yet exist).

The RR3 can provide a useful avenue for consultation and expert advice. Members

of the group are appointed as individuals rather than as representatives of their organisations and notes are published on the Clinks website, so meetings give MoJ officials a transparent forum to access independent advice.

Good practice: During meetings of the Special Interest Group on Commissioning Family Services, families' organisations raised concerns about the timescales of the commissioning process and the ways in which contract lots were calculated, suggesting that these issues could prevent some high-performing providers from bidding for contracts. In response to these concerns, HMPPS extended the original timescales and re-configured the way in which lots were calculated, allowing a more accessible bidding process.

Recommendation 8

The MoJ should consult with potential providers to ensure that financial barriers for potential providers are identified and minimised. For example, financial thresholds that are inappropriately high for the size of the contract can prevent smaller organisations from bidding. Similarly, the knowledge that payment for delivery of the contract will be in arrears can discourage smaller organisations from bidding.

As shown in Clinks' report *More than a provider*, service specifications can sometimes include onerous requirements that do not appear to be relevant to the ability to deliver the service successfully. For example, some service specifications require bidders to have a very high level of reserves or experience of managing very large contracts in order to bid for relatively small amounts of funding. These requirements often exclude good providers from the bidding process. Payment mechanisms such as payment by results or payment in arrears can be highly problematic for smaller organisations, who may not have the necessary reserves to provide upfront costs for delivery.

Core principle 3: Equalities

Organisations with specific skills and experience in providing services to people with protected characteristics are a vital part of the voluntary sector working in criminal justice. These organisations address the specific needs of people with protected characteristics and are also instrumental in supporting mainstream services to engage with their service users more successfully. While mainstream services often struggle to achieve equality in outcomes for service users with protected characteristics, organisations with specific skills and experience in working with people with protected characteristics are able to use their expertise to tackle these disparities.

Findings from Clinks' most recent State of the sector survey highlight that 30% of specialist black, Asian and minority ethnic (BAME) organisations report they are at risk of closure, compared to 5% of other organisations. 24% of BAME and women's organisations report that they never receive full cost recovery on contracts. These findings highlight the potential danger posed to the sustainability of BAME organisations by commissioning processes that exclude them. Similarly the Lammy Review has highlighted the challenges faced by BAME organisations in engaging with probation contracts and recommended that a working group be convened to explore these barriers. This suggests a clear need for commissioners to consider their role in supporting a healthy and diverse voluntary sector which is able to provide the services and expertise necessary to support desistance for all those in contact with the criminal justice system.

Recommendation 9

The MoJ should ensure that a full Equality Impact Assessment of each commissioning process is carried out and published. This should be done in partnership with specialist voluntary organisations as well as service users with protected characteristics.

In order to ensure equality of opportunity and outcomes across the criminal justice system for people with protected characteristics, it is crucial that equalities issues are placed at the heart of commissioning processes. Voluntary organisations with specialist knowledge on equalities groups have raised concerns that equalities issues are too often relegated to a specific stream of work, rather than being mainstreamed into all services. Ensuring that voluntary organisations and service users with expertise on issues faced by people with protected characteristics are involved with commissioning processes at the earliest possible point is an important way of addressing these concerns. Utilising this expertise will enable the MoJ and HMPPS to meet their obligations under the Equality Act 2010.

Core principle 4: Developing high quality services

During the family services commissioning process, voluntary organisations raised concerns about the potential impact of the process on the services being commissioned. Issues such as unrealistic budgets, lack of knowledge around good practice and poor communication, not only create barriers for voluntary sector engagement but also hinder the development of high quality services based on best practice.

It is important that the MoJ/HMPPS, in consultation with voluntary organisations, set out a clear vision of what needs to be achieved by the service being commissioned and how this will be measured. Discussions with the relevant inspectorates (such as HM Inspectorate of Prisons, HM Inspectorate of Probation and Ofsted) during this process would encourage the development of consistent measures aimed at high quality outcomes.

Recommendation 10

Commissioners should engage with the voluntary sector at the earliest opportunity to understand the costs associated with delivering good practice to meet the needs identified. Where budgets are unalterably restricted, it may be useful for commissioners to work in partnership with the voluntary sector to draw up a tiered service specification which identifies the 'must-haves' as well as the ideal level of delivery. This may help bidders in each area to adapt their bids to the local level of need as well as the budget available.

Budgets allocated to deliver a service do not always reflect the resources needed to deliver the service to a high level of quality. This can lead to a range of negative outcomes, including organisations with strong track records declining to bid for contracts, contracts being awarded to organisations without specialist knowledge in the relevant area, and voluntary organisations being required to subsidise contracts with their own income in order to deliver the specified service.

Recommendation 11

The MoJ and HMPPS should ensure that prison governors and relevant staff are given appropriate information, support and guidance in order to ensure they have the right expertise to complete the service specification. Number one governors should ensure that the service specification is completed by a member of staff with the relevant knowledge and expertise.

The family services commissioning process involved prison governors and relevant staff by asking them to write the service specifications for the bid process. However, prison staff did not in all cases have the necessary expertise to complete the service specification or clear information about the budget available for commissioning the service. This meant that many service specifications were not deliverable with the budget available and/or included numerous mistakes. These included missing information, a lack of Transfer of Undertakings (Protection of Employment) information, errors in the information about the incumbent provider and, in one case, the release of an entirely blank specification. This meant that bidders had to send a number of clarification questions to HMPPS and struggled to develop a realistic bid in response to the service specification.

Good practice: With the support and encouragement of the MoJ policy team, the Prisoner Learning Alliance has developed a resource for prison governors to help them work through their requirements for commissioning in the field of education – an area in which many governors may otherwise feel ill equipped.

Recommendation 12

The MoJ and HMPPS should require that service specifications are completed by staff with experience of the work that is being commissioned. They should be offered, and have access to, support from the MoJ and HMPPS.

Service specifications for the family services commissioning process were in some cases completed by staff who were not involved in family services at the prisons (in one case, a volunteer Chaplain). This meant that the quality of service specifications varied dramatically, including incorrect or missing information.

Recommendation 13

The MoJ and HMPPS should ensure that there is a continuous single point of contact in the MoJ/HMPPS to oversee and co-ordinate communication with prison staff.

During the family services commissioning process, communication with prisons was problematic. Organisations bidding for family services contracts, for example, found themselves unable to get in touch with key contacts at prisons or to arrange visits to prisons within an appropriate timeframe. This meant that, in some cases, organisations were unable to gather all the necessary information to make an informed bid. Procurement teams must have sufficient numbers of staff to provide this logistical support.

Recommendation 14

Procurement teams and projects teams within the MoJ and HMPPS must be adequately resourced to be able to provide consistent, timely and detailed information to bidders throughout the commissioning process. Resources should be adequate to ensure that there are enough staff members on the team, that team members have the time to dedicate to the procurement process and that team members have expertise relevant to the specific service being commissioned.

During the family services commissioning process, numerous difficulties occurred due to a lack of capacity within the procurement team, such as delayed responses to clarification questions, incorrect responses to clarification questions and errors in service specifications. While the recommendations in this section aim to address these problems, it is clear that procurement teams will be unable to provide consistent, timely and informed communication without the necessary resources and capacity.

Core principle 5: Service user involvement

People with direct experience of the criminal justice system have a unique insight into what works to reduce reoffending and support the desistance process. Good service user involvement can ensure that services reflect the needs and wishes of those who use them and set outcomes and objectives that are led by service user need.

Recommendation 15

The MoJ should seek to engage service users in identifying needs and designing services, using the expertise of the voluntary sector to do so.⁸

The voluntary sector is a valuable partner in service user involvement and can provide expertise on best practice. Clinks' most recent State of the sector survey showed that 80% of voluntary sector organisations working in criminal justice consult their service users about the design and delivery of services, 58% recruit service users as staff and/or volunteers and 41% have a service user forum or council.

Conclusion

The *Prison Safety and Reform* white paper's proposals to empower governors to be more involved in commissioning services represent an opportunity for governors and the Ministry of Justice to utilise the expertise of the voluntary sector in reducing re-offending and supporting the desistance process. It is vital that the commissioning processes that accompany these changes are transparent, responsive and informed by an in-depth understanding of the needs of service users and existing services to address these needs.

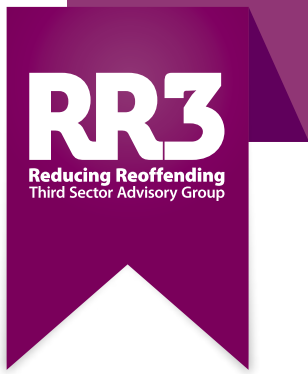
The RR3 represents a useful avenue for consultation with experts from the voluntary sector and can support the MoJ and HMPPS to develop better commissioning processes. The group regularly provides feedback to MoJ and HMPPS officials on policy development and commissioning processes; it can also convene Special Interest Groups to explore a specific topic over a limited time period. Advisory groups such as the RR3 and infrastructure organisations such as Clinks and local voluntary sector networks offer a particularly useful route for engagement with the voluntary

sector before, during and after commissioning processes. This method of engagement has the following benefits.

- **Transparency:** Infrastructure organisations and advisory groups have existing processes for recording engagement and for communicating important information to the voluntary sector. Engaging with organisations this way ensures that the rest of the voluntary sector has access to any information communicated and that no one organisation has a commercial advantage over another.
- **Independence:** Infrastructure organisations and advisory groups do not deliver services and therefore can offer independent advice without the need to promote a particular organisation or service. This ensures the consultation process is solely focused on the quality of services rather than on securing contracts for any one organisation.
- **Communication:** Infrastructure organisations and advisory groups have well established communication channels and can support commissioners to communicate opportunities and important information to a much wider audience. This supports commissioners to engage with a broader group of potential providers and ensure that stakeholders are kept up to date with any developments.
- **Efficiency:** As infrastructure organisations and advisory groups are not providers, commissioners are able to engage with them throughout the commissioning process in order to address urgent issues or developments in the process. This ongoing communication can be crucial for preventing difficulties in the commissioning process from causing delays in the delivery of the service.

Clinks has over 500 members working in the criminal justice system and is experienced in developing and supporting consultation processes to help commissioners understand the landscape of the voluntary sector, develop flexible and accessible commissioning processes and monitor the quality of delivery.

We hope that the recommendations in this report will support the MoJ and HMPPS to improve future commissioning processes and the RR3 will continue to offer its support to provide voluntary sector input wherever that is practical and possible.



Appendix: Additional information about the Special Interest Group on Commissioning Family Services

In 2016, the RR3 convened the Special Interest Group on Commissioning Family Services. This provided a forum for voluntary organisations providing family services to engage in the design of the commissioning process and give ongoing feedback to HMPPS on its implementation. The group continued to run throughout the commissioning process, with a short hiatus during the tendering, and also provided feedback on the process of mobilising the services once contracts had been awarded. The last meeting was in October 2017.

While commissioners can be hesitant to engage with potential providers due to competition regulations, the Special Interest Group on Commissioning Family Services demonstrated that this engagement can be conducted in a transparent and mutually beneficial manner. There was an open recruitment process for the Special Interest Group, which brought together potential providers for the family services contracts. Notes of each meeting were published on Clinks' website and updates were reported back to the RR3, allowing the group to maintain oversight of the process. Clear timelines were set to ensure that engagement did not continue past an appropriate point in the process and the group will be reconvened once services are being delivered to provide ongoing feedback on the results of the commissioning process. The RR3 provided clearly defined parameters and provided transparent updates to the broader voluntary sector and the public, which allowed HMPPS to benefit from the expertise of voluntary organisations without impeding competition.

Although organisations experienced significant challenges during the commissioning process, the Special Interest Group provides a useful good practice example for pre-empting and addressing problems in commissioning processes. In this case, early and ongoing engagement with the voluntary sector ensured that contract sizes were appropriate for this specific market and that some problems in the commissioning process were flagged and addressed before they impacted on the effectiveness or legality of the process.

End notes

1. The Reducing Reoffending Third Sector Advisory Group (RR3) exists with the purpose of building a strong and effective partnership between the voluntary sector and the Ministry of Justice (MoJ). The chair for the group and its secretariat is provided by Clinks. The group meets quarterly, providing expertise and voluntary sector representation to the MoJ in relation to their policy developments.
2. For more information about desistance theory and how the voluntary sector supports desistance, see: www.clinks.org/sites/default/files/basic/files-downloads/Introducing%20Desistance%20-%20August%202013.pdf
3. The Reducing Reoffending Third Sector Advisory Group (RR3) exists with the purpose of building a strong and effective partnership between the voluntary sector and the Ministry of Justice (MoJ). The chair for the group and its secretariat is provided by Clinks. The group meets quarterly, providing expertise and voluntary sector representation to the MoJ in relation to their policy developments.
4. Clinks (2014). *More than a provider*. Available online: www.clinks.org/sites/default/files/basic/files-downloads/clinks_more-than-a-provider_WEB_FINAL_0.pdf
5. See: www.clinks.org/resources-reports-mapping/state-sector-reports
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Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.

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