Association of Mental Health Providers

Developing positive engagement between commissioners and the VCSE provider sector

Considerations for commissioners and providers to create an effective health and care system

November 2023

Introduction

Commissioning within the public sector is changing, especially in the context of Integrated Health and Care. Place-based commissioning is effective for ensuring more effective outcomes for people on a more localised basis, but it should be recognised that commissioning approaches vary across the country. The role of the VCSE within communities is widely recognised as a key element to ensuring effective service delivery that is community focussed and ensures value for money. This short paper outlines a number of issues to be considered by commissioners and providers to support long term effectiveness of the sector within the health and care system.

Commissioning Practice

Commissioning practice works best when undertaken in a blended or collaborative way i.e., through early meaningful dialogue with a range of providers and commissioners themselves, rather than commissioners designing a service in isolation and presenting the design only at the tender stage which sometimes happens with smaller tenders.

It should be remembered that commissioning is a process, including setting strategic direction. Providers, including representatives from the VCSE, should be at the table when strategic planning is undertaken as they have valuable knowledge of the health and care system within their location. This approach should be multi layered, with effective engagement at a national, regional and local level, possibly through an effective network of provider associations.

To improve outcomes and/or quality of services, commissioners need to understand what isn't working well, and both providers and the public should be engaged in co-design to ensure a balanced view. Whilst having to tread carefully through any conflicts of interest in respect of procurement rules when tenders are undertaken, it is important to understand how services can be structured from a provider point of view, in order to ensure that outcomes for people can be operationally delivered in the best way. Otherwise, commissioning can feel theoretical and providers may be unable to meet the required outcomes as effectively as anticipated.

Value

Value is more than cost; it is good quality, safe, care and support that delivers outcomes that matter to people and enhances social value. Public value is derived from meeting all legal, procurement and regulatory responsibilities including, equalities, human rights, economic, social, technical and environmental considerations.

From a legislative overview we attach all the main guidance and legal frameworks you may wish to refer to:

i. 2014 Care Act
ii. 2007 Mental Health Act
iii. 2022 Health and Care Act
iv. 2019 (amendment to) the 2005 Mental Capacity Act
v. 2010 Equality Act
vi. United Nations Convention on the Rights of the Child (UNCRC)
vii. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
viii. 1998 Human Rights Act

Consideration should be given to how collaborative commissioning can be embedded for the sector by public service commissioners, possibly through a review of good practice.

An outline of our key suggestions to review commissioning of your current care and support services and that you may wish to raise with your contract manager:

i. Away from (process) complexity. Towards simplification.
ii. Away from price. Towards quality and social value.
iii. Away from reactive commissioning. Towards managing the market.
iv. Away from task-based practice. Towards an outcome-based practice.
v. Away from an organisational focus. Towards more effective partnership and co-produced outcomes with people that;

1. set benchmarks to stimulate the continuous improvement of commissioning and delivery of care and support in: (insert your local authority/ICB)
2. catalyse the transformation of commissioning and delivery of care and support in: (insert your local authority/ICB)
3. improve consistency of commissioning practices;
4. promote local and hyper-local integration, joint commissioning and shared decision-making;
5. tackle inequalities and fulfilling human rights and complementing legislation and guidance.

Relationships

It is well understood that positive working relationships are key to effective commissioning and service delivery and there are many examples of this in place across the country. However, staff turnover in both the NHS and local government systems mean that key relationships often end at short notice and it takes time and effort to rebuild them.This, along with the loss of organisational history and lack of knowledge about previous decision making, creates difficulties in maintaining a high profile for smaller organisations in the wider local system. Consideration needs to be given to how the profile of VCSE organisations can be raised and maintained in the wider system, so that they are not dependent on one or two key individuals other than for contract monitoring purposes.

Providers working together

Collaboration between VCSE providers is often helpful, whether to bid for a tender together, or to understand a local system in which they are working - though can be difficult to navigate effectively. On the one hand, working together should ensure that providers avoid competition between themselves and can potentially enable them to configure a wider offer to health and care commissioners. On the other, this may require a transparency that some organisations are not comfortable with, and potential conflicts of interest would have to be managed carefully. Smaller organisations should have equal voice, even if it is recognised that they may not have as much financial risk / gain as larger partners.

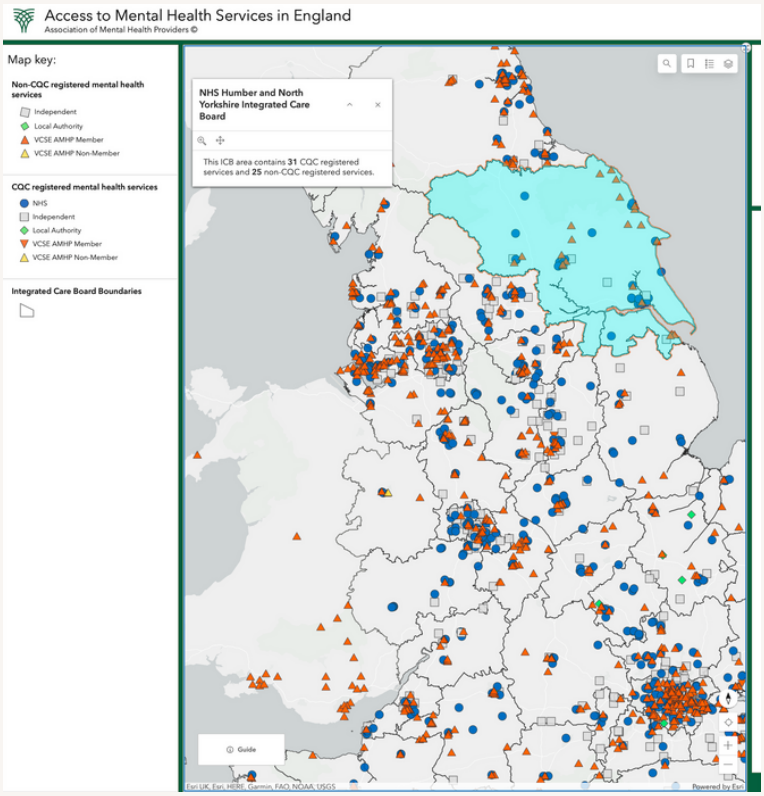
Experience demonstrates that lack of partnership working can create divisive behaviours within the sector. There is potentially a need to promote collaborative working.

Working in this way may also present some challenges for commissioners, where providers are differing in size, structure and service type.Creative thinking around contract structures and payment mechanisms may need further development for effective implementation.

Service design

The Association created the first ever complete picture of mental health service provision across England via an interactive map in early 2023. Initial findings from the mapping have revealed our members are delivering a wide range of over 3000 mental health services locally, regionally, and nationally. This means there is a mental health charity supporting our NHS in delivering mental health services in every local area of this country.

Use our mapping tool to check services available in your locality – offer new service configuration based on demographic need.



Use our **service mapping wheel** (below) to look at the range of mental health services that could be available to the community in your locality. Making recommendations to the commissioner of new services and how they can meet the prevention and value for money agenda can be beneficial to your organisational sustainability.

Money

The flow of money through the health and care system is complicated and inconsistent; Local Authorities which have responsibility for social care and public health services have seen funding reduce significantly due to austerity measures.To ensure they can meet funding cuts they often focus on meeting their statutory obligations and reduce preventative funding, meaning that funding for the VCSE is often reduced as a result.Whilst the NHS has had funding increases, it is often directed in a specific way to meet clinical outcomes; a good example of this is the Mental Health Investment Standard, which has a positive focus on ensuring additional investment into mental health services, but which has the potential to stifle innovation if additional resources cannot be added to it.

Funding flows within the VCSE are also complicated and not always well understood by commissioners working in the wider system. In terms of financial structure of charitable organisations, donations vary significantly across the sector and other funding may have specific conditions attached to it, or have to align with achieving specific outcomes.Both of which need to be factored into the financial viability of organisations within the VCSE.

Longer term contracts have been sought by the sector and commissioners have often listened, awarding 3+ year contracts, which is positive. However, the current financial climate of high levels of inflation means that longer term contracts with fixed fees which are not uplifted become impossible for the sector to maintain. Consideration should therefore be given to implementation of longer contracts with annual financial reviews.

Top Tip: For providers a good starting point is to look at the due diligence you can undertake on your commissioning authority.

For example, if you regular contract with a single authority, take some time to check publicly available spending information on social care.

Usually, annual accounts and public meeting papers have to be published on their website, or check companies house for information.

What is the interesting fact about how decisions are made and where they are spending the most money?

Can your service find savings or support their strategic aims?

What can you find out on fee rates?

Top Tip: Take your existing contracted rate and decide: Do you have full costs recovery for the service or how far is this from the actual cost to deliver?

Use the Care Provider Alliance link to check you LA and how it responded to the Fair Cost of Care – although not specific to mental health services what this reporting for residential and home care will tell you is: what the pay rates are being used for staff in other services

What they will accept as included service costs and other overheads such as insurance, food costs, mileage rates should all be 0.45 per mile standard.

Contract terms and negotiations

All contracts in mental health social care are not the same, they vary by size, service type, duration and specific terms.

Do check if there any other (local) arrangements in place for VCSE or small organisations when being commissioned by a Local Authority or the NHS?

For example: longer term contracts, extended notice periods, special beneficial invoice payment arrangements (see below on prompt payment policy), or payment in advance to help cash flow?

Link your offer with the Commissioners strategic approach - do you as a VCSE organisation understand your role in prevention / early intervention and the wider health and care system?

Can this be clearly demonstrated in a meaningful way to the commissioner to support your evidence base for success?

Are there specific performance indicators relating to this that commissioners could provide to you to help you evidence impact?

For example: hospital discharges or admission prevention for certain customer cohorts that are collected by the NHS and not mapped into community services.

Check the TUPE agreements especially if you are taking over an existing service.

Last and not least before you sign check the fine print. Contractual obligations are binding and can be costly if you find out that a specification you originally bid against has additional contractual terms to adhere too. For example, ensure you know the specific level of insurance cover you must provide.

Also know how and under what circumstance you can break any agreement if it becomes financially unsustainable.

Contract monitoring arrangements

Do be clear about what regular reporting is requested, how often, what deadlines etc and understand how onerous this could be for your organisation

Top Tip: What data do you collect for your own management information purposes? Could any of this be useful to commissioners (and is therefore a quick win for you to report as you already collect the info)?

Ensure that any changes to the original request for information or service ad hoc requests for data are built into contract amendments as the contract will potentially run for many years and you may require extra resource to maintain.

Prompt payment guidance

This prompt payment guidance specifically for central government departments rather than other public bodies. The prompt payment policy contains some good practice – e.g., payment of invoices from SMEs to be made within 5 days.

However, the 30-day maximum payment of invoices rule applies to all public bodies.

NHS and LA commissioners will adhere to their OWN payment terms, and they vary by size, service type, duration and specific terms.

The Local Government Association has E-procurement case studies here.

Top Tip: Check and ask for the details of your invoice arrangements and do not hesitate to ask for information on how to present the invoice and direct contact details for the finance department.

With special thanks to Julie Gonda

Association of Mental Health Providers

www.amhp.org.uk
@AssocMHP

November 2023