

AGENDA ITEM: 10

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Meeting	Cabinet Resources Committee
Date	22 July 2008
Subject	Third Sector Commissioning Framework
Report of	Cabinet Member for Community Services
Summary	This report seeks to establish a corporate framework covering commissioning and procurement from the third sector including grant awards.

Officer Contributors	Julian Mauger, Third Sector Commissioning Manager
Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix – Third Sector Commissioning: Changes to Funding Arrangements
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Julian Mauger – telephone 020 8359 7026

1. RECOMMENDATIONS

- 1.1 That the changes to funding arrangements for third sector commissioning set out in the Appendix be approved.**
- 1.2 That the Executive Director of Resources draws up plans for implementation of the changes in consultation with the Cabinet Member for Community Services.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet - 4 September 2006 – approved the recommendations of the best value review of working with the voluntary and community sector.
- 2.2 Cabinet – 3 April 2008 – agreed the Compact with the Voluntary and Community Sector

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Council spends significant amounts on third party payments and grants to the third sector. There has always been targeting of these in line with corporate priorities but there is room to tighten this up further in line with the Council's continuing focus on its 'Use of Resources'.
- 3.2 In relation to the Council's priority of *More Choice, Better Value*, the vigilance of the Grants Unit and frontline services operates to minimise duplication between their funding streams. However a different approach, with commissioners holding or influencing the use of grant budgets currently held at the corporate centre, may prove beneficial in value for money terms. If and where budgets are aggregated up, care will be needed to balance better value with choice to clients.
- 3.3 The Corporate Procurement Strategy seeks to "promote the full range of service delivery options ... including not-for-profit organisations". This framework supports that aim in finding ways to level the playing field for third sector organisations wishing to bid for funds or contracts, without providing unfair advantage in procurement terms.
- 3.4 The Compact with the Voluntary and Community Sector sets the overall policy and governance framework for working with the sector, makes a reference to the link to a future Third Sector Commissioning Framework and the latter needs to be read in conjunction with it

4. RISK MANAGEMENT ISSUES

- 4.1 National research has highlighted that more can be done to achieve better value from funding to the third sector. However, the change being led from central government brings risks and is causing much anxiety in the third sector nationally. These measures are intended to operate as a broad framework in which to operate and manage those risks without constraining

the considerable amount of work now required to develop best practice, both nationally and locally.

- 4.2 As central government issues increasing amounts of guidance in relation to various commissioning areas, there is a risk that practice across Council departments will diverge. These changes to funding arrangements are the first step towards an integrated corporate approach to managing funding awards (contracts and grants) to the third sector.
- 4.3 The general approach which sits behind the initial changes set out here is new to all local authorities. It will require a systematic review of processes, building in the lessons from local experiences and similar work elsewhere and may result in supply markets being restructured. Commissioners and the third sector will need to collaborate to manage this transition to ensure that benefits to end users are realised.
- 4.4 The change process has the potential to damage the good working relationships which exist between Council and the third sector, if not handled sensitively and transparently. Relationships will be managed in the context of the Compact agreed with the third sector locally and through the mechanism of the Barnet ChangeUp group which co-ordinates third sector infrastructure development locally. A corporate third sector group will be convened to maximise benefits of the changes and to develop a wider framework and guidance, incorporating best practice emerging nationally.
- 4.5 There is an inherent risk that funding arrangements will not deliver value if poorly managed. The changes set out here take an explicitly risk-based approach to deciding whether a contract is helpful in that regard. They set monetary thresholds above which the presumption is that a contract will be awarded and this is expected to lead to more contractual arrangements and closer monitoring.
- 4.6 If implementation results in later changes to the procurement framework in order to enable third sector organisations to compete, these may need to be accompanied by a different set of checks prior to awarding a contract and enhanced performance management arrangements subsequently. These will need to be developed at the same time. Penalties or legal redress for non-performance may impact more severely on some smaller organisations than those to whom we typically award contracts now and this will also need to be reflected in contract terms and in management of the contract.
- 4.7 Implementation of the changes risks losing the involvement of smaller VSOs whose work is valued by the Council but who cannot or do not wish to take part in competitive processes. Transitional work recommended here will allow consideration of the impact on a market by market basis.
- 4.8 Full cost recovery allows third sector providers to apportion appropriate organisational costs (salaries, rent, utilities, etc) to grant-funded activity as would happen for any commercial contract. This can have the effect of reducing the outputs per unit cost, i.e. the commissioner gets less for their

money. Commissioners will need to balance market development involving the third sector with the need to maintain services to customers. (See also section 9.)

- 4.9 The interaction of full cost recovery with direct payments and individual budgets may prove complex. Social care commissioners will need to be particularly closely involved in implementing changes to third sector commissioning to help manage this.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Commissioners are required to apply equalities legislation and Council policies in designing all services. This applies equally to contract and grant awards and needs to be applied in the implementation of operation of these changes.
- 5.2 The transitional work will include a review of grants awarded to VSOs for activities supporting specific ethnic or faith groups and work which supports the Council's corporate priority of a 'Strong Barnet' and will consider how this work should be co-ordinated and commissioned in future.
- 5.3 There is a high uptake of direct payments among black and minority ethnic social care clients and changes proposed, particularly market development, will need to remain sensitive to this.

6. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 6.1 These changes do not require immediate changes to the Council's Contract Procedure Rules or financial regulations but the transitional work and emerging best practice almost certainly will. These will be brought forward through the usual channels.
- 6.2 The transitional work mentioned in the framework may result in virements of budgets between departments, particularly from the Grants Unit to commissioners in frontline services. Virements of budgets between departments will be co-ordinated under the oversight of Key Priorities Board in the context of setting budgets for 2009/10 onwards. No additional resources are sought.
- 6.3 Grant programmes managed by the Council on behalf of other organisations, namely the Milly Aphorp Trust and Edward Harvist are unaffected by this report but they will need to be included in consultation on the Council's small grants programme.
- 6.4 The Grants Unit is now incorporated into the Corporate Procurement Team and will need to position itself more strategically, taking an overview of third sector commissioning across the Council and coordinating spend and best practice. There is no immediate change to staff roles but a change process needs to be set in motion now to monitor the impact of implementing the framework and plan the necessary changes with staff involvement.

- 6.5 The best value review highlighted a need for better identification and management of funds channelled to the third sector. This needs to be developed within the Council's existing SAP system.

7. LEGAL ISSUES

- 7.1 These changes require commissioners and funders, as always, to consider whether they are intending to enter into contractual relations before deciding on a funding 'channel' and to operate within the Council's Contract Procedure Rules together with any statutory requirements where they apply.

8. CONSTITUTIONAL POWERS

- 8.1 Constitution, Part 3 – Responsibility for Functions – Section 3 – Responsibilities of the Executive: section 3.6 reserves matters relating to grants over £20,000 to Cabinet Resources Committee.

9 BACKGROUND INFORMATION

- 9.1 The Council's best value review of working with the voluntary and community sector concluded that there was much work to be done in relation to commissioning from the third sector and re-working our grants policy. The changes to funding arrangements attached for approval are intended to address these issues against the backdrop of an on-going national change programme in relation to third sector commissioning led by central government that has developed considerably since the best value review was finished.
- 9.2 Barnet's third sector has long been preparing for such change, in part through the ChangeUp group and specifically on developing consortia which may enable Third Sector Organisations (TSOs), particularly smaller ones, to make collaborative bids for contracts and grants where they would otherwise be less competitive.
- 9.3 This document sets out headline changes in the council's funding arrangements with the third sector, concentrating on the choice of a funding channel (essentially either a contract or a grant) and the associated process of selecting a provider. It also provides transitional arrangements and action points for implementation in 2008/09 where these are required to alter existing arrangements.
- 9.4 The guidelines fit into the phase of the commissioning cycle which centres on procurement and market development. They concentrate on this part of the cycle because it is key to unlocking change. They will, usefully, trigger questions about practice in other parts of the cycle and these areas in themselves are likely to require further guidance in due course. As national best practice is still developing, these changes are designed as a starting point for decision making to be supported by detailed guidance for

commissioners developed with their specialist knowledge of the markets they operate in.

- 9.5 It is intended that dialogue on the implementation of these changes will act as a stimulus to further develop and codify best practice in this area. They will also form a backdrop to the Council's Guidance for Grant Applications which may require alteration as a result.
- 9.6 The changes have two main purposes: firstly to put in place basic rules around third sector funding, but remaining flexible and allowing best practice to develop; and secondly to enable transitional work which will in turn trigger further change. Experience elsewhere shows that there are benefits to the proposed changes, but that we should treat them as experimental and adjust as we learn. More specifically, they
- define broad objectives for the processes of commissioning from the third sector which align with the Council's corporate priorities, 'Use of Resources' work and the Compact
 - are a first step in ensuring consistency across the Council's commissioning and financial arrangements with the third sector at a time when there is a proliferation of national guidance to commissioners
 - bring procurement from and grants to the third sector into a single framework consistent with the Council's procurement rules
 - clarify rules for procurement from the third sector
- 9.7 They set out a sequence of decision making that requires the commissioner to consider first the nature of what is being funded, followed by the decision whether to award a contract or a grant.
- 9.8 Grant-in-aid, i.e. grant as a strategic investment in one third sector organisation or consortium may be up to £100,000 over the lifetime of the award without use of a contract, but all other awards over £50,000 (lifetime value) must be contractual. This effectively lowers the threshold for needing a contract which is currently £50,000 per annum in most cases. There is then a further assumption that grants will be awarded through a competitive process with further work required to decide whether and to what level smaller grants should be available through application to the grants unit, as per the current scheme.
- 9.9 The framework moves grant funding towards allowing "full cost recovery". This allows third sector providers to apportion appropriate organisational costs (salaries, rent, utilities, etc) to the activity funded by the commissioner. This helps them sustain themselves financially by passing on costs in the way that any contractor would and increases the chances of entering or remaining competitive in any particular market. From the commissioner's point of view, this can have the effect of reducing the outputs per unit cost, i.e. the commissioner gets less for their money. Commissioners will need to balance market development involving the third sector with the need to maintain services to customers. Therefore moves towards full cost recovery will necessarily be a managed trend rather than rigid implementation from the outset.

- 9.10 The changes set out here include transitional work which will review the corporate grants budget alongside commissioners' budgets, with a view to rationalising them. This will aim, where possible, for closer targeting of corporate priorities and better value for money. This will report in to Key Priorities Board in the context of budget setting for 2009/10 onwards.
- 9.11 Barnet's third sector has prepared extensively for the national agenda reflected here in the Council's framework. There is recognition that radical change that the national commissioning agenda will have a big impact on the sector and the consultation feedback on the changes proposed here is concerned mainly with the impact and practicalities of implementing them. The Council and third sector will need to agree a programme of development work and training for the sector with the assistance of Barnet Voluntary Service Council, building on training already in place.
- 9.12 A particular concern is the future of the Council's grants programme and this will require further consultation.

10. LIST OF BACKGROUND PAPERS

- 10.1 Corporate Procurement Strategy (January 2003)
- 10.2 Third Sector Commissioning Framework – background document version 0.2 (circulated with consultation document, April 2008)
- 10.3 Barnet ChangeUp Strategic Plan and Business Plan
- 10.4 Please contact Julian Mauger, telephone 020 8359 7026, if you wish to view any of the above papers.

Legal: PD

Chief Finance Officer: CM

Third Sector Commissioning: Changes to Funding Arrangements

This document sets out only headline changes and should not be used in isolation as the basis for decision-making.

Objectives of these changes

These are set out below and are consistent with the Council's corporate priorities.

More Choice, Better Value

- Build on the existing strengths and capacity of Barnet's third sector as potential service providers in support of our corporate priorities
- Maximise value from funding arrangements with the third sector, aligning funding more closely with corporate priorities
- Make the process of choosing a provider more efficient and proportional to the value of the contract or grant

Strong Barnet

- Identify and preserve the value given by smaller third sector organisations in support of a 'Strong Barnet'

Transitional arrangements

- Bring existing contracts and grant awards into line with new guidelines where they are not already and consider how grant budgets should be managed.

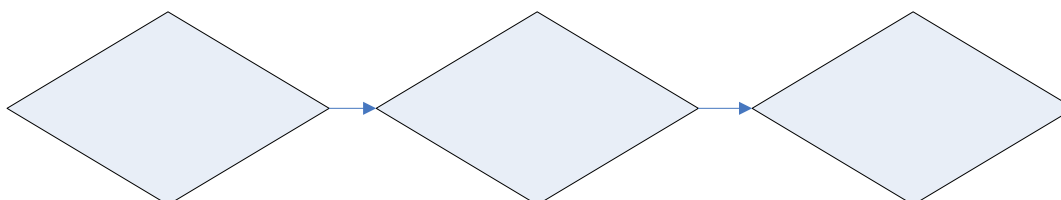
Joining up funding streams

Transitional action point

The Grants Unit will work with Council departments to rationalise grant-funded services and projects with related services commissioned by those departments with a view to achieving the objectives set out above. Where appropriate, budgets will be vired to the lead commissioner in the relevant department. The Grants Unit will itself remain as a commissioning department, e.g. for generic advice services.

Funding arrangements - the decision-making process

Commissioners will be guided to take decisions on any particular funding arrangement in the sequence set out below.



Decision: Commission, subsidise or invest?

Before deciding whether to award contract or a grant and before designing the funding arrangements (length of award, payment terms, etc), commissioners should decide which of the following they are doing:

- Commissioning a service – this usually involves the commissioners (who may be from more than one organisation acting jointly) specifying and paying for a service in its entirety so that they decide for themselves exactly what service they want to 'buy' and what outcomes and outputs they want.
- Subsidising the activity of a third sector organisation – this will often be a financial contribution to a service or project with specified outcomes and outputs, run by and often initiated by the third sector but which fits the commissioner's requirements.
- Strategic investment in a particular third sector organisation or consortium where the organisation itself (as well as the services it provides) is central to the efficient and effective functioning of the market in question and whose broad objectives are aligned with the commissioner's own.
- A combination of the above.

A single contract or grant award may cover a combination of commissioned services, subsidised activities and strategic investment with the funds apportioned accordingly. However, the presumption is that funding awards are more likely to be split for larger values, as risk increases and where doing so will increase competition.

Decision: Contract or grant?

Contract and grant thresholds

The thresholds in the table below should be adhered to. These thresholds may vary over time in the light of experience and changing markets. 'Lifetime value' means the value of the contract or grant over its full term.

Lifetime value ↓	Commissioned services	Subsidised activities	Strategic investment
£100,000+ [note 1]	Contract	Contract	Contract
£50,000 - £99,999			Grant-in-aid
< £50,000	Grant	Grant	

Notes

[1] – For a contract of this value, the commissioner should seek legal advice to ensure it does not contravene the State Aid rules pursuant to Article 87(1) of the updated European Community Treaty.

Experience of implementing these new thresholds may give rise to cases where exceptions should be made. Exceptions will be approved at an appropriate level of authority and the following factors will together be taken as the primary ones:

- acting in the interests of the intended customers
- obtaining best value from the contract or grant
- an increasing presumption in favour of awarding a contract as risk increases where risk is interpreted as:
 - importance of the funded activity to delivery of the Council's corporate priorities and partnership goals
 - increasing financial value of the contract / grant
 - other risk factors assessed in context

Decision: A competitive process?

When awarding a contract, Contract Procedure Rules define the competitive process. Where a grant is to be awarded, there will be a presumption from the outset that a competitive process will be used, i.e. organisations will be required to bid for the grant, except where:

- The value is small enough to fall within any small grants programme in operation at the time
- It meets one of the few exceptions set out in guidance currently being developed.

Transitional action point

In relation to existing contracts, this guidance applies equally to contracts awarded following the policy decision to convert existing grant awards over £50,000 into contracts without a competitive process. Where one of these contracts or grants is renewed, these guidelines regarding competition apply in full.

Full Cost Recovery

As a starting point, commissioners will be expected to make a presumption that full cost recovery applies to all contracts and grants awarded to the third sector. That means that the organisation delivering the service for which the contract or grant is awarded can build their overheads into the price of delivering it.

However, the impact on customer service and the availability of supply will be taken into account in implementing full cost recovery and this is likely to mean that there will be a managed trend towards full cost recovery and not full, immediate implementation.

Best practice

The Council will develop a toolkit for commissioners which covers all of the above as well as other best practice, including those items set out below. The Council will aim for transparency in implementing guidance for commissioners.

- Risk management
- Simplicity and proportionality of processes
- Consistency between Council commissioners and where possible between organisations
- Consistency with other Council frameworks such as contract procedure rules and financial regulations
- Standardisation of documentation where this is helpful
- Transparency in decision making on contract and grant awards
- The interaction of commissioning from the third sector with Direct Payments and Individualised Budgets
- Decommissioning
- Market development