

NOTE OF A MEETING OF THE CORE COSTS CLUB HELD AT THE BARING FOUNDATION ON 8TH OCTOBER 2008

COMMISSIONING, CONTRACTS AND THE THIRD SECTOR

Matthew Smerdon, the Deputy Director of the Baring Foundation welcomed the 60 participants present. For the past six years the Foundation has been inviting recipients of its larger grants to come together to discuss issues of generic relevance. The Foundation has had a long standing interest in how the sector is funded and the current theme of its Strengthening the Voluntary Sector programme on the independence of the voluntary sector has great relevance to how voluntary organisations respond to the increased use by public bodies of commissioning and contracts. He handed over to David Cutler, the Director of the Baring Foundation who chaired the seminar.

Dr Gordon Murray, the Manager of the National Programme for Third Sector Commissioning at the Improvement and Development Agency was the first speaker. [His presentation can be accessed here](#). His key message was that smarter commissioning has as its purpose better outcomes for individuals and communities - this is why it all matters. There is considerable confusion over the terms 'commissioning' and 'procurement'. He presented a model of the commissioning cycle that starts with a strategic needs assessment and moves round to monitor and review. The procurement part of this cycle includes option appraisal, sourcing and delivery. One of the reasons why this is important to clarify is that the third sector has especially important roles in terms of the design of services and holding providers and commissioners to account - many voluntary organisations do not wish to provide services. The Government's Eight Principles of Commissioning are a sound basis for good practice but insufficiently known and used. Although there are many serious concerns over the current state of practice in commissioning and procurement by public bodies at least there is a significant degree of recognition by commissioners over the need to improve their practice.

Seb Elsworth, the Head of Policy at the Association of Chief Executives of Voluntary Organisations (ACEVO) entitled his talk 'Contracts: the enemy of independence?' [His presentation](#)

[can be accessed here](#). His main contention was that there is a trade-off between the power to achieve your goals and the independence to choose them. Independence matters in relationship to an organisation's mission. Therefore 'mission drift' and 'mission gag' are genuine dangers but it is the job of the voluntary organisation if it enters into contracts to negotiate ones that don't threaten them in this way. On other side of the equation resources can bring power to achieve mission.

Alan Lawrie is an independent consultant delivering the Directory of Social Change's Getting a Fair Deal from Contracts course as well as the co-author of 'Surviving Contracts' published by DSC. [His presentation can be accessed here](#). He brought us a series of messages from the frontline, the first of which is that commissioning is still finding its feet and is in a mess. He contracted the desired smart commissioning with the all too prevalent 'tick box procurement'. Third sector organisations need to influence the process of commissioning but this is difficult in terms of time and resources especially for the smaller ones. In general there seems to be a number of advantages for larger providers in how things are organised. Commissioning is likely to become ever more important and more areas of public service might be transferred to the voluntary or private sectors. There are things that voluntary organisations can do to strengthen their hand, including sometimes saying 'no' to contracts - the ultimate nightmare for any commissioner who needs a market. Andy Gregg, the Chief Executive of the London Advice Services Alliance outlined two current sets of commissioning practice which are causing him the gravest concern. The first was the rolling out of Community Legal Advice Centres (CLACs) and Networks (CLANs) by the Legal Services Commission. Their use of a system of fixed fees penalises advisers for taking on more difficult cases. Secondly, the prioritisation of outer London boroughs for funding, in some cases in contrast to relative need, by London councils.

Verity Timmins, from FRC Group finished the series of speakers with a more upbeat message of how the Furniture Resource Centre in Liverpool had managed to persuade local authorities in a number of areas to use 'added value' or 'social value' clauses to contracts issued during tendering processes. The added value in their 'Bulky Bob' service includes: salaried training for long term unemployed people; recycling, reuse and or diversion of at least 30% of waste collected; and access to cheap pre-loved goods to families in Liverpool and on low

incomes. It is important to note that they set about proving that they are achieving this through robust social auditing.

Each of the presentations was followed by questions and the meeting closed with a plenary discussion and points for the panel of speakers. The overall spirit of the meeting was characterised by a great deal of concern over the current level of practice in commissioning and procurement by many public sector bodies. Some commissioners had not even heard of the Compact. Many examples of bad practice were given and rules generated quite arbitrarily by commissioners which do not comply with the Government's Eight Principles. (There was however great appreciation and support for the work that Gordon Murray is engaged in trying to improve this situation). There is much inconsistency and local authorities in particular going their own way. The voluntary sector tends to struggle on the issue of intellectual property and there appears to be a disadvantage for early providers of services who are then beaten by new entrants, sometime large national providers with less understanding of the local context but an advantage in scale. Although there are lots of things that voluntary organisations can do to get on the front foot this is particularly difficult for smaller organisations, some of whom are going out of business. Even though the voice role of voluntary organisations is so important there is little practical support for it in terms of funding. One of the more radical suggestions was that Government should outsource the role of commissioning to the voluntary sector.

Janet Lewis Jones, a trustee of the Baring Foundation, closed the session by thanking all the speakers and participants. The funding of the sector has been the subject of two publications for the Baring Foundation by its then adviser, Julia Unwin, ['Speaking Truth to Power'](#) and ['The Grant Making Tango'](#). (Click on these links to download the publications). It will remain a vital consideration in the strategy review which the Foundation has begun and this session has emphasised its continuing centrality.

David Cutler