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Lord Agnew Kt DL
Minister of State
HM Treasury and Cabinet Office
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28 July 2021

Dear Lord Agnew,

Procurement and commissioning of public services

Thank you for your letter of 18 March. As a follow-up to that letter, on 9 June we held two evidence sessions with witnesses working on the commissioning of services in the voluntary and public sectors. We spoke to [Rachel Silcock, Strategic Commissioning Manager, Plymouth City Council](#); [Mike Barker, Strategic Director of Communications and Reform, Oldham Council](#); [Martin Wilson, Chief Operating Officer, Newcastle Hospitals NHS Foundation Trust](#); [Julian Blake, a public benefit lawyer at Stone King LLP](#); [Mat Ilic, Chief Development Officer, Catch22](#) and [Ed Wallis, Head of Policy and Public Affairs, Locality](#). We are grateful for their contributions.

The evidence raised some important questions in the light of the consultation on the Procurement Green Paper, which closed for submissions in March of this year. We remain concerned that the Government's proposals prioritise competition to the detriment of collaboration among providers public services, give insufficient recognition to the important role played by the voluntary sector, fail to promote expertise in commissioning and do not align with the Health and Social Care Bill. I would be grateful if you could respond to our questions as soon as possible.

The Procurement Green Paper

Witnesses told us that the Green Paper did not differentiate between the commercial purchasing of goods and commissioning, which is the process of ensuring that the highest-quality public services are delivered by the voluntary sector or other organisations. Procurement is founded on competition law, but commissioning should instead prioritise collaboration – whether between local government and the NHS, or the voluntary sector and statutory services. If it promotes competition over collaboration, the forthcoming Procurement Bill could do more harm than good.

Ed Wallis described how the Procurement Bill needs to be “properly designed for the commissioning of public services. The starting point for that needs to be collaboration, not competition.” However, he argued that “the very framing of the Crown Commercial Service’s procurement guidelines” says “very clearly that the overriding procurement priority is achieving value for money through competition. That is a very clear incentive structure being created.”

Rachel Silcock reported that while she had found a way to ensure collaboration between services within the competitive framework imposed by Government procurement requirements, a focus on collaboration would be more effective:

“We did not start off by going out to competitive procurement ... We seed-funded a model, which we called a prototype ... We tried it out, learned from it, changed it and tried it again. ... That is how you create social value. I do not think that running a competitive procurement that has some social value aspect to it is really the way to go. I think the focus of the legislation, if anything, needs to change that completely and almost turn it on its head.”

1. The Procurement Green Paper fails to recognise that procurement and commissioning are different. To what extent, if at all, will the Procurement Bill promote collaboration in the delivery of public services ahead of competition between service providers?

We heard that when Cabinet Office guidance was updated due to the COVID-19 pandemic, commissioners had more freedom to work with the voluntary sector and could provide longer-term funding that allowed small voluntary organisations more scope to plan. In many local areas this flexibility led to more placed-based, social-value- and outcomes-focused commissioning. Ed Wallis told us: “in our experience of the pandemic ... some of the flexibilities that were introduced ... seemed to help to start to create a different dynamic and different relationship.”

However the Green Paper did not recognise the unique value that the voluntary sector can bring in identifying and responding to local needs, and ensuring that user voice is at the heart of service design. Its proposals could, furthermore, undermine a local focus on social value. Ed Wallis continued:

“The worry is that the signals and incentive structures that legislation creates double down on some of the risk-aversion bureaucratic culture. The current procurement Bill does matter as an opportunity to create the kind of different, more collaborative approach that we have been talking about. If we do not get there, guidance and training will have to do quite a lot of heavy lifting to encourage commissioners.”

One area of particular concern for our witnesses was the Green Paper’s approach to [innovation partnerships](#), a procurement procedure that was introduced in EU countries in 2015 to develop “innovative products, services or works” requiring long-term funding. Julian Blake gave the example of an innovation partnership in Leicestershire “that is very striking ... It is a totally different approach to children’s services. You have a children’s services innovation partnership – a 10-year integrated partnership relationship between the council and Barnardo’s to redesign, redevelop and reorganise the whole system in collaboration with all the other organisations that have an interest.” He noted however that although the Green

Paper treats “flexibility [as] a very important thing ... it then moves from the focus on commissioning by removing ... the innovation partnership, which is the only place where you can put in place relationships that are not just service contract relationships but can be partnerships and collaborative relationships, too.”

- 2. The Green Paper does not embed the flexibilities that were introduced during the pandemic, nor does it give sufficient recognition to the important role played by the voluntary sector in embedding social value. How will the Procurement Bill rectify these shortcomings? How will the Government replicate the long-term funding arrangements provided by innovation partnerships?***

The Green Paper proposed the creation of a [National Procurement Policy Statement](#) to shape the Government’s priorities for achieving social value. However, Ed Wallis was sceptical about its value. He felt that the Policy Statement could place bureaucratic requirements on local service providers rather than supporting the flexibility needed to address local priorities and need:

“My big concern from the procurement Green Paper was the proposal for a National Procurement Policy Statement ... It needs to be flexible and about local priorities, and it needs to have an approach where a local authority can embed that social value right at the heart of the quality of a contract rather than it being an additional thing that is trying to meet wider Government priorities.”

- 3. In establishing a National Procurement Policy Statement, the Government must work with local public services providers rather than against them. Local services need the freedom to determine how best to achieve social value in their area. How will the Government ensure that social value requirements do not introduce excessive bureaucracy for local providers?***

Building skills for effective commissioning

Mat Ilic reported that while the civil service has many procurement specialists, it has little commissioning expertise: “in central Government the civil service values procurement and commercial specialism and [not] commissioning specialists.” Despite a “policy intention” focusing on “commissioning and public value ... more civil society participation and ... smaller charities”, the “process ends up being a procurement process and the binding and overarching culture is one of procurement, because it is being led by commercial teams that are very insular, quite specialist and prioritise risk mitigation and management, especially the threat of legal challenge and risk.”

- 4. While central Government is able to draw on a wide range of procurement specialists, it suffers from a dearth of commissioning expertise. Will the Procurement Bill rectify this shortage of skills?***

Mat Ilic argued further that while the commissioning of local services might be inhibited by poor culture and practice, these failings should be addressed through mechanisms to share

practice such as toolkits, peer-to-peer learning and support networks. Such an approach is just as important as legislation in inculcating necessary culture change:

“Culture is paramount. To go beyond the legislation, which gives that clarity of purpose, you want a level of local autonomy and mastery. Mastery comes through working with others who have done it and have built best practice over time ... networks and peer-to-peer learning end up being quite significant contributors.”

5. *Aside from introducing legislation, what approaches will the Government take to support the sharing of commissioning best practice at the local level?*

Procurement legislation and the Health and Care Bill

We welcome the proposals in the Health and Social Care White Paper and subsequent Health and Care Bill that will encourage collaboration between NHS and local authorities. Nevertheless, witnesses told us that the Procurement Bill should join up effectively with the Health and Care Bill, and that otherwise there was a risk that public services could be subject to two contradictory legislative frameworks. We also heard that while the Health and Care Bill gives local commissioners more freedom to innovate, the Government’s procurement proposals were “top-heavy”.

Mike Barker was more in favour of the Health and Social Care White Paper than the Procurement Green Paper “because it is a very permissive paper”. Julian Blake pointed out that the Health and Care White Paper “talked about collaboration” while the procurement Green Paper did not. “Therefore, for anything other than health we are not talking about collaboration. That raises a massive question. Why do we not have collaboration in the other areas of public services too, because exactly the same reasons are applicable?”

Ed Wallis agreed that “it seems strange that [collaboration] is an explicit goal within commissioning health and care services, but there is no similar goal being supported by the Procurement Bill. It could create some local complexity, with certain services that may feel quite similar being commissioned in a collaborative, place-based way and then commissioned under a different procurement regime depending on where they fit.”

Witnesses said that both bills should put stronger requirements on commissioners to involve the local voluntary sector in the design of services, and encourage integrated commissioning and procurement between the NHS and local government.

6. *The NHS White Paper prioritises collaboration over competition in NHS commissioning, while the Government’s procurement proposals do not. How will the Government ensure that legislation in these two areas aligns? How, if at all, will the Procurement Bill complement the NHS White Paper’s focus on encouraging collaboration between councils and the NHS?*

7. *How will the Government use health and social care and procurement legislation to ensure sufficient voluntary sector involvement in designing*

public services, and to encourage integrated commissioning and procurement between the NHS and local government?

We look forward to receiving your response as soon as possible.

Yours sincerely,

A handwritten signature in black ink, reading "Hilary Armstrong". The signature is written in a cursive style with a large initial 'H' and a long, sweeping tail on the 'g'.

Rt Hon Baroness Armstrong of Hill Top
Chair, House of Lords Public Services Committee