



# RE-TENDERING OF SOCIAL CARE SERVICES: SERVICE PROVIDERS' PERSPECTIVES

FINDINGS OF A SURVEY OF CCPS MEMBERS, AUGUST 2008

## INTRODUCTION

In May 2007 CCPS published *Competitive tendering in social care and support services: a position statement*. That document noted the increase in competitive tendering of social care services in recent months and years (in particular the re-tendering of those services already provided by voluntary organisations), set out the risks associated with re-tendering and proposed a series of actions to mitigate those risks.

A number of the recommended actions in that document are being taken forward by CCPS with a range of partners, including the Association of Directors of Social Work and COSLA.

In the meantime CCPS has conducted a survey among its member organisations in order to gain more insight into providers' perspectives of the way in which re-tendering exercises are being taken forward in Scotland, and to illustrate some of the practical implications of re-tendering on provider organisations, their staff and the people they support.

This paper sets out the key findings of that survey.

## THE SURVEY

A short proforma questionnaire was issued to all CCPS members in June 2008 with an invitation to those organisations that have been involved in one or more re-tendering exercises to complete a proforma for each exercise. The results were then collated and analysed by CCPS staff.

The proforma asked providers to identify those tender exercises in which they had participated: subsequent questions related to concerns identified by CCPS in its earlier publication in the following areas:

- whether existing services were evaluated in any way *before* the tender exercise was initiated
- whether and in what way the people supported by existing services, and their families, were contacted and/or consulted either before, during or after the tender
- whether providers bid to retain their existing services or to win contracts for services provided by other organisations (or both)
- whether providers won or lost in tender exercises, to/from whom, and the financial implications
- how many staff were transferred under TUPE following tender exercises
- how many people's support arrangements were transferred following tender exercises
- any other issues to which providers wished to draw attention.

Twenty-four forms were returned from 15 CCPS member organisations; 14 separate re-tender exercises were identified, in 10 local authority areas. Six of these exercises involved services for people with learning disability (including combined tenders with mental health and sensory impairment); 1 mental health; 2 children and young people; 4 older people; and 1 autism. All the tenders were for community (ie. non-residential) services.

The findings of the survey are presented here both as a set of collated figures, and more qualitatively as quotations from providers involved in tender exercises. These quotations have been selected to illustrate key points, and are representative of the comments offered by all respondents. It is acknowledged that they are predominantly critical in character, however again, this is wholly representative of the survey responses (including responses from providers awarded contracts).

# Key findings

## Transfers of business

In total, the outcome of all 14 tender exercises taken together was **24** transfers of business between **19** identified provider organisations (**16** of them CCPS members; **3** of them private companies) and **3** unidentified providers. The chart at Figure A illustrates these transfers.

In 13 of these tender exercises, the support of at least **362** individuals was transferred from existing providers to contract award 'winners'.<sup>2</sup>

More than a third of the bids reported in this survey resulted in 'no change' (ie. providers bid for, and retained, their existing services; or bid for a contract for services provided by another organisation, but did not 'win'). There were no 'straight swaps' of business, ie. two providers transferring business directly to each other, in different areas or for different tenders.

## Re-tendering 'snapshot'

In one re-tender, business was transferred as follows:

**Provider A** - transferred 35 staff to **Provider C** and 25 to **Provider E**; transferred in 50 staff from **Provider F**

**Provider B** - transferred (unspecified) staff to **Provider C**

**Provider C** - transferred in over 100 staff from **Providers A, B, D and F**

**Provider D** - transferred 48 staff to **Provider C**

**Provider E** - transferred in 25 staff from **Provider A** and unspecified numbers from other providers

**Provider F** - transferred 50 staff to **Provider A** and 23 to **Provider C**

More than 200 staff changed employers in this one exercise.

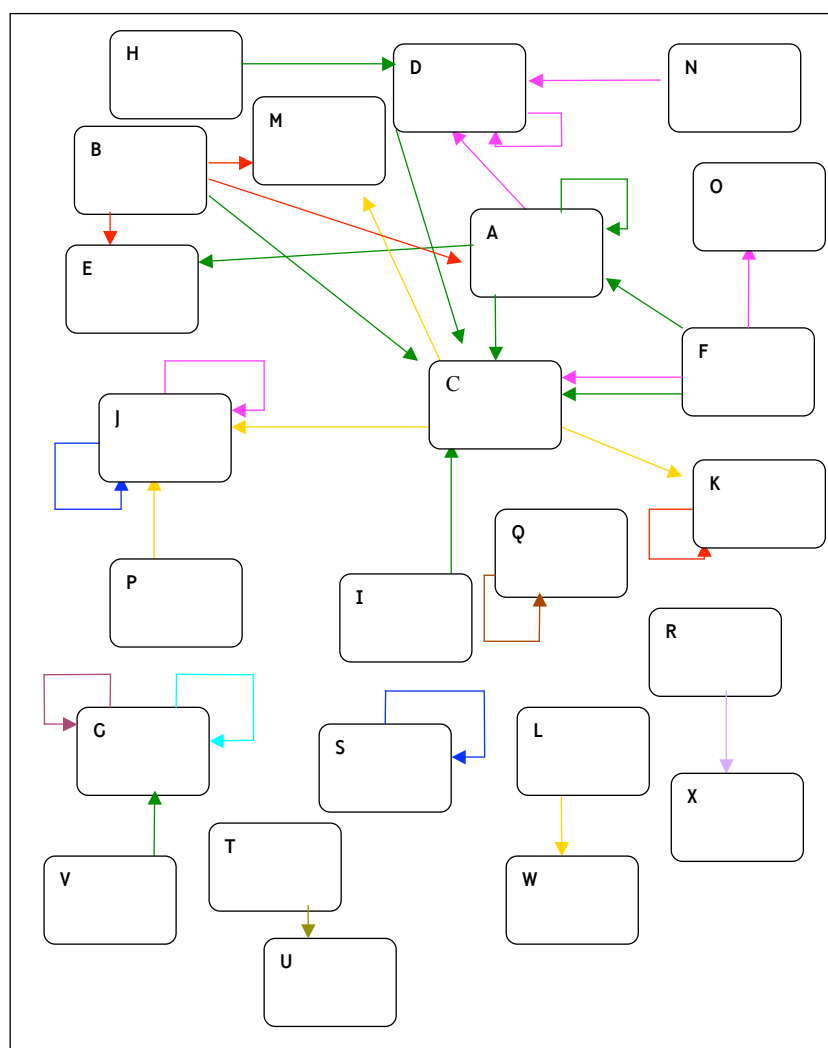


Figure A

- Boxes A - X represent 24 independent providers, including 3 private sector and 3 unidentified.
- Lines indicate a transfer of business; the different colours represent different local authority areas.
- 'Circular' lines indicate instances where providers bid for, and retained, their existing services, or bid for services provided by another organisation, but did not 'win'.

*"All our management capacity to develop new services, or support the continuous improvement of existing services, was diverted to dealing with the aftermath of [being awarded a contract in] the re-tendering exercise, so you could say that all our service users, and not just those involved in the re-tender, were adversely affected."*

*"There are significant, and as yet unquantifiable, risks arising from this process, which we entered into only because we have services [in this area]. In addition, there are significant management issues involved: in one area, the winning provider has to absorb five other providers' services."*

*"The transfer process itself is enormously demanding, it consumes months of senior management time. Whilst contractually - and morally - we were obliged to ensure this was completed in a thorough and professional manner, the demands of this are very significant."*

*"No real change to us in financial terms, or numbers of service users, but a tremendous amount of pain and anxiety for families, service users and staff concerned."*

## Re-tendering and best value

- Only **one** of these re-tenders was taken forward as a result of the existing provider withdrawing from the contract. All the others were taken forward, so far as providers understand it, as a result of standing orders and/or procurement regulations; as a response to the public procurement reform agenda; as a response to budget constraints; or as a combination of these.
- **None** of these exercises was *preceded* by a best value review or other service evaluation designed to differentiate good value services from poor. Evaluation was undertaken as part of the tender process itself, either during the pre-qualifying stage or the tender itself (or both) and only initiated after the exercise was under way. Tenders were therefore used as a *means of demonstrating/achieving best value*, ie. a "live" market test.<sup>2</sup>
- In connection with the proforma questions about service evaluation, several providers raised concerns about the tender quality evaluation process. Of particular concern was the absence of independent evaluation measures, such as Care Commission reports.

*"There was some discussion amongst commissioners locally about the existing service but no evaluation information was gathered...nor was there any discussion about quality improvements prior to re-tendering being undertaken. There was no opportunity to address any perceived concerns from parents or commissioners."*

*"The outcome letter indicated that the scoring was very close: in one area our score was [only just] below the successful tender...our fundamental concern is that the scoring process as described to us at the feedback session lacked rigorous objectivity...there was no independent quality assessment of services currently provided, eg. references, inspection reports, measurements of user/carer satisfaction."*

*"We had received repeated informal confirmation that our service provision was viewed as highly satisfactory...we scored highest on quality...all the people we support expressed their view that they were satisfied with our support...we were also advised by commissioners that they received only positive commendations about us... [nevertheless] the contracts were allocated to other providers."*

*"No consideration was given to providers' track record or Care Commission reports. We enjoyed a sound relationship with the council, with no major issues reported. We believed that we would be in a strong position through the re-tendering process...we were shocked when we failed to secure our existing business as our reputation within the council had always been sound."*

## Contact and consultation with people supported, and their families

- **All** providers in this survey reported that so far as they were aware, service users and/or families were neither consulted or contacted by the tendering authority *before* the decision to re-tender their support service was taken.
- **Four** providers reported that service users and families were *consulted*, in one instance before the tender documents were issued (but not before the decision to re-tender was taken) and in the other three before the final contract award decisions were made.
- **In all other instances**, providers reported either that service users and/or families were *contacted* (but not consulted), before final contract award decisions (but

no earlier), or that service users and families were *neither consulted nor contacted* at any stage during the process.

*"[service users] did not understand that the council was in the process of re-tendering their support... despite repeated assurances from the council that their staff would contact people to advise them of the outcome, this in the main did not happen...we were left to advise most people that our support to them would be transferred."*

*"The team responsible for the tender explained that they had told care managers to discuss the process with each person. This did not occur."*

*"A service user was included on the panel, but only after she had spoken directly to [director level official in social work department], who seemed to believe that service users were consulted as a matter of course during re-tendering exercises...families and service users had previously been told by senior social work staff that they couldn't be involved, as they would be biased."*

*"The council took a decision not to contact service users until the process had been concluded. However it did advise some families prior to the tender process (although this was patchy)."*

*"We included a service user in our interview with the LA - we were strongly criticised for this by the LA with the authority feeling 'uncomfortable' about this although we feel that she added a context and information about the organisation which we could not have done."*

## Patterns of bidding

- A small proportion (approx 16%) of activity reported in this survey related to providers bidding for services provided by other organisations in areas where they had no existing work and wanted to win new business (only one of these bids was successful).
- Otherwise, overwhelmingly providers bid in areas where they already had work. In most of these cases (83%), providers were bidding to retain their existing services.
- The same proportion (83%) bid for services provided by other organisations: of these, the majority (60%)

did so because a geographical reconfiguration within the authority meant that this was the only way of retaining their existing services.

- In the remainder of cases, providers wanted to win new business in an area where they already had a presence: the majority of these bids were unsuccessful. In those instances where they were successful, the 'winning' providers reported that undisclosed TUPE liabilities have placed their fulfilment of the contract at serious risk (and one has already withdrawn).
- Finally, a very small proportion of providers (8%) did not bid to retain their existing services.

*"Our objective was to firstly try and maintain our current services, which meant applying for most "areas" anyway as they were to be allocated to one provider."*

*"We decided not to bid...because we were not optimistic that we would get the service as the council had made clear that they wanted more for less money...we decided we could not make a quality bid on that basis."*

*"We were effectively barred from tendering for our own service as the council confirmed that any provider tendering for business must put in a generic tender, ie. for [a range of] services. As we at this time had not committed to working with [specific type of] service, we were disadvantaged."*

## TUPE and staffing issues

- As a result of 13 of the tenders identified in this survey, at least **15** TUPE transfers have either been completed or are under way, involving approximately **500** staff.<sup>3</sup>
- Out of the three instances identified where providers were successful in bidding for services already provided by other organisations (but where the "lot"<sup>4</sup> did not also include their own existing services), one provider has already withdrawn because of undisclosed TUPE liabilities, and another is still in negotiation over similar issues.
- Most providers who have taken forward a TUPE transfer - either transferring staff into their organisation, or over to another - commented on the major problems arising.
- The only provider that transferred business into their organisation that was not subject to TUPE also experienced problems.

*“Difficult transition...no reasonable negotiation...the anger and frustration in transferring organisations was apparent.”*

*“Whilst the formal retender documentation confirmed that TUPE would apply, the council sought to distance itself from this, leaving it to providers.”*

*“We were informed by the LA that...TUPE did not apply...we won the tender and are now in negotiations with the LA as it seems that TUPE does apply in this situation...At this stage we are hoping that the LA will cover the shortfall, otherwise we will be forced to withdraw from providing the service.”*

*“We were not fully aware of the risks related to this re-tendering process. The TUPE information from the other providers did not seem very accurate.”*

*“Unusually, staff from outgoing providers were not subject to TUPE due to the nature of the outgoing contract. TUPE of staff would perhaps have been a preferred route as impact on service users of new staff coming in, vulnerability of staff from outgoing providers etc. has had an adverse impact on the ‘culture’ of care delivery in the area.”*

*“As a result of TUPE costs we eventually had to serve notice on this project, due to lack of financial viability, at a loss...”*

## Costs, winning and losing

- In these 14 tender exercises, **three** private companies won business direct from voluntary sector providers (in learning disability); and **one** voluntary organisation won business from the private sector (in domiciliary care).
- Total business lost by voluntary organisations in 13 of these exercises (approx) = £9.16M; business won by voluntary organisations (approx) = £7.89M. Net business lost to voluntary sector (approx) = £1.21M.<sup>5</sup>
- **Three** CCPS members report that they have both won and lost business; **nine** have lost business, but not won any; **five** have won business (including retaining their existing services) but not lost any. **Four** further providers (some of whom are unidentified) have won business previously provided by CCPS members whilst at least two further providers have lost business to a CCPS member.
- Several organisations commented on the dominance of cost as a factor in contract award decisions.

*“Bid awarded to significantly lower cost provider (public information on website and committee report).”*

*“We were advised that we had lost purely on the basis of cost.”*

*“All indications would suggest that the hourly rate and overall costs were the deciding factors. Quality seemed to have less of an influence... this was frustrating and disappointing.”*

*“we have since heard that the successful providers are really struggling to deliver the service for the agreed cost.”*

*“This tender was based on delivering as much as possible for as little as possible and was calculated on time slots, not on individual needs.”*

## Tender processes

The proforma offered space for providers to comment on any other issues they wished to raise: most of these raised concerns about aspects of the tender process.

*“Social work staff did not seem to be in control of this process at all. It did not seem like they wanted to go down this route but were being forced into it by the procurement team.”*

*“This retender was part of the framework agreement process in [named council], it felt a bit like you have to be ‘in it to win it’...this appears to be a method for councils to cut back on hourly rates with no negotiation...if the price was wrong, we would have lost the business.”*

*“The inadequacy of the tender specification was striking, very little information on expected outcomes and for other prospective providers little information on the needs of the individuals concerned.”*

*“[This tender] relied on an odd combination of going through a fairly massive process ‘because we have to’ and then not actually following it through fairly, which they also have to, if they choose to embark on it.”*

## Overview and issues

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The findings of this survey reinforce and amplify many of the concerns set out by providers in the CCPS document *Competitive tendering in social care and support: a position statement*.

These concerns include:

### **The apparent lack of engagement or involvement of people using existing services, and their families, before those services are re-tendered**

This is an issue firstly because of the developing agenda on empowerment and involvement (“nothing about us, without us”) and secondly because it is increasingly accepted that good practice in commissioning involves good communication with people who use services, in order to determine what they need from a service and what outcomes they want to achieve; and then, good communication with the ‘market’ in order to determine and indeed to stimulate the capacity of providers to meet those needs and outcomes<sup>6</sup>.

In this survey, providers were not aware of any communication with people supported by existing services prior to re-tendering, and were therefore not confident that the service specification, the tender evaluation scoring system or other aspects of the exercise were focused on the needs of individuals or their desired outcomes. Perhaps unsurprisingly then, the perception persists that these exercises are primarily about reducing costs.

### **The way in which ‘quality’ is assessed in tenders, and the weight accorded to it in scoring systems**

As noted, the quality of a provider’s existing service(s) was not evaluated prior to any of the re-tendering exercises in this survey: all services, good and poor quality, were re-tendered as part of the same exercise and no attempt was made to differentiate between them before the tender exercise was initiated. Once the tender was under way, ‘quality’ was assessed and scored primarily on the basis of the written information that the provider was asked to supply in the PQQ or the tender submission (or both), and (in many cases) a presentation or interview.

In at least one case, people supported by existing services were asked for their views about their service as part of the tender evaluation process; however as noted, this was not common and one provider’s inclusion of evidence from a current service user in an interview situation caused problems. Several providers reported that so far as they were aware, Care Commission reports and other independent measures of service quality were not referred to as part of the tender evaluation process. Again, difficulties and disparities about what ‘quality’ means in tender exercises lead to perceptions of cost dominating tender award decisions.

### **The adversarial nature of re-tendering**

This survey shows that the great majority of providers participate in tender exercises in order to continue supporting the people who currently use their services. Where providers also bid for services provided by other organisations, this is in the main because the authority has reconfigured service ‘areas’ in such a way as to make this unavoidable if providers are not to abandon their existing supports.

The prevalence of what might be termed ‘predatory’ bidding, based on growth targets, does not appear to be significant in this survey. Most of the significant transfers of business in this survey are from one major national voluntary organisation to another.

### **The cost - financial and otherwise - of service re-tendering**

This is the most fundamental concern raised by the survey. The chart at Figure A, and the figures cited in the survey findings, demonstrate the sheer ‘volume of traffic’ resulting from tender exercises, as services and staff are transferred between providers.

Providers responding to the survey emphasised the very significant level of management and administrative activity involved in participating in tender exercises, regardless of whether business is won, lost or retained; they noted that the time, effort and expense of participating in tenders would better be employed in service development and improvement; and they drew attention to the sometimes very minor differences in tender evaluation ‘scores’ that result in services and staff being transferred on a massive scale. In addition, providers highlighted the destabilising impact of tendering exercises on staff and people supported, again regardless of whether services are eventually transferred or not.

The Scottish Government states that advertising and competition may not be required in respect of social care service contracts where ‘it would result in disproportionate costs to contracting authorities and/or service providers.’<sup>7</sup> Disproportionate, in this context, refers primarily to the cost of the tender in relation to the value of the contract. CCPS would contend that disproportionate costs can also occur where the savings achieved as a result of the exercise are outweighed by the costs of conducting it; and further, that this principle is not restricted to individual tender exercises, but holds for the total social care budget.

## Recommendations

The concerns and issues identified in this survey report might usefully be addressed as follows:

- Development of good practice standards for the involvement and engagement of people supported by existing services, pre-tender, both to ensure that the developing agenda of empowerment and joint decision-making is respected; and to bring procurement processes more into line with current thinking on commissioning.
- Development of good practice indicators/guidance on the evaluation of 'quality' in tender exercises, and the weight accorded to quality in relation to cost.
- Development of procurement processes that encourage collaboration between providers in pursuit both of efficiencies and of service improvements, rather than cost-centred competition between individual provider organisations.
- Cost/benefit and risk analysis of re-tendering exercises prior to their introduction: assessment of projected savings and service improvements calibrated against the costs and other risks of the proposed exercise for the public authority running it; the providers participating in it; the staff liable to potential transfer as a result of it; and the people supported by existing services whose support may be transferred to another provider.
- Consideration by government and parliament of the overall costs, benefits and risks of service re-tendering, including the total monies from social care budgets spent on mounting and responding to tender exercises, and of the value of pursuing such exercises.

CCPS is promoting prompt action in relation to these recommendations and is seeking collaboration and co-operation with all stakeholders involved.

Comments and feedback on this survey report are welcome and should be addressed to: [annie.gunner\\_logan@ccpscotland.org](mailto:annie.gunner_logan@ccpscotland.org).

## Notes and references

- <sup>1</sup> NB. Accurate data was not available at the time of the survey in respect of one of the more significant transfers, in which an estimated additional £4M of business, with associated staff and people supported, were transferred, in the main to the private sector.
- <sup>2</sup> This is in contrast to the way in which some framework agreements have been taken forward in England, where those existing services evaluated as providing value for money are offered a contract extension, and only those 'failing' a best value review are re-tendered.
- <sup>3</sup> See note 1 above.
- <sup>4</sup> Some of the tenders referred to in this survey divided geographical areas (and in some cases numbers of people supported) into "lots". This terminology is not supported by CCPS or its members, hence the use of inverted commas here.
- <sup>5</sup> See note 1 above.
- <sup>6</sup> See for example, Key activities in commissioning social care, CSIP June 2007.
- <sup>7</sup> Scottish Procurement Directorate SPPN 9/2008, Social care procurement: advertising and competition (forthcoming).

## About CCPS

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CCPS exists to identify, represent, promote and safeguard the interests of voluntary sector and not-for-profit social care providers in Scotland, so that they can maximise the support they offer to the people who use their services.

CCPS aims

- to be a recognised and respected source of expertise, information and advice on issues affecting service providers
- to be an influential body able to use the collective experience of members to effect change
- to be a champion for service quality and for the central role of providers in quality improvement
- to be a focus for promotion of the role of voluntary organisations as service providers, ensuring diversity and choice.

CCPS membership comprises all of Scotland's most substantial providers of social care and support services to children and families, adults and older people.



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