

Open Public Services White Paper

Consultation Briefing from Children England
August 2011

About Children England

Children England is the leading membership organisation for the children, young people and families' voluntary sector and the Department for Education's overarching strategic partner. With member organisations working in all parts of the country ranging from small local groups to the largest household names in children's charities, Children England is in a unique position to use the collective voice of the voluntary sector to achieve positive change for children. Children England provides capacity building, support and information to its members and the wide range of voluntary sector organisations working with children, young people and families. It does this by building active networks, promoting good practice, stimulating policy debate and ensuring that the issues that matter most to its members are taken up with decision makers.

Children England is committed to working alongside its members in the creation of a society where children and young people are valued, protected and listened to, their rights are realised and their families supported.

About This Briefing

This briefing is provided on behalf of the Department for Education's overarching strategic partnership which aims to support the evolving economy and infrastructure of the whole voluntary, community and social enterprise sector serving children, young people and families. It will also share the best practice, expertise, learning and concerns of the sector with the DfE.

Led by Children England, and working with Community Matters, NCVYS, NAVCA, The Race Equality Foundation and the Social Enterprise Coalition, the partnership will use its extensive combined member networks and stakeholder groups to shape and deliver activities with the sector, and gather the perspectives of thousands of organisations and community groups. The programme will include information, learning resources and opportunities, and peer support networks. The aims being to offer practical help to support the sector's sustainability and explore the potential for growth from a range of funding mechanisms and service models.

Introduction

The Open Public Services White Paper¹ builds on the previously published 'Modernising Commissioning Green Paper'² and the Treasury's call for evidence on public service reform³. Its central thesis is that opening up the delivery of public services to new providers (voluntary and community sector, private sector, social enterprises) and giving people more power over the services they receive will lead to more responsive, higher quality and more efficient public services.

The Coalition contrasts its approach with that of the previous Labour Government. Whilst recognising that Labour significantly increased spending on public services, it says that standards stagnated and the outcomes for the poorest remained static. The Government believes that the reason for this failure was not a shortage of money or an unskilled public sector but rather the reliance on an outdated, top-down approach.

The White Paper sets out a framework for reform and provides examples of the types of policy (some already underway, others requiring further consultation) that the Government expects to see under this new public service model. Rather than being the default provider of public services, central government will instead focus on overseeing core standards and entitlements (such as school floor standards and NHS waiting times), fair funding (such as the Pupil Premium or tiered payments for different client groups within the Work Programme) and equality of access (such as setting the School Admissions Code).

Underpinning these reforms are five key principles:

- 1) Wherever possible the Government will increase choice (either through direct citizen control or greater power for elected representatives)
- 2) Public services should be decentralised to the lowest appropriate level (whether that be to the individual, local authority or other elected representative e.g. Police and Crime Commissioner)
- 3) Public services should be open to a range of providers (whether they be public, private or voluntary and community sector)
- 4) The Government will ensure fair access to public services (by providing extra support to those who have previously been left behind)
- 5) Public services should be accountable to users and to taxpayers (both directly and through elected representatives)

The White Paper identifies three categories of public service with power decentralised according to the category; individual services, neighbourhood services and commissioned services. A chapter is dedicated to explaining the Government's policies for each.

¹ <http://www.cabinetoffice.gov.uk/sites/default/files/resources/open-public-services-white-paper.pdf>

² <http://www.cabinetoffice.gov.uk/sites/default/files/resources/commissioning-green-paper.pdf>

³ http://www.hm-treasury.gov.uk/d/callforevidence_publicservicereform.pdf

Individual Services

Wherever possible, the Government wants power over public services to lie in the hands of individual service users. One mechanism for achieving this is ensuring that statutory funding follows individual choices. Most directly, this will be through the use of personal budgets which allow individuals to choose how to spend their support money. The White Paper highlights the proposals set out in the 'SEN and Disability Green Paper' to offer personal budgets to all families of children with special needs by 2014. Other, less direct, examples include the entitlement for 3- and 4-year-olds to get 15 hours' free early education a week in a setting of their parents' choice and reforms to school funding that will create a much clearer link between the number of pupils at a school and its funding settlement.

The Government recognises the most deprived need extra support in order to ensure equal access. Indeed, the White Paper states that well targeted support can be beneficial both for individuals and the taxpayer if it helps to prevent an intergenerational spiral of disadvantage. To this end the Coalition is seeking to establish financial incentives and regulatory interventions to tilt the playing field to ensure fair opportunities. Policy examples include the Pupil Premium, replacing the Education Maintenance Allowance with a more targeted bursary scheme and the creation of a National Scholarship Programme to support young people from poorer backgrounds to enter higher education.

In order for individuals to be able to make informed choices, the Coalition believes that service users will need access to a full range of data relating to public services, particularly information concerning finance, user satisfaction and provider performance. The White Paper mentions the new Right to Data (contained within the Protection of Freedoms Bill) that will allow the public to request unpublished datasets about public service performance and Department for Education's decision to publish a new dataset showing the funding and spending per pupil in each school in England.

As mentioned above, under this new vision for public services, one of the key roles for the state will be to guarantee standards. In most cases this will mean ensuring quality by requiring providers to be registered or licensed by the relevant regulator for their sector. An existing example of this are the 'floor' standards that schools are required to meet. The Government will also consult in the autumn on introducing eligibility criteria that providers of free early education will need to satisfy in order to receive funding.

The White Paper envisages a number of ways in which individuals will be protected and services held accountable under this new model. Firstly, the Government is considering whether a failure on the part of a public authority or service to provide the choice to which an individual has a right could, by definition, constitute a form of maladministration. If so, they propose that the Ombudsmen should have the power to investigate complaints, promote local resolution and specify necessary remedial action. Secondly, the Coalition is examining how elected and unelected officeholders could act as champions for individual rights and scrutinise services. The White Paper suggests encouraging existing independent champions for consumer choice, such as Which?, and the newly announced HealthWatch to speak out on consumers' behalf, including acting as 'agitators for choice' in open public services.

The Government has asked the following questions about the proposals for individual services:

- How best, in individual services and on a case-by-case basis, can we ensure that people have greater choice between diverse, quality providers?

- Consistent with the Government’s fiscal plans, what further opportunities exist to target funding to help the poorest, promote social mobility and provide fair access to public services?
- Are there additional areas where personal budgets would be appropriate and could existing initiatives on personal budgets be accelerated?
- How can the principle be implemented that providers (from whichever sector) who are receiving public money for individual services should collect satisfaction data in a standardised form to enable comparison and put it into the public domain?
- How can we ensure that people are aware of, and can exercise, their right to choice effectively in specific services, through choice champions, choice prompts, data and a possible new role for Ombudsmen?
- What is the appropriate role for elected and unelected office-holders in championing individuals’ ability to exercise choice and ensure accountability from service providers?
- How can we ensure that our approach to opening public services protects and enhances accountability rather than dispersing it?

Neighbourhood Services

In cases where a service is used by a community collectively but it is not possible or appropriate for power to be devolved to individuals, the Government wants to either transfer the ownership of those services directly to communities, or give neighbourhood groups democratic control over them. The White Paper highlights a number of policies contained in the Localism and Decentralisation Bill that will help to achieve the former. This includes the Community Right to Buy, Community Right to Challenge and Community Right to Build which will give community groups the opportunity to purchase community assets, take over local public services and circumvent normal planning regulations respectively.

The White Paper also sets out the Government’s intention to enable neighbourhood councils (parish, town and community councils) to take greater power over locally delivered public services such as local parks, leisure facilities and community grants. It hopes that this could encourage demand for new councils in those, largely urban, areas which are not currently parished.

Finally, the chapter looks at community budgeting at a neighbourhood level. This involves the pooling of money, people and resources in a neighbourhood in order to tackle social issues and improve services. The first community budget pilots have focused on supporting families with complex needs.

The Government has asked the following questions about the proposals for neighbourhood services:

- What is the scope for neighbourhood councils to take greater control over local services?
- What help will neighbourhood councils need to enable them to run any services devolved to them?
- What would make it easier to establish new neighbourhood councils in areas where local people want them?
- Do additional checks and balances need to be created to ensure proper financial control?

- How can we improve the delegation and financial framework for neighbourhood councils?
- How do we ensure appropriate accountability for services run by communities to ensure that those not involved directly are not disadvantaged?

Commissioned Services

The White Paper recognises that for many services it would not be appropriate for power to be decentralised to neighbourhoods or individuals. In such cases, the Government contend that the five principles can still be applied by splitting responsibility for commissioning and service delivery – the purchaser/provider split. Under this ‘open commissioning’ policy’ commissioners should: consult on and be challenged by potential providers from all sectors on the future shape of service; seek and fully consider a minimum of three providers, from whichever sector, when they contract for services; and transparently link payment to results. The Coalition believes that this will encourage new providers to enter the market, enable the specialisation of services and allow for more tailored financial models.

The White Paper acknowledges that open commissioning is already well established in local authorities and seeks to extend it to services that are not currently open. In particular, it wants to consult on plans to open up local commissioned services in family support and support for looked after children. It has also taken steps to give local authorities additional powers such as the general right of competence and greater control of local finances due to fewer ring fenced budgets.

In order for locally commissioned services to be more democratically accountable, the Government is implementing a number of democratic decentralisation policies including elected Police and Crime Commissioners, increasing the number of directly elected mayors, publishing all local authority spending over £500 and allowing local referenda on petitions and ‘excessive’ council tax rises.

At a national level the Government wants accountability to mean more than not re-awarding contracts to failing providers. They hope that increased use of payment by results (PBR) mechanisms will provide a financial incentive for providers to deliver good services throughout the term of the contract. The Coalition recognises some of the practical difficulties with PBR, highlighting that where outcomes take a long time to deliver, such as the impact of early years family interventions in cutting crime, that a payment by results model may need proxy outcomes to be set that are deliverable more quickly. The White Paper highlights the use of PBR in the Work Programme and trial arrangements to pay Sure Start children’s centres in part for the results they achieve. It also sets out the Government’s intention to decentralise additional commissioning powers such as skills and services for families with multiple problems, as well as extend commissioning to new areas such as the court and tribunal administration, payment processing and, debt management and enforcement services

As with individual services, the Government wants to ensure fair access and targeted funding for commissioned services. The White Paper gives the example of the New Homes Bonus for building council homes that gives developers additional incentives to include more social housing in their developments.

The Government believes that in order for democratic accountability to be effective, there will need to be much greater transparency so that individuals and their representatives can properly scrutinise the effectiveness and value for money of public services. Existing moves towards greater transparency include publishing details of all

central government spending over £25,000 and creating the Contracts Finder website that shows all Government contracts and tender documents over £10,000.

The Government suggests that commissioners will be further held to account by users (through strengthened rights of redress), audit and inspection bodies such as the NAO and independent champions such as the Taxpayer's Alliance. Providers will be held to account through a combination of mutually reinforcing choice, voice (such as user satisfaction surveys) and transparency mechanisms, depending on the service being provided. The Government is consulting on additional ways of strengthening accountability mechanisms.

The Government has asked the following questions about the proposals for commissioned services:

- What is the scope to extend and/or deepen the commissioning approach across public services?
- What further potential is there to decentralise central government commissioning to locally elected individuals and authorities?
- To which areas should we apply the open commissioning policy?
- What else can government do to overcome any traditional boundaries between public service providers, which get in the way of solutions to people's needs?
- How can we ensure that commissioners and providers are best held to account?
- What new skills and training will commissioners need?

Ensuring diversity of provision

The Government believes all public services, except those where it has special reason to operate a monopoly (such as the military), should be delivered by a variety of providers as this is the only way to provide tailored services to a diverse population. The White Paper emphasizes the innovations that new providers could bring to public services provision and gives the example of supporting VCS organisations to acquire current public sector providers that would benefit from being run as a specialised charity such as children's services.

The Government believes that public sector professionals are unable to use their professional judgement or develop innovative new services due to excessive central management and bureaucracy. It wants to deregulate the sector through conferring autonomous status on public sector providers (e.g. Academies), reviewing statutory duties placed on local authorities and scaling back the vetting and barring regime.

It also wants to give more public sector workers the opportunity to break away from the state and form mutuals. The Government hopes that this will release the entrepreneurial spirit of civil servants. To this end they have created a right to Provide for public sector workers who want to form mutuals, a number of mutual pathfinder areas and a £10m Mutuals Support Programme.

The White Paper acknowledges that new providers, particularly smaller charities, social enterprises and businesses, face significant barriers to entering the public service market and wants to level the playing field to allow all providers to compete equally. The paper highlights TUPE regulations and states that the Government will encourage public service commissioners to disclose TUPE regulations at an early stage. It also notes that contracts are often too big for all but the largest providers. Further levelling policies will be included in the Government's soon to be published response to the consultation on the Modernising Commissioning Green

Paper. This will focus on access to open markets, reducing bureaucratic barriers and improving commissioning across central and local government.

The Government recognises that some providers will inevitably fail but does not think that this justifies not opening up public services. In order to prevent service users being adversely affected by failing providers, the Coalition will develop continuity regimes for each government department as part of their modernisation programmes. These will be based on the following principles:

- Struggling organisations should be given support to turn around poor performance, within agreed timescales, before failure occurs
- Accountability for providing quality services and good financial management should remain firmly with the provider
- Where service failure occurs and is the result of poor management, there should be severe consequences for management and others involved in the governance of the provider
- Continuity regimes should therefore articulate a short, carefully selected list of existing data that will be used to identify failure
- There is a role for external bodies, independent of government (such as regulators), with powers to ensure proper financial management (including financial robustness where appropriate) and to intervene to ensure continuity of service
- Systems should be flexible to accommodate the changes our open public services reforms will bring, and so government departments should set out the long-term vision for ensuring continuity of service, as well as any transitional arrangements

The chapter finishes with a roundup of further steps that the Government is taking to diversify provision. These include phasing the use of ‘any qualified provider’ into the NHS from 2012 (so that services are judged on the quality of service not the type of provider), creating more free schools and allowing a wider range of providers, including voluntary and private sector organisations, to offer high-quality education for excluded children and others without a mainstream place.

The Government has asked the following questions about the proposals for ensuring diversity of provision:

- How can we stimulate more openness and innovation in public services through new types of provision?
- What more could we do to support and catalyse new enterprises (e.g. mutuals) spinning out from the public sector?
- Where and how should we extend autonomous status for public sector providers?
- How do we ensure a true level playing field between providers in different sectors?
- How can we create new, more diverse types of provider out of public sector bodies?
- How can we best enable external investors and public service providers (from all sectors) to combine their resources to improve public services?
- How could we best achieve our goal for more back office services in central government to be provided independently and flexibly?

- How should government regularly review the barriers to entry and exit for providers?
- How can we ensure continuity of services, in particular for the most vulnerable users?

Next Steps

The consultation on these proposals will finish in September (a precise date has not been given). Following this, the Government will set out a programme of work to implement the open public services agenda, including proposals for legislation. From April 2012, government departments will publish regular progress reports, setting out the steps that have been taken to open public services.

Consultation

Children England will be coordinating a response to the Open Public Services White Paper on behalf of the children, young people and families voluntary sector as part of the Department for Education's Overarching Strategic Partnership programme. If you have any comments, ideas or evidence relating to any of the questions above please contact Nick Davies on 0207 833 3319 or nick@childrenengland.org.uk and we will include it in our submission.

We are particularly interested in the following questions:

- Consistent with the Government's fiscal plans, what further opportunities exist to target funding to help the poorest, promote social mobility and provide fair access to public services?
- What else can government do to overcome any traditional boundaries between public service providers, which get in the way of solutions to people's needs?
- What is the scope to extend and/or deepen the commissioning approach across public services?
- How do we ensure a true level playing field between providers in different sectors?
- How can we ensure continuity of services, in particular for the most vulnerable users?