

Finance and Resources Committee

10.00am, Thursday 9 June 2016

Implications for Coproduction and Procurement

Item number 7.7

Report number

Executive/routine

Wards

Executive summary

In response to a motion at the Finance and Resources Committee on 26 November 2015, a report on 14 December 2015 set out some early learning for future procurement exercises following the Edinburgh Alcohol and Drug Partnership (EADP) tender of community treatment services. As significant changes to the legislation were anticipated a further report analysing the options for coproduction and procurement of community services was to be brought back in Spring. This report sets out:-

- a summary of the changes brought about by new procurement legislation and the implications for the way the Council procures community services;
- lessons learned to date including specific lessons from the EADP tendering processes and the Council's grants processes;
- an update as to how future work to mainstream co-production in the context of procurement and grants is progressing; and
- how the capacity of community based third sector organisations can continue to be developed.

Links

Coalition pledges

Council outcomes

Single Outcome Agreement

Implications for Coproduction and Procurement

Recommendations

- 1.1 It is recommended that:
 - 1.1.1 the Finance and Resource Committee note the issues raised in this report; and
 - 1.1.2 note that a follow up report in six months will report on the development of a 'light touch regime' for health and social care tenders.

Background

- 2.1 At its meeting on 26 November 2015, the Finance and Resources Committee deferred a decision on the award of contracts for the EADP Community Treatment Service. The Committee requested further information about the procurement process itself.
- 2.2 The Implication for Coproduction and Procurement - Early Findings from the EADP Treatment Services Tender report on 14 December 2015 set out some early learning for future procurement exercises. The Future Governance of Council Payments to Third Parties report to Committee in March 2016 provide a report on the benefits, outcomes, management and improved transparency of third party payments. Anticipating significant changes to the procurement legislation along with statutory guidance a further report was planned for Spring. This report now sets out:
 - 2.2.1 a summary of the main changes and how they will impact upon the procurement of health, social care and community services;
 - 2.2.2 lessons learned to date including specific lessons from the tender processes and the Council's grants processes;
 - 2.2.3 an update as to how future work to mainstream coproduction in the context of procurement and grants is progressing; and
 - 2.2.4 how the capacity of community based 3rd sector organisations can continue to be developed.

Changes to the Procurement of health, social and care related services

- 3.1 As from 18 April 2016 the Public Contracts (Scotland) Regulations 2015 (2015 Regulations), which implement the EU Public Procurement Directive, introduce a new 'light touch' regime for certain services, including health, social and care related services i.e. community services. This requirement brings clarity as to when a contract opportunity for such services requires to be openly advertised and an appropriate procurement process followed.
- 3.2 The new procurement process, referred to as the 'light touch' regime because not all the provisions of the 2015 Regulations must be followed, applies to those potential contracts with a value above the EU threshold of 750,000Euros (£589,148). This threshold applies to the total anticipated value of contract over its full contract duration and not to an annual value. The minimum requirements for health, social and care related services and certain educational and training services, and others such as legal services (formerly known as Part B services of which only limited regulation applied) are now as follows:-
- 3.2.1 the Council must make its intention to award a potential contract known by way of a contract notice published in the Official European Journal. This is to comply with the principle of transparency and allow cross border trade by notifying all registered providers of the contract opportunity.
- 3.2.2 the notice must contain a description of the proposed services, value and extent, any conditions for participation and a brief description of the award procedure to be applied:-
- 3.2.3 the Regulations provide that the Council may take into account the following criteria when procuring services:-
- 3.2.3.1 the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- 3.2.3.2 the specific needs of different categories of users, including disadvantage and vulnerable groups;
- 3.2.3.3 the involvement and empowerment of users;
- 3.2.3.4 innovation; and
- 3.2.3.5 and any other relevant considerations.
- 3.3 Subject to complying with the above, the procedure leading to the award of contract is essentially left to the Council to determine provided that it complies with the fundamental EU Treaty principles of transparency and equal treatment of potential providers and the mandatory grounds for exclusion such as bribery, corruption and fraud.
- 3.4 The new Regulations mean that contract opportunities above the value of £589,148 will require to be openly and transparently advertised. However the

clarity and flexibility that is permitted gives the Council the opportunity to rethink and coproduce the procedures that we use to procure health, social and care related services.

Contracts below EU thresholds

- 3.5 For contracts or frameworks agreements over the value of £50,000 but less than £589,148 (total value over proposed term) the Council is left the discretion to decide on a case by case basis whether to seek offers or not subject to the general requirement to obtain best value i.e. the optimum balance between quality, cost and sustainability. Best value will usually, but not always, be best demonstrated through a fair and transparent competitive process.
- 3.6 The recent Scottish Government Guidance on the Procurement of Care and Support Service 2016 (Best Practice) recommends that Councils to take into consideration the impact that a change in service provider or change in service provision may have on service users and their carers, continuity or service regulatory requirements, quality and cost, the market and the workforce. This general position is caveated in that notwithstanding that the value opportunity is below EU financial thresholds, the service may on occasion be of interest to providers located in other member states. In these instances EU law requires that there should be an open and transparent process as if the opportunity were above the EU financial threshold.

Legislative Changes and updated Contract Standing orders

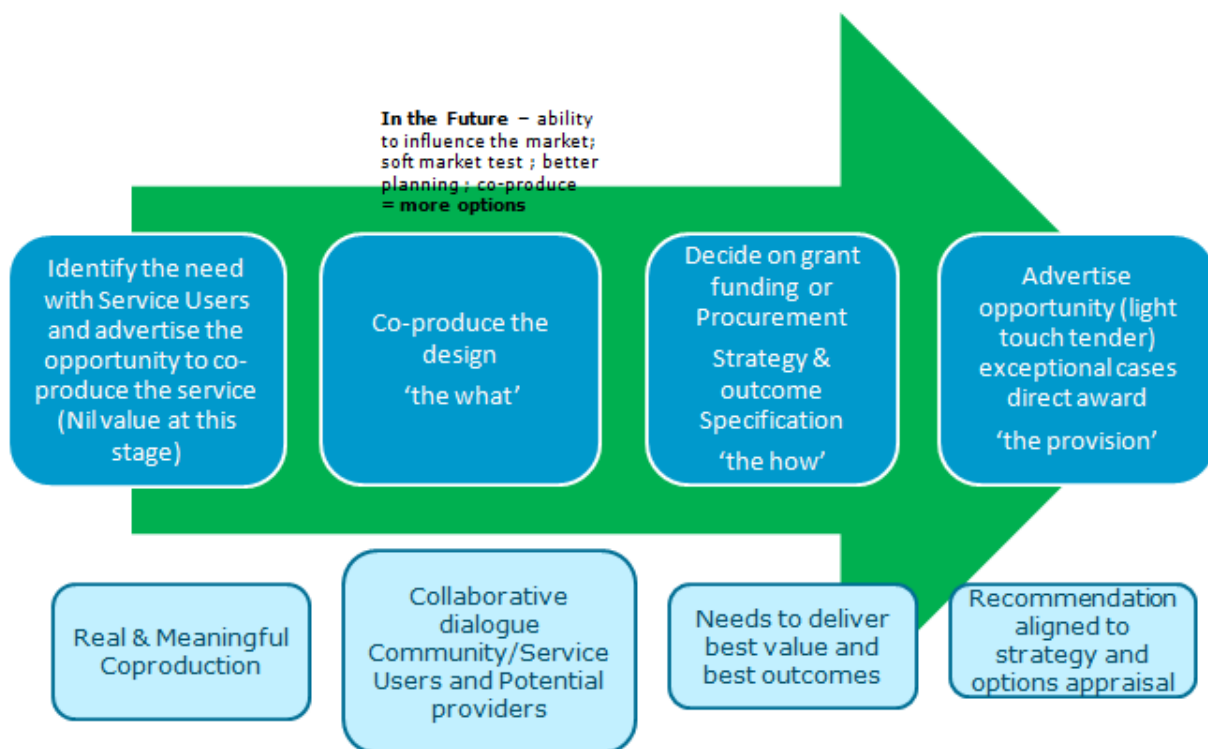
- 3.7 The Council's Contract Standing Orders are kept under annual review by Commercial and Procurement Services (CPS) to ensure that they work effectively, and address changes in the legislation. A report to Council on 2nd June will recommend a number of changes including the procedural changes that will impact upon health, social care and community services in light of the statutory changes referred to above.

Coproduction and procurement

- 3.8 Coproduction is seen as an effective means of designing, developing and improving service delivery, and making sure our public services are built around people and communities. As a result the Council has set out a clear commitment to coproduction as a means of service redesign and development. This includes the Council and Compact commitments to mainstream coproduction (November 2014). Coproduction good practice guidance for Council staff which once finalised with third sector colleagues will be included in the Procurement Handbook.
- 3.9 Coproduction is defined by the Council in a number of complementary ways. This includes the Edinburgh Compact's definition:
- “To coproduce is to build something together, to co-create, to jointly develop and innovate.”
- 3.10 The Joint Improvement Taskforce description as "Co-production begins and ends with the person, placing them at the heart of any given service, and involving them

in it, from the creation and commissioning of that service through to its design and delivery, it's assessment and sometimes, where appropriate, its end. (Co-production of Health and Wellbeing in Scotland: Loeffler, Power, Bovaird and Hine-Hughes, (eds.))

- 3.11 Co-production needs to form part of the ongoing process of service design and development, with commissioners and service providers working together to involve service users, carers and others with lived experience in the design development and delivery of services. As the Council implements its commitment to coproduction, the involvement of service providers and service users should become central to service evaluation, monitoring and development, and identifying the need for change. While this approach is becoming embedded in the way the Council works, there will be an emphasis on co-production of service redesign where there is an intention or need to make significant changes to a service.
- 3.12 The diagram below and the following stages indicate how service users and third sector partners and all other potential suppliers will be a part of decision making when there is significant change to contract from the outset up to tender award stage and then in the subsequent review and contract management of the contract or grant.



- 3.12.1 Commissioning Strategy – identification of needs using strategic needs assessment work and involvement of Service Users and carers and how these might be met.
- 3.12.2 To comply with the Procurement Regulations requirements to be fair, transparent and treat potential providers equally the opportunity to co-produce may require to be advertised openly at the outset, prior to the

investment approach or route to market being finalised. Co-production with service users does not require advertisement.

- 3.12.3 Develop the specification with potential users and potential providers.
 - 3.12.4 Determining best route to market – including grant or contract provision - will form part of the co-production process with key stakeholders, where there is a statutory requirement to provide a service or care commission requirements that may indicate that a contract is the best procurement method but each instance will be looked at on its merits along with the benefits, how best value will be achieved, the need for continuity and the risks and issues.
 - 3.12.5 Evaluation – service users and those with expert knowledge may be used as subject matter experts to inform quality assessments.
 - 3.12.6 Review – review how well the strategy and contract have performed and allow service users, local organisations and providers to identify specific areas for improvement in future. Proper management and monitoring of contracts and grants will be fundamental to securing continuous improvement.
- 3.13 As co-production requires the proper involvement of service users, potential providers and other stakeholders this involvement should happen early on in the commissioning stage before decisions are made. Ideally key stakeholders should be involved at the identification of need and strategy stage then throughout the process as the service specification is designed and route to market determined. Once the resulting service is in place co-production may continue as part of continuous improvement and service planning for the future.
- 3.14 Decision making – co-production is built on equal relationships, where individuals, families, communities, service providers and commissioners have a reciprocal and equal relationship. An appropriate timescale needs to be allowed for these relationships to develop and function properly, and a supportive structure developed.
- 3.15 There are many good examples of the Council co-producing services with its third sector partners which should be built upon, for example
- 3.15.1 The supported employment tender where there was extensive consultation with services, stakeholders and particular emphasis on engagement with clients . There was also benchmarking with five other local authorities and further market testing and co-production of the service design with 28 organisations. This resulted in a new contract with specific focus on outcomes for service users. The improved outcomes

achieved as a result are:-

	14/15(Prev)	15/16 (Curr)	%Differ
Employment Full Time	68	104	152.9%
Employment Part Time	47	34	72.3%
Self Employed	2	6	300.0%
Retained Employed	5	22	440.0%
Total Outcomes	122	166	136.1%

- 3.15.2 The pilot for Homeless Advice and Support services was co-produced (in 2013/14) with a wide range of stakeholders, and is considered a success in achieving agreement to partial payments by outcome and a greater shift towards prevention and the formation of consortia to deliver the services.
- 3.15.3 The reservation of a proportion of the delivery capacity in the recent Care at Home tender for innovative practices.
- 3.15.4 The service design by Edinburgh Alcohol and Drug Partnership (EADP) within the Commissioning Collaborative of its third and public sector partners for the community treatment and counselling services which are held up by EVOC as a good example of coproduction working well in terms of providers.
- 3.16 However co-production in this context has focussed on commissioners and providers working together to redesign services. Work is ongoing with third sector representatives such as EVOC to produce guidance and minimum standards for co-production which focus more on involving service users and people with lived experience. Once finalised this coproduction good practice guidance for Council staff will be included in the Procurement Handbook. Co-production will be a requirement for community based services under the revised Contract Standing Orders.

Lessons Learned from the EADP Treatment Services Tender and Coproduction to date

- 3.17 On 26 November 2015 two reports were put to the Finance and Resources Committee recommending the following contracts to be delivered on behalf of the EADP were awarded:-
- Item 7.9 Community Treatment Contract
- Item 7.10 Counselling and Psychological Therapies
- 3.18 The contracts both followed the same or very similar co-production and procurement processes. While the contracts recommended by Report 7.10 were awarded, the Community Treatment contracts were deferred following deputations expressing concern as to the potential loss of value to the community in that the incumbent local providers was unsuccessful in the tender. Concerns were

expressed that the unsuccessful tenderers were 'not equipped to manage a full tender process' and that the "outcome of this competitive tender process starkly contradicts the Council's stated commitment to co-production and locality based partnership working" because their local expertise and strong links to community was valued in the co-production process but it was felt that the tender process did not allow sufficiently for this to be taken into account. The deferral allowed for additional information on the tendering process and an early lessons learned report to be reported to Committee (the 14 December reports). The total value of the contracts including possible extension was £7.251million.

3.19 The Community Treatment contracts commenced on 1st April 2016. As the Transfer of Undertakings (TUPE) regulations applied no staff were made redundant as a result of the process. For the Hub based services, services continue to be delivered from the same venues with more locally based venues being considered. Both Lifeline and Turning Point have delivered effectively on their implementation plans.

3.20 While the co-production process of the EADP contracts was considered by the Council's third sector partners as a good example of co-production working well there were specific lessons learned as follows:-

3.20.1 It is clear that co-production will not always mean co-delivery by those involved in the co-production and the Council must work to deliver the co-produced service requirements in a way that is transparent, fair and equal as well as demonstrating best value. This needs to be made absolutely clear at the outset of any co-produced service so that expectations are managed.

3.20.2 Applying traditional procurement processes used to deliver other services may not be the optimum method to achieve best value and best outcomes for health and social care services. A 'lighter touch regime' which is better able to assess added value is required.

3.20.3 While local knowledge cannot, in itself, be a factor in an evaluation, participation in the co-design process, an in depth understanding of local needs and systems and established local networks can all give advantages to local providers: they provide opportunities to adapt services to meet expectations and to describe their proposed service delivery in depth. Specifications and evaluation frameworks should allow for this (even while they will not require it).

3.20.4 Smaller and local organisations may not have the same in-house tender writing resources as larger national organisations. Continuing to signpost these organisations to available training and having a procurement process that allows different methods of assessing what best value looks like should be adopted.

3.20.5 To respond to tenders effectively, third sector organisations need to be able to evidence their effectiveness, quality and capacity to be co-

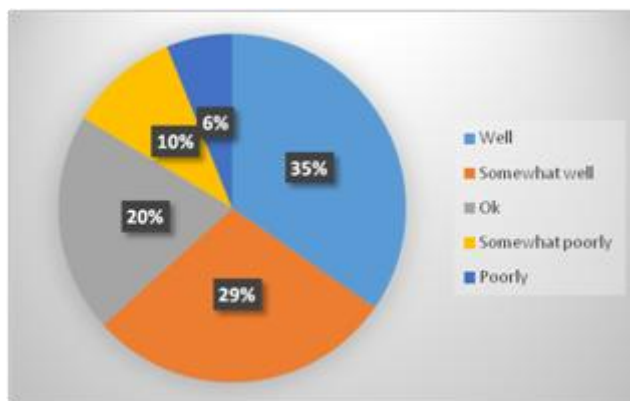
production partners. EADP developed a quality assurance process to support smaller third sector partners to develop the kind of organisational capacity needed to engage in tender processes. However the implementation of these processes can take time and clearly some smaller organisations found this process challenging. In preparation for tendering under the new legislation the Council could explore the use or the co-production of a set of quality assurance standards across health and social care services. This should enable "smaller" or "locally based organisations" to develop their capacity to engage in more formal tender processes; particularly smaller organisations and/or those which have arisen out of a community based response to a particular challenge. Any quality assurance process would have to be evaluated alongside standard equivalents used by organisations so as to comply with the principles of fairness and equal treatment.

3.20.6 The procurement process can be perceived as competitive as opposed to collaborative with potential partnering providers required to submit individual proposals against defined and coproduced service specifications. Where appropriate collaborative partnerships should be encouraged, and appropriate timescales allowed for these to form. The EADP counselling tender process provides evidence that coalitions of existing providers fared better when working together and sharing expertise and resources.

Lessons Learned from Coproduction to date

- 3.21 The Council has been reviewing recent examples of co-production, including co-production of the grants programme, with a view to creating standardised guidance and looking to streamline and coordinate the grants programme. The main issues highlighted have been:
- 3.21.1 Perception of fairness and transparency of process.
 - 3.21.2 Further training required for staff, service users and providers when they are involved in coproduction.
 - 3.21.3 The social added-value of community organisations be taken into account when devising investment programmes.
 - 3.21.4 Effective co-production is extremely beneficial in terms of outcomes but to be effective requires considerable time and investment which need to be resourced.
 - 3.21.5 Co-production in the current financial context of reducing budgets can lead to reluctance in some instances to engage. Forums to co-produce alternative innovative approaches to service provision are also required. Co-production can work best when there is new funding available as there are usually no vested interests at stake.

- 3.21.6 Demonstrable transparency throughout the life-time of the co-production, investment and appointment of providers process leads to improved trust and better more productive relationships.
 - 3.21.7 There is a need for improved consistency across investment (grant and contract) programmes.
 - 3.21.8 There is a need to be very clear with all stakeholders at the start of the process that when the commissioning stage ends and the tendering or grant application starts that different rules to ensure fairness, transparency and equality of treatment apply and must be adhered to.
 - 3.21.9 The need to value the time commitment of providers and people with lived experience and use it thoughtfully and with focus. Developing a framework for the process could help clarify expectations.
 - 3.21.10 Co-production requires a genuine sharing of power and decision making. It should not be used as a new term for consultation.
 - 3.21.11 Involvement of EVOC/other infrastructural organisation can assist the smooth running of a number of co-production processes.
 - 3.21.12 The Council should be very clear where there is going to be a competitive process after a period of co-production.
- 3.22 To put the above lessons learned in context, in response to a recent survey of the co-production experience of 3rd sector organisations, 64% of the third sector respondents stated that their experience of co-production had gone well or somewhat well, with only 16% stating it had gone poorly or somewhat poorly.



What needs to happen next

- 3.23 In recognition of the above observations there a number of workstreams to be taken forward focusing on:-
 - 3.23.1 The procurement 'light touch regime'.
 - 3.23.2 The management and integration of the grants process with the contracts pipeline.

- 3.24 The Council will work with its Compact partners to develop its own 'light touch regime' which can take into account:-
- 3.24.1 Organisations track record of delivering added value and integrating well with other local services.
 - 3.24.2 The need for training in tender writing and co-production (currently provided by the Supplier Development Programme).
 - 3.24.3 Need to encourage the market.
 - 3.24.4 Encouraging collaborative working as the evidence suggests that smaller organisations that tender collaboratively fare much better in the tender process as they allow for pooling resource, expertise, knowledge and experience.
 - 3.24.5 Opportunity to split the contracts into smaller 'lots' based upon localities or types of services where this seems likely to result in a more responsive, effective service.
 - 3.24.6 The opportunity to developing a quality assurance process across health and social care services to improve organisational capacity to evidence their effectiveness.
- 3.25 A Thinkspace event is being planned by EVOC, to explore the options and solutions for the new procurement procedures. This is likely to take place at the end of June 2016. A follow up report in six months will report on the progress of these new procurement procedures.
- 3.26 As of 1 April 2016, the lead function for overseeing grant management arrangements will transfer from the Strategy and Insight Division to CPS to sit alongside contract procurement. Grants and contracts currently have two discrete council governance arrangements with outcomes to be delivered by grant programmes commissioned and approved by executive committees, whereas contracting arrangements commissioned by executive committee are approved by this committee.
- 3.27 For both types of funding, achieving best value, transparency, fairness and the delivery of outcomes for service users remain key. Aligning the procurement of grants and contracts for the provision of community outcomes and related services will allow for enhanced co-ordination of best practice, improved planning and avoiding duplication of effort across directorates.

Measures of success

- 4.1 The work outlined in this report will directly impact upon the Council objective of embedding the practice of coproduction as standard

Financial impact

5.1 There are no direct financial impacts related to this report.

Risk, policy, compliance and governance impact

6.1 If the overall potential contract value exceeds £589,148 then officers require to adhere to the requirement that it must be openly advertised along with the procedure for award. From the point of advertising, any breach of the principles of transparency and equal treatment, such as favouring local providers, may be challenged. Where there is interest from providers then there will be an expectation of a fair, equal and transparent process. Breach of any of the fundamental principles carries a greater likelihood of successful legal challenge as well as reputational damage where the opportunity has been advertised and generated interest.

Equalities impact

7.1 There are no direct equalities implications arising from this report.

Sustainability impact

8.1 There are no impacts on carbon, adaptation to climate change and sustainable development arising directly from this report.

Consultation and engagement

9.1 Consultation and communication has been undertaken with appropriate stakeholders in preparing this report and the guidance for the Procurement Handbook.

Background reading/external references

[Implications for Co-production and Procurement – report to the Finance and Resources Committee of 14 December 2015](#)

[EADP Adult Community Treatment Contract – report to the Finance and Resources Committee of 14 December 2015](#)

[EADP Adult Community Treatment Contract – report to the Finance and Resources Committee of 26 November 2015 Item 7.6 Future Governance of Council Payments to Third Parties](#)

[Future Governance of Council Payments to Third Parties - report to the Finance and Resources Committee of 17 March 2016](#)

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Links

Coalition pledges	P12 and P43
Council outcomes	CO10 and CO11
Single Outcome Agreement	SO2
Appendices	