

Delivering Change

Challenges for Social Enterprises Delivering Public Services

4 November 2008



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Challenges For Social Enterprises Delivering Public Services

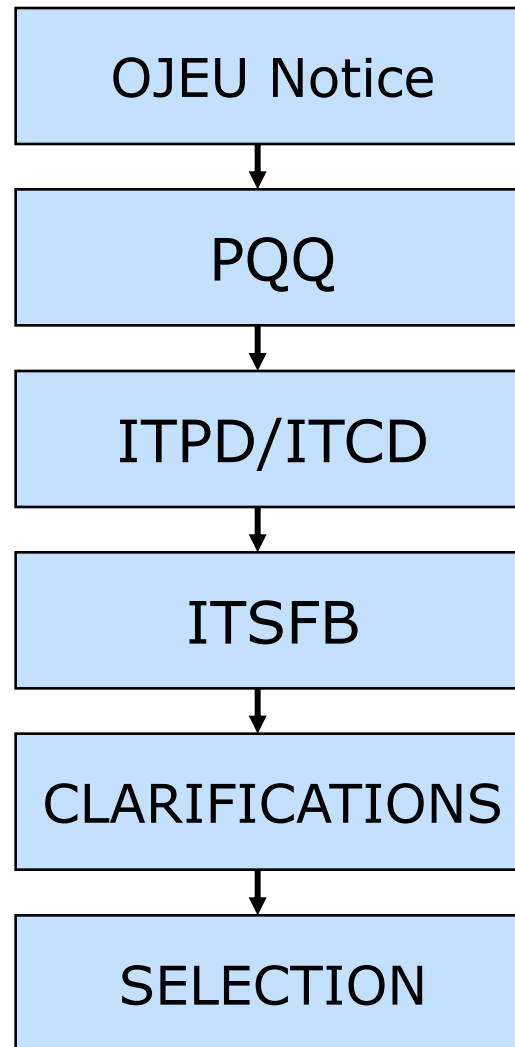
- Procurement
- Workforce Issues
- Commercial and Contractual



Procurement

- General principles – equal treatment, transparency, proportionality and openness to competition
- Competitive Dialogue procedure
- Principles:
 - ◆ Flexibility
 - ◆ Greater competition
 - ◆ Increased transparency
 - ◆ Better, more specific solutions

Competitive Dialogue Process



Workforce Issues

- Is there a TUPE transfer?
- If so, you will inherit liabilities and costs associated with the workforce
- Due diligence will be required on terms and conditions, so you can price accurately (watch out for enhanced redundancy entitlements and sickness benefit schemes)
- What if the workforce needs to be re-organised?
- You and the Commissioner need to inform and consult the workforce



Pensions

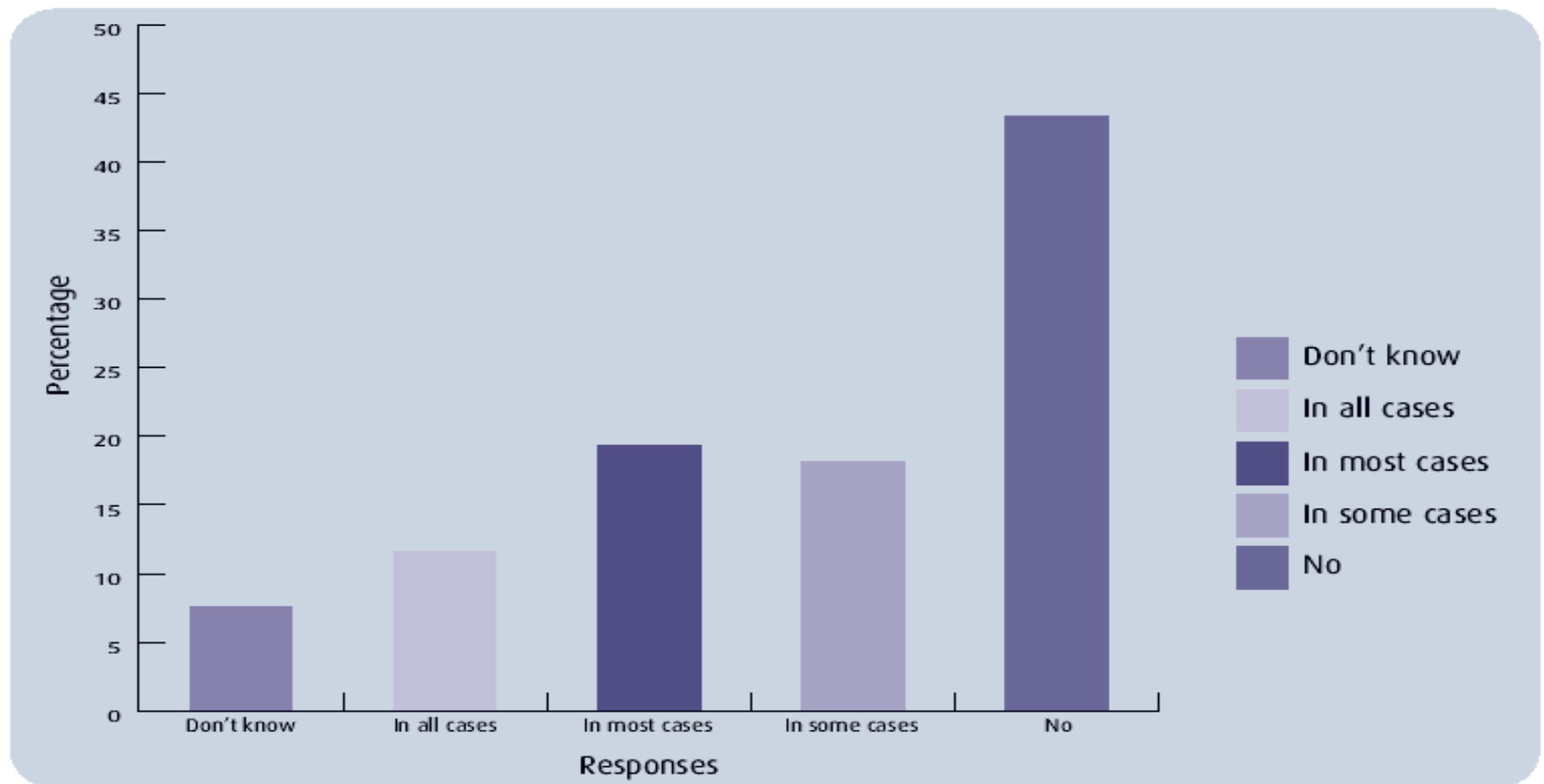
- Are the staff members of the NHS Pension Scheme, if so, this will be a major concern for staff affected
- Some Primary Care contracts (SPMS and PMS) give access automatically to NHS Pension Scheme
- Alternatively, it may be possible to obtain a 'direction body order' from NHS Pensions Agency
- Fall-back position: you may have to provide a 'broadly comparable' pension certified by GAD
- Make sure you price for the pension contributions
- Don't unwittingly take on risk of under-funding

Commercial And Contractual

- What length of contract can you obtain?
- How secure is the income stream – is it performance-related?
- Are the specifications and expected outcomes clearly defined?
- Is the contract a balanced allocation of risks and rewards?
- Will you obtain full cost recovery (otherwise you will be subsidising the public purse)

Full Cost Recovery – The Facts

Does the funding cover all the costs?



Key Contract Clauses To Watch For

- Payment mechanics – effect on cash flow
- Price inflation clauses – are they realistic?
- Indemnities and liability – consider capping your exposure
- Termination rights and the consequences (transfer of services, assets, employee liabilities etc)
- Dispute resolution – use of ADR techniques

Other Commercial Issues To Be Aware Of

- Insurances (medical malpractice and public liability, employer's liability, business interruption, trustee liability, professional indemnity)
- Regulation and Licensing (Healthcare Commission, CSCI, Mental Health Act Commission ⇒ to be replaced by the Care Quality Commission)
- Data Protection and Freedom of Information
- Intellectual Property Rights
- Tax and VAT

Conclusions

- The market opportunities are there and are increasing
- Social Enterprises have an important role to play and there is political will to make it happen
- Go into this with your eyes open and think carefully about the risks
- Make sure your organisation is ready to take on the challenges

Creating Partnerships for Public Services

- Public-Private Partnerships
- Outsourcing
- Joint Ventures
- Development & Regeneration
- Charities & Not-for-Profit
- Social Enterprises
- Transaction Management
- Training & Capacity Building

Innovative Legal Solutions
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