



Response to Cabinet Office Green Paper  
**Modernising Commissioning: Increasing  
the role of charities, social enterprises,  
mutuals and cooperatives in public  
service delivery**

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**Response to the Cabinet Office Green Paper – Modernising Commissioning:  
Increasing the role of charities, social enterprises, mutuals and cooperatives in  
public service delivery**

**Charities Aid Foundation**

**1. Background and Introduction**

1.1 The Charities Aid Foundation (CAF) is a registered charity that aims to help charities and social enterprises make the most of their money. CAF provides financial, investment and fundraising services and works directly with tens of thousands of charitable organisations across the UK and internationally.

1.2 CAF has a strong history of campaigning for changes in policy and legislation in order to improve the giving environment and to secure supportive legal, fiscal and regulatory conditions for donors, charities and social enterprises. Our knowledge and understanding - gained through direct experience and research - makes us a trusted voice on giving and the effective use of charitable funds.

1.3 CAF does not itself receive any public funding and does not have any contracts to provide services. However, many of the charities we work with do deliver public services and have experience of the commissioning environment.

1.4 CAF has a social investment fund, CAF Venturesome, which has been operating since 2002. As a result of this, we have developed influential thinking on the requirements for successful social investment, how the market as a whole could be developed, and what the issues are relating to risk.

1.5 CAF's Chief Executive, Dr John Low, was a member of the NCVO Funding Commission, which published its final report in December 2010. This considered many of the issues around commissioning from civil society organisations, and made a number of recommendations which we shall endorse in this submission.

**CONSULTATION QUESTION: In which public service areas could Government create new opportunities for CSOs to deliver?**

**2. Sub-Question: Which public service areas could be opened up to more civil society providers? What are the barriers to more civil society organisations being involved?**

2.1 Many Civil Society Organisations (CSOs) are already delivering successful, value-for-money services on behalf of the state. CAF believes that more could be made of the potential of the civil society sector to deliver services if certain barriers were removed and the way that services are commissioned was significantly improved.

2.2 However, we do not believe that it is right to make decisions about which areas are or are not appropriate for greater CSO involvement prior to investigating the actual marketplace for provision. The profile of organisations delivering services should be

driven by the composition of the marketplace in a given sector or locality, and by the needs and priorities of service users. Any decision to increase the percentage of CSO provision based on assumption or ideology rather than evidence could have potentially damaging effects.

2.3 Likewise, CAF does not believe that imposing arbitrary requirements on commissioners to achieve a particular percentage of CSO provision is the right way to proceed. Rather than artificially distorting the market, the system of commissioning should be reformed so that potential providers from all sectors can compete fairly against one another with respect to criteria of value that encompass social, environmental and economic elements.

### **3. Sub-Question: What are the implications of payment by results for civil society organisations?**

3.1 The move to using payment by results - if those results are based on outcomes decided through meaningful consultation with service users and citizens- could be a huge opportunity for CSOs. Many of them are already able to demonstrate their ability to deliver high quality outcomes for their stakeholders, so they should flourish in an environment where commissioners are willing to pay for those same outcomes.

3.2 If the system is truly results-based, this should also mean fewer restrictions and stipulations governing the way that services are delivered. This would allow many organisations that have in the past found public service contracts to be highly prescriptive and stifling, to operate more freely and thereby maximise the value they are able to add.

3.3 Alongside the potential benefits, there are potential risks. The most obvious of these is the gap in working capital that is created by making contract payments end-loaded. Many CSOs- particularly those smaller ones that do not have large reserves and which struggle to raise commercial finance- may have an approach which could deliver great outcomes, but be unable to find the money to fund that approach.

3.4 The nature of working capital for payment by results, particularly for the smaller organisations that constitute the bulk of the sector, is risky. However good an organisation may be at delivering results, there will always be external factors at play which threaten delivery of results, particularly in a volatile economic and political environment. These CSOs have no assets against which to secure lending, so it is difficult to see who is going to take the risk of lending them the working capital. Commercial funders have the funds but not the risk appetite, whereas social investors may have a higher risk appetite but not the funds. At the moment there are only a small number of social investment funds in the UK (including CAF's own fund, CAF Venturesome), and these are focused on the existing access to capital problems facing the sector, rather than the specific working capital problem.

3.5 The new Big Society Bank, when launched, should take this problem into account, and look to fund intermediaries who demonstrate innovative approaches to providing payment-by-results working capital to CSOs.

3.6 One model that already exists, and is much-discussed, is the Social Impact Bond. This is an exciting and potentially powerful tool. However, CAF believes that there is a risk in placing too much emphasis on this model as the method of financing working capital. Whilst it might be useful in some circumstances, the model is likely to be applicable only in certain areas of social need, where costs and benefits are readily identifiable and relatively uncontroversial. There are also high pre-development costs associated with setting up a Social Impact Bond, which must be factored into the considerations of commissioners, who need to be clear about who absorbs these costs.

3.7 In the long run, if the Government is determined to rely more heavily on payment-by-results, then it must invest in a range of approaches to overcoming the working capital problem.

**4. Sub-Question: Should Government explore extending the right to challenge to other local state-run services? If so, which areas and what benefits could civil society organisations bring to these public service areas?**

4.1 In general, offering CSOs and community groups the right to challenge service provision is a positive step. Currently the only recourse for dissatisfied service users is the traditional democratic process. This requires exerting political pressure through the voting system and then hoping that that pressure filters back down to the level of commissioning and results in a change in service provision. This means that there is a lot of inertia in the system, which would be removed if service users, community groups or CSOs were able to challenge provision directly.

4.2 There are some concerns about the impact of the right to challenge, however. One key issue is where community groups or CSOs will find the capital to take on a service provision role. The right to challenge services is in danger of becoming an empty one if organisations that wish to challenge find that they are unable to do so because they cannot raise sufficient finance. Since the right to challenge is a key feature of the coalition's Big Society plans, it should address this issue through the Big Society Bank or another mechanism.

4.3 The other major concern is that the right to challenge could become a back-door route to privatisation. Whilst the right itself is reserved for community groups and CSOs, it is easy to envisage a situation where a private sector company encourages a community or a CSO to challenge provision in a given area and helps them to succeed, with a view to taking over provision themselves in the future. This might either be through takeover, if the organisation in question is a social enterprise or mutual, or through stepping in when a community group or small CSO fails. The right to challenge must not end up being a mechanism to force services out to tender for companies that are interested in bidding.

**CONSULTATION QUESTION: How could Government make existing public service markets more accessible to CSOs?**

**5. Sub-Question: How can commissioners achieve a fair balance of risk which would enable CSOs to compete for opportunities?**

5.1 Aversion to risk has long been a problem for public sector commissioners. Whilst many of them recognise the potential value of more innovative approaches offered by CSOs, there is an imbalance between the risks associated with failure to deliver- which are potentially huge and might well affect the commissioner directly- and the rewards that might come from success, which whilst potentially large are unlikely to be credited to the commissioner. This leads to an understandable reluctance to take risks of any kind.

5.2 The key issue to address in order to overcome this risk aversion is cultural: it is to do with the way that local and central government interacts with commissioners, and with the way that blame is apportioned. If commissioners are to be expected to take more risks or be more innovative, they must also be allowed at least some “room for failure” and be confident in this.

5.3 Of course, commissioners should not start taking unsuitable risks in the hope of achieving miraculous results. Rather, they should be able to take a portfolio approach to commissioning, where alongside low risk core services they are able to invest in a number of higher-risk, more innovative approaches such as early interventions.

5.4 With this freedom in place, there are still things that commissioners can do to mitigate risks. The most obvious of these is to engage with CSOs and community groups on an ongoing basis, rather than just at the point of tendering a contract. Developing longer-term relationships and a good knowledge of the landscape of civil society in their area, and what the organisations in it can offer, will mean that commissioners can have greater confidence in investing in the ability of these organisations to deliver agreed outcomes.

5.5 Commissioners must refrain from simply seeing CSOs as a convenient way of offloading risks. Payment by results contracts inherently contain the risk that the results are not achieved, but CAF does not believe it is appropriate to place the entire burden of this risk onto the CSOs working to deliver outcomes. Public sector funders must find ways to accept their fair share of risk.

5.6 Innovations such as the Social Impact Bond offer a way for commissioners to share some risk with social investors or social investment intermediaries, which is a potentially valuable development, but there are some concerns about the long-term sustainability of these models. There is also an ethical question regarding whether it is right for social investors to take on the risk of delivering outcomes that public sector commissioners want to achieve. Philanthropic funds would need to be raised in order de-risk public services.

5.7 It would perhaps be more appropriate for the Government to capitalise a working capital fund in the early years and then over time, as government pays a fair price for services (a price which will have to factor in the extra cost of capital) the civil society sector can have a chance to build up its capital base.

5.8 A different sort of risk faced by CSOs looking to take on a service provision role is that presented by complex and potentially punitive employment rules and restrictions. In particular, the transfer of pension burdens from the public sector to CSOs under TUPE presents a significant barrier. The cost of pensions must be factored into the pricing of contracts by commissioners. This might remain ring-fenced so that service deliverers are contractually obliged to spend the money only on pension provision, with a claw-back provision for commissioners in the event that the money is misused. CAF calls on the Government to look at what can be done to address this and other employment issues.

**6. Sub Question: What issues should Government consider in order to ensure that CSOs are assessed on their ability to achieve the best outcomes for the best price?**

6.1 The key issues are the need to educate commissioners about social and environmental value and what it means in practical terms, and then to provide them with the tools to measure this value effectively and the confidence to know that they can really use them.

6.2 CAF welcomes the Government's support for the Public Services (Social Enterprise and Social Value) Bill, sponsored by Chris White MP. However, the aims of this bill, which will merely impose a voluntary requirement on commissioners to consider wider aspects of value, will only be met if the appropriate environment is put in place. If commissioners themselves are put under pressure to achieve cost savings rather than being allowed to demonstrate the broader value of their approach, then cost rather than value will remain the defining criterion. This is likely to lead to a "race to the bottom" in terms of the quality of services delivered.

6.3 CAF supports recommendation 10 of the NCVO Funding Commission report. This proposes that all government funding should be directed at achieving better outcomes for people and communities, and that service users and the CSOs representing them should be involved in specifying user outcomes.<sup>1</sup> CAF also welcomes the Government's desire to put outcomes at the heart of public sector commissioning. However, it is widely recognised that there are difficulties associated with identifying and measuring outcomes, and these must be taken into account. If CSOs are to be engaged on the basis of delivering agreed, measurable outcomes, then the cost of measurement must be factored into the price paid for services.

6.4 The civil society sector has done, and will continue to do, a lot of work in developing methods of measuring social impact. CAF supports Recommendation 1 of the NCVO Funding Commission Report, which calls for an "Increasing Impact" fund, financed by BIG and other major funders, and designed to help individual CSOs or groups of CSOs working in the same sub-sector to develop the systems and expertise to measure their impact.<sup>2</sup>

6.5 The civil society sector should not, however, be expected to bear the entire burden of funding the development of impact measures. Developing the resources and skills for

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<sup>1</sup> NCVO, *Funding the Future: A 10-year framework for civil society*, 2010, p.60

<sup>2</sup> Ibid p.30



effective measurement will be expensive, and when public sector commissioners themselves are in part driving demand they should expect to shoulder a fair proportion of the cost.

**7. Sub-Question: What issues should Government consider in the development of the BSB, in order to enable CSOs to take advantage of public service market opportunities?**

7.1 We have already raised a number of issues that should be taken into account in the development of the Big Society Bank. These include the need for appropriate risk sharing and the need to invest in funds that address the payment-by-results working capital problem.

7.2 An additional, broad issue affecting social investment is the need to develop the demand side of the market. Even with the relatively small number of social investment funds operating in the UK today, there is a common complaint that it is a struggle to find suitable investment opportunities. Too few CSOs and social enterprises are able to clearly articulate their plans and requirements and offer a viable proposition.

7.3 The development of the Big Society Bank must address this demand-side issue, and make one of its aims to build the capacity and capability of CSOs to make them investment-ready. If it does not, then the additional money being made available for social investment intermediaries will be of limited use, as there will not be sufficient opportunities to invest it effectively. This will either result in a bottleneck, where money that could potentially benefit the sector ends up sitting in intermediary funds, or it will result in intermediaries making poor investments as a result of pressure to distribute money quickly. Either way, the civil society sector will suffer.

7.4 Social investment intermediaries already play a key role in developing the demand side of the market, as they work with CSOs to get them investment-ready. The Big Society Bank must leverage this knowledge and experience if it is going to take a targeted approach to developing investment readiness and avoid simply wasting money on organisations that have no realistic chance of developing a viable proposition

7.5 The Government must recognise, however, that getting CSOs investment-ready is a resource-intensive process, and can drive the cost of transactions very high. If it is part of the Government's plans to get more CSOs delivering public services, then it must accept some responsibility for developing the marketplace of potential providers. If it is keen to use social investment as a way of achieving this, then it must invest in the development of the demand-side of the current social investment market, and work with intermediaries to get CSOs investment-ready.

7.6 This need not be an isolated policy aim. The Government has already stated that it intends to focus on developing the financial capabilities of CSOs as part of its philanthropy and giving agenda, and the development of investment-readiness should form part of a spectrum of such capabilities. CAF also supports recommendation 2 of the NCVO Funding Commission report, which highlights the need for financial capability programmes in the civil society sector and calls upon a number of bodies in the sector to develop these programmes.<sup>3</sup>

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<sup>3</sup> Ibid p.31

**CONSULTATION QUESTION: How could CSOs support greater citizen and community involvement in all stages of commissioning?**

**8. Sub-Question: What issues should the government consider in the development of the future programme of training public service commissioners?**

8.1 As already argued, if the Government is keen to base public sector commissioning on a broader notion of value that includes social, environmental and economic factors, then it must train commissioners in the skills required to understand what this means and how it can be measured.

8.2 Commissioners should also be trained to understand where value of this new sort might be found. This will mean having a better understanding of the potential marketplace for provision available to them, including the civil society sector. They should develop knowledge both of the general features of the sector (how it is composed, what CSOs might look like, how they can operate etc) and of the specifics of the sector in their locality or service area.

8.3 This should lay the foundations for developing long-term relationships with potential providers, who can then be involved at multiple stages of the commissioning process. It should also provide the tools needed to work with these organisations to identify priority outcomes, appropriate measures of success and effective methods of financing.

8.4 If commissioners are interested in using new methods of funding to achieve social outcomes, they should also consider engaging with funders who are already working in their locality or service area. Not only will grant-making foundations or individual philanthropists have knowledge and experience that might be useful, but there could also be opportunities for co-funding.

8.5 Currently there are major barriers to businesses or donors investing alongside public sector funders: chief amongst these is the concern that the highly prescriptive way that services are commissioned constrains CSOs, and gives public sector funders too much control over what is done and how it is done. This can lead to mission drift for CSOs that have service contracts, and makes philanthropic donors unwilling to invest in them. If, however, funding relationships are based on payment by results for agreed outcomes, they should dictate only what is delivered, and not how it is delivered. This leaves CSOs free to operate in a way that maximises their added value, and should allow donors to have the confidence to invest alongside public sector funders.

8.6 More work needs to be done to find ways of making co-funding a reality. This is an area that CAF will be looking at in the coming year.

**For more information contact:**

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