

Consultation on Modernising Commissioning. Cheshire and Warrington ChangeUp Consortium Response

The Cheshire and Warrington ChangeUp Consortium is the sub-regional infrastructure consortium covering Cheshire and Warrington. The response has been based on feedback from the member organisations based on the knowledge of and support they give to local community organisations the majority of whom do not have the capacity to respond to this consultation on their own.

New opportunities

In which public service areas could Government create new opportunities for civil society organisations to deliver?

Your Objective: To drive efficiency, effectiveness and innovation in public services by opening more public service areas to civil society organisations.

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

Payment by results has significant cashflow and risk implications and as such, they will prevent many charities who have limited unrestricted funds being able to bid for these contracts. We already have examples of this as there are many organisations who will not undertake projects which have European Funding elements e.g. European Regional Development Fund due to cashflow (payment frequently received 3-6 months after being incurred) and risk (changes are made part way through the contract to the rules for being paid leading to reclaims for expenditure being refused after expenditure was incurred in line with the original contract and claim terms and conditions). The issues with projects including European Funding has lead to organisations making a loss on these projects.

Charity Law states that Trustees should not take unnecessary risks. Whilst there is an element of delivery that is in the control of a charity, no matter how excellent and innovative an approach is, external environmental factors can prevent an organisation from being able achieve the minimum results necessary to receive sufficient payment. Although it could be argued that agreeing to such a contract is a necessary risk of delivering the services, the majority of civil society organisations do not hold sufficient lack of reserves / unrestricted funds to enable them to bank roll this level of project. Any shortfall in funding would have bankruptcy implications, and loss of an otherwise effective civil society organisation.

As a result the risk of a pure payment by results contract will be too great for most charities. This is particularly the case where an organisation is an unincorporated charity (i.e. not a limited company as well as a charity), as in unincorporated charity organisations, the liability to cover any deficit lies personally with the individual trustees. Whilst the Charitable Incorporated Organisation is not the whole solution to this issue, its continued delay is a hindrance to charities taking an increased level of risk.

There is also a contractual issue in relation to proving that the required results have been delivered. There is rarely the inclusion of sufficiently detailed monitoring and information recording systems and processes to be able to provide the required evidence of results included in at the commissioning stage. There is often a reliance on the commissioning

body to provide information / referrals / support to enable the contractor to meet the required results. Both of these areas can lead to disputes over results and hence lead increased costs or a risk to payments. There can be similar issues in the relationship between prime contractors – who by their nature are generally larger, more powerful organisations and smaller subcontract organisations. This area needs to be looked at with extreme care if any part of a contract is to include payment by results.

To ensure the widest possible interest in public service contracts, which would lead to the most effective and efficient delivery organisation being prepared to be commissioned will require a mixed funding regime, not pure payment by results. This is one of the reasons the Compact states that payment should be in advance for civil society organisations.

Some level of fixed price contract with staged payments, with a bonus for achieving different levels of results would encourage a results/output driven approach, whilst reducing the risk level that would prevent organisations from bidding for these contracts.

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

Civil society organisations would be interested in delivering a wide range of public services. Charities are restricted to services that can be counted as for the public benefit, but none charitable organisations would be able to tender to deliver any service.

Barriers to civil society organisations being involved in delivery of public services include

- The timescales associated with the commissioning process. This can include the length of time it takes to submit a bid, and revise a bid. Sometimes this is a long drawn out process – the cost and time implications of which has to be incurred by the organisation, and cannot be recouped from the contract. Other times, there is insufficient time to prepare a submission. In both cases the date the contract was initially due to be rewarded is frequently delayed either leading to costs being incurred that cannot be recouped, or redundancies having to be made, and new staff recruited at a later date leading to loss of expertise and a less efficient contract start.
- A requirement for detailed costings from civil society organisations which are then overly scrutinised. Historically, a private sector organisation would generally submit a price to complete the work, and how the price was created and how the money was spent on the project would be a matter for the private sector internally. Where more detailed costings are required, each element would have an allowance for overheads and profit – e.g. the use of a day rate for individuals. With civil society organisations there is a requirement to provide the detailed breakdown which has historically been based on actual costs – e.g. actual salary of a post excluding overheads and surplus. This then leads to the overhead and surplus elements of a civil society organisation looking significantly higher than that of the private sector, when in effect private sector is likely to have built in
- TUPE issues – final salary pensions and the associated liabilities are something that most charities cannot afford and have actively made the decision to close their schemes.

- Size of the contracts. Local organisations are often the experts in a particular area, but they are often precluded from bidding by minimum turnover levels, and are wary of the inequality associated with prime contractor – subcontractor relationships.
- There appears to be an assumption that best value is had by running fewer contracts with large prime contractors. However the prime contractors will have to build in the costs of managing the sub-contract relationships, and there is an increased cost of their lack of knowledge of a local area and the associated delivery issues. Best value in some areas will be by directly commissioning smaller organisations, who employ local people and have local knowledge, however restrictions on minimum turnover levels in the commissioning process means that this is not an option that can be assessed.
- To fully assess needs, prioritise needs and outcomes and design the service specification needs input from end users and those who support them. In many cases this knowledge is held within very small frontline civil society organisations who support the end users. However there is limited / no funding to enable these organisations to find / develop the capacity to engage in this process and assist the commissioners to truly identify need and design appropriate service specifications. Potentially this sort of engagement needs to be grant funded, rather than commissioned.

Sub- Question: How can we encourage more existing civil society organisations to team up with new employee-led mutuals?

There is an issue of perception of the new employee led mutuals and social enterprises as something that has been set up to access funding and contracts by following a fad, rather than genuinely being set up to serve a local need.

The new organisations are seen to have an unfair advantage by starting with existing contracts which have not been put out to open competition. To encourage the different types of organisations to team up, the contracts need to be put out to open tender and encourage joined up working utilising the experience of delivery from the new employee led mutuals and the innovative and locally based culture of the existing civil society organisations.

Sub-Question: What other methods could the Government consider in order to create more opportunities for civil society organisations to deliver public services?

Start with the opportunity to deliver public services on a small local scale. This enables civil society organisations to gain experience of the delivery – reducing risk and leveraging their local knowledge. As they gain more experience, they could bid for larger contracts. The focus on using prime contractors mitigates against this.

More accessible

How could Government make existing public service markets more accessible to civil society organisations?

Your Objective: To address practical, regulatory, legislative and cultural 'barriers to market entry' in existing markets, with a particular focus on barriers that affect civil society organisations.

Sub-Question: What issues should commissioners take into account in order to increase civil society organisations involvement in existing public service markets?

And

Sub- Question: In the implementation of the above mentioned measures, what issues should the Government consider in order to ensure that they are fully inclusive of civil society organisations?

They should ensure that the commissioning process and forms used is fair across all sectors. The North West Improvement and Efficiency Partnership have done some work on ensuring their standard processes are fair to civil society organisations.

There should be standard PQQ forms and requirements not just across central government but across local government and other public sector bodies e.g. health service, police, fire, offender management services.

There should be additional credit given for local knowledge and local 'reach', which increase the effectiveness of delivery. The contracts need to be of a size and complexity to encourage local organisations whether this is SME's or civil society organisations. This may add burdens to the commissioning process and appears to go against economies of scale however the use of prime contractor / sub-contractors means that the overhead of managing the multiple contractors is moved down the supply chain by a level rather than removed as an economy of scale.

In some instances, specific organisations due to their knowledge of the end service user are best placed to assist in the design of the commissioned work, however they also wish to deliver the final service. This can lead to perceptions of unfair advantage by those who also wish to tender for the service. Care needs to be taken to ensure a fair playing field or potentially, where a service is designed between an organisation and the commissioning agency, it could be initially run as a time limited pilot to test the service and identify potential changes, before it is formally commissioned in open competition.

This is covered by the previous answer regarding ensuring a level playing field.

More generally, the Government has established a Civil Society Red Tape Taskforce to answer the question "How can we reduce the bureaucratic burden on small organisations, particularly in the charitable, voluntary and social enterprise sectors?"

Even within the same statutory agency, there are different requirements for performance monitoring, and document submission. Different departments of the same organisation can have different payment processes, request information in different formats or require absurd levels of detail – e.g. all copies of volunteer expense claim forms (when undertaking a sample inspection / relying on an organisations internal and external audit processes or doing a sample spot check would be more environmentally friendly and more cost effective). There is also the issue of same information e.g. accounts, policies, annual reports, governance being required by different departments of the same organisation - again neither environmentally friendly or time and cost effective.

The different culture, different quality standards of civil society organisations mean they are misunderstood and often treated as second class, or the cheap option over private sector companies, with different more detailed levels of information being required.

Questions asked and the scoring methods during the commissioning process need to be directly relevant to the ability of an organisation to deliver the service. There is an assumption that if an organisation has ISO 9000 as a quality standard it is automatically the best with little or no credit given for the many other excellent quality standards (some of which are charity commission endorsed) that exist within the civil society sector. This leads to organisations having to maintain and be assessed on multiple quality systems. The question asked / scoring system should relate to a recognised externally verified quality system which includes more than just ISO 9000 scoring higher than an internal only quality system, and no points if an organisation has no quality system.

Sub-Question: How can commissioners achieve a fair balance of risk which would enable civil society organisations to compete for opportunities?

The balance of risk that an organisation can take on depends on its size, so the size of the contract / organisation needs to be taken into account and the level of risk that is shared should be proportionate.

There needs to be an increase in the level of trust between both sides that the balance of risk is fair and takes into account the constraints on risk on charitable organisations.

Sub-Question: What are the key issues civil society organisations face when dealing with TUPE regulations and what could government do, within existing legislation, to resolve these problems?

Pension provision is a key issue. Most public sector employees are on final salary pensions, the associated liabilities of final salary pension schemes are a massive deterrent to taking staff under TUPE. In the private sector after changes in ownership, pension arrangements have been reduced from final salary to defined contribution and employees have been advised that it is a fair and reasonable change for an employer to make given the cost of liabilities. It may be that TUPE regulations change so that a transferred employee has to move to the pension terms and conditions of the new employer with any historic pension entitlement (and associated liabilities) remaining with the original final salary provider.

Sub-Question: What issues should Government consider in order to ensure that civil society organisations are assessed on their ability to achieve the best outcomes for the most competitive price?

Civil society organisations have in the main a good track record of delivery whether this is based on value for money or additionality.

The key issue is how the best outcome is determined – this should include an estimate of the wider social value of the outcome – e.g. impact on the wider society – the value of which would depend on the method used to achieve the outcomes.

Sub-Question: What issues should Government consider in the development of the Big Society Bank, in order to enable civil society organisations to take advantage of public service market opportunities?

Debt finance increases the risk on small organisations. As discussed above, with unincorporated charity organisations, this in effect pushes the risk into the personal financial pockets of individual trustees. There would need to be the agreement that trustees who had not been negligent could not be pursued for debts owed to the Big Society Bank.

Sub- Questions: What issues affecting civil society organisations should be considered in relation to the extension of the Merlin Standard across central government?

Members of the Consortium have little direct experience of the Merlin Standard, however from conversations with partner organisations we believe that these standards should be extended through Central and Local Government Commissioning opportunities.

Sub- Question: What barriers prevent civil society organisations from forming and operating in consortia? How could they be removed?

A key issue is time and trust. Although now working effectively together, the Cheshire and Warrington ChangeUp Consortia had a very challenging first few years after the members were forced together through the ChangeUp process. Forming and operating effectively in consortia takes time to develop and needs to be done as a result of likeminded / compatible organisations coming together voluntarily, rather than being forced together by commissioners.

Developing an effective consortium goes through the same stages of Bruce Tuckman's 1965 Forming, Storming, Norming, Performing team-development model. Key to effective team or Consortium performance is the level of trust between members. Trust takes time to build.

Where organizations are rapidly forced into Consortium through external factors, the storming process takes a significant length of time and can lead to long term damaged relationships and an ineffective consortium where there is limited / no trust.

Currently we have a local authority that is asking specific organisations who have historic overlaps to develop a partnership working model – in effect a consortia – that is able to develop and deliver agree to deliver shared contracts in a matter of weeks. This is inappropriate and does not allow the time for trust and a new culture of working together to be delivered. It is likely to lead to internal conflict and competition which will take time and money that could be better directed to supporting delivery to manage leading to reduced effectiveness and long term broken relationships between people and organisations. This will require expert support and understanding from the commissioners.

Some of the Cheshire and Warrington ChangeUp Consortium members are already working in partnership on different projects. In these projects there has been an increase required in the level of management support and scrutiny from all parties as the partnership has to be managed as well as the delivery of the project outcomes. Therefore the overhead costs are higher than would have been the case for individual projects – hence removing expected economies of scale.

Value

How could commissioners use assessments of full social, environmental and economic value to inform their commissioning decisions?

Your Objective: To enable commissioners to make strategic commissioning decisions on the basis of a full understanding of the social, environmental and economic impact.

Sub-Question: What approaches would best support commissioning decisions that consider full social, environmental and economic value?

A Social Impact Assessment / Social Audit / Social Accountancy tool to go alongside the impact assessment process for environmental and economic issues and Equality Impact Assessments may be of use.

Such an Assessment should take into account:

- Local reach
- Local knowledge
- Engagement processes
- Social impact over and above the actual outcomes required as a minimum.

Currently there is no single agreed standard method of measuring the full social, environmental and economic value, and many of the possible methods e.g. social accountancy have a very high level of administration and data capture required.

Sub- Question: What issues should Government consider in taking forward the Public Services (Social Enterprise and Social Value) Bill?

Members of the Cheshire and Warrington ChangeUp Consortium welcome the Government's support for this Bill, and endorses the concept of Full Value.

Citizen and Community Involvement

How could civil society organisations support greater citizen and community involvement in all stages of commissioning?

Your Objective: To enable civil society organisations to support and facilitate the increased involvement of citizens and communities in commissioning.

Sub-question: What role and contributions could civil society organisations place, through Local HealthWatch, in informing the local consumer voice about commissioning?

Civil society organisations should be fully engaged in HealthWatch and should be able to bid for contracts to deliver this locally, just as they have been in LINKS schemes.

Where a LINKS contract was given to a non local organisation, there has been a greater barrier towards developing community engagement. This is a lesson that should be learned for the future and include local knowledge as a high scoring weighting in the commissioning process.

Sub-question: What issues relating to civil society organisations should the Government consider when refreshing the Joint Strategic Needs Assessment Guidance?

It is important to include civil society organisations in the JSNA process as full partners with a genuine belief that we can add to the evidence.

There is an issue of culture and terminology between the different organisations that leads to a difference in understanding of the impact, reach and value of civil society and in the collation of evidence gathered by civil society organisations.

Sub-Question: How could civil society organisations facilitate, encourage and support community and citizen involvement in decision making about local priorities and services commissioned?

In the rural areas in particular, community-led planning activity has been undertaken for a few years now and has built up a considerable bank of knowledge and information which is of great value to many aspects of statutory agencies. This should be invested in, built upon and enhanced further.

Sub-Question: What forms of support will best enable statutory partners and civil society organisations to improve their working relationships?

Civil society organisations are often involved in supporting statutory agencies with their development at a strategic level, in developing and designing services and in assisting individuals to engage directly with the statutory agencies. However there is no acknowledgement of the cost to civil society organisations of doing this. A continued lack of funding for this type of support will lead to it being marginalised to the loss of all civil society organisations have to prioritise their limited resources towards activities that generate income. It may be that there needs to be fee for attendance at engagement events / meetings, for organising meetings with the individuals to feed into statutory agency decisions or for response to consultation / engagement documents.

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

The current minimum standard for public service commissioners is Level 2 of the Chartered Institute of Purchasing and Supply. This course (as at May 2010) had a very old view of the not for profit sector, treating them as small and second rate in comparison to the private sector. A key place to start levelling the playing field has to be here.

An understanding of the diversity of the sector, and the different types of organisations and their umbrella bodies and therefore the different types of quality systems etc that are appropriate.

Sub- Questions: What can civil society organisations contribute to the roll out of community budgets? What barriers exist to realising this contribution? How can these barriers be removed?

Participatory budgeting events have been run by members with a number of our statutory colleagues. These events put decision making in the hands of communities. In every case, both the agency and the community members have come away with an increased respect for the other, and with a greater desire to have more, similar events.

Community budgets and the distribution of them to be through an independent but community focused organisation takes away cynicism from the community that it is a publicity exercise rather than a genuine desire to support them.

Sub- Questions: a). What can civil society organisations contribute to the roll out of Local Integrated Services?

Ellesmere Port within Cheshire is an area where LIS is in operation. The former Area Board was chaired by the Police and they continue to be key drivers.

We believe that civil society organisations could lead and be the conduits to bring a LIS into a more dynamic framework as they can cross boundaries that each statutory agency is confined within, creating greater impact from the shared funding.

This is backed by grassroots knowledge and reach - a truly powerful combination.

b). What barriers exist to realising this contribution? How can these barriers be removed?

TRUST, or the lack of it, and the willingness to cede 'power' to others. There is still a belief that only the organisations with funding are the true players at the table, the rest secondary.

Sub- Questions: a). What can civil society organisations contribute to the development of Free Schools?

b). What should Government consider in order to realise this contribution?

Government need to ensure that supportive and advocating organisations are suitably resourced in order to provide that very key service to local groups and communities. None of this can happen unless that core resource is available.

Sub- Question: What contributions could civil society organisations make to the extension of personal budgets across a range of service areas?

The concept of Personalisation is something we welcome as it gives the 'consumer' the right to choose. However, this can be extremely confusing especially for an isolated elderly person, or those with mental health issues and help is needed to support these people. Civil society organisations are ideally placed to provide that support, however to be accurate, and effective it cannot be done for free.

