



Community
Transport
Association

**Response to the
Cabinet Office
consultation on
Modernising Commissioning**

Increasing the role of charities,
social enterprises, mutual and co-operatives
in public service delivery

Closing Date: 5 January 2011

The Community Transport Association

The CTA and community transport

The Community Transport Association (CTA) is a UK-wide charity giving voice and providing leadership, learning and enterprise support to over 1,500 member organisations in civil society which deliver innovative and flexible transport solutions to achieve social change in their communities. The CTA promotes excellence by providing training, e-based resources, publications, advice, consultancy, events and project support on voluntary, accessible and community transport.

Community transport is safe, accessible, cost-effective, flexible transport run by the community for the community. Community transport shows what can be done when people take responsibility for solving their own problems. It mobilises and engages local communities, as it is provided by charities and voluntary organisations (which are often very small and local), and harnesses the experience and energy of volunteers who give freely of their time to help others.

Community transport is about freedom and fairness of opportunity. It provides an essential, responsive service for a wide range of people – often the most vulnerable in society. These are people who cannot use or do not have access to cars, taxis or buses and who depend on community transport to get to the services and the social activities they require.

Community transport is a lifeline in both rural and urban areas. It takes disabled people to work, children to school, sick people to healthcare and older people to the shops. It runs local bus routes and provides transport for a wide range of clubs, voluntary bodies and care homes. People shape the services they want and community transport makes it happen.

The CTA's response to the consultation

The CTA welcomes the opportunity to contribute to the Cabinet Office's consultation process. After reading through the consultation we have decided to respond on those specific areas that we believe would have a marked effect on our sector.

Contact details

Any queries regarding this response should be directed to:

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Chief Executive

The Green Paper asks four main questions:

- In which public service areas could Government create new opportunities for civil society organisations to deliver?
- How could Government make existing public service markets more accessible to civil society organisations?
- How could commissioners use assessments of full social, environmental and economic value to inform their commissioning decisions?
- How could civil society organisations support greater citizen and community involvement in all stages of commissioning?

Under each question there are several sub-questions. Our response is structured to address these in the sequence they are listed in the consultation document. However, the CTA warmly welcomes the proposed reforms and wishes to see an increased role for its members in delivering local transport services.

New Opportunities

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

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

Whilst we understand the concept and need for payments by results, this does present difficulties for charities.

The biggest issue that could be faced and is undoubtedly common with most civil society organisations is that charities will generally have lower levels of capital and free reserves. They will find it much more difficult than private sector competitors to pay initial up-front costs such as; bid set up and initial running costs, pending receipt of a first payment. The example quoted in the consultation document, whereby 13% of the contract value was paid on a “payment by results” basis could potentially cause difficulty for transport charities where operating for profit is not allowed.

When a transport charity calculates their total costs of any particular proposed operation, they then determine a way forward in which their

tenders are constructed. Building in a 'risk factor' will ensure the correct type of tender is submitted for their organisation, this can be done by looking at the following:

- If they make the assumption that they will most likely receive the bonus payment there is a risk of the charity losing money, which would be unacceptable to most Trustees that are, by law, 'risk-averse'.
- If they make the assumption that they may not receive the bonus and account for all their costs in the basic tender, then receiving a bonus payment would mean that the transport had been operated at a profit which would invalidate:
 - their legal operating framework (Transport Act 1985 permits) and
 - their insurance cover and
 - the driving licences of all the drivers employed. (because they were driving on a profit making basis).

If the policy of payment by results is to be effective, the risk of whether or not payment would be received must be real. There is also an assumption that offering a financial reward will improve the quality or performance of the contractor – an assumption that may not be true for charities. It is reasonable to suggest that all bidders will build in a risk premium in their tender price causing total bid prices to rise.

A challenge for civil society organisations is that, particularly at first, they may not appreciate the risks associated with 'payment by results' and the need to build in a risk premium. As a result they may under-bid, so that if performance suffers for any reason they may either be unable to continue trading or, at a lesser level, create a situation where they are subsidising the commissioned service from their reserves. Neither of these outcomes is acceptable.

Charity legislation requires trustees to be prudent with the resources of their charity and ensure the charity does not take unnecessary risks. As charities would normally be operating on a not-for-profit basis there is very little margin between the actual costs involved and the guaranteed income required to commence work on a particular project. This is most notable when considering transport contracts operated under a Transport Act 1985 Permit, which legally requires not-for-profit operation. Charities should not be bidding for contracts that could result in financial loss due to charity legislation and should not be bidding for contracts that will make a profit due to transport

legislation. We suggest that commissioners should include an option within tender documents or contract negotiation to allow a bid that forgoes the 'payment by result' element. These bids can then be evaluated alongside other organisations that may strive to receive the bonus payments.

As far as charities in the transport field are concerned payment by results formula must make the basic cost of the services not subject to the bonus payment and recognition needs to be given to payments in advance to simply make it feasible for civil society organisations, particularly charities to tender.

There are no particular issues for other types of civil society organisations operating under normal transport legislation e.g. Public Service Vehicle Operators Licences or Taxi/Private Hire Vehicle licences. Neither is there a problem if a contract is for training, job placement or other services where a bonus payment would be an allowable outcome.

Sub-Question: Which public services areas could be opened up to more civil society providers?

Community transport organisations are particularly interested in the public transport area. Many existing Community Transport operators already provide the following services and are capable of expanding their operation to embrace more opportunities.

- **Transport services traditionally undertaken directly by local authorities. E.g. Home-to-School transport for children with mobility difficulties**
- **Transport for NHS bodies. E.g. Patient transport services (particularly highly specialised areas like renal and cancer patients), hospital discharge transport, attendance at doctor surgeries and health clinics**
- **Transport services for social services. E.g. day centres, respite care, etc.**
- **Public transport services either using Transport Act 1985 – Section 22 permits for not for profit operations or by using mainstream legislation by setting up a separate company to obtain a PSV Operator's Licence.**

It is also worth mentioning that the Local Transport Act 2008 provided the community transport sector with new arrangements for Section 22 permits whereby community transport organisations could more easily provide mainstream public transport on a not-for-profit basis. We have noted a steady increase and believe that many more organisations are planning to introduce new services under this legislation.

Although not specifically answering this question, we would like to raise two particular barriers experienced by civil society organisations that we feel need to be addressed within the proposed White Paper;

- Firstly, the difficulties experienced by smaller organisations in growing quickly to take on larger contracts and:**
- Secondly, situations where no organisations currently exist but there is a willingness within the area to tackle public transport problems.**
- Thirdly, where there are already a number of organisations (for example community transport operators) that have the potential to meet the requirement, but as individual organisations they lack full capacity and capability to fulfil a contract. However, they may have capacity as a collective or consortium.**

In each of the above cases there is a need for the development of new skills. These could, for example, be the formation of consortiums; attracting and managing investment monies; transport legislation; recruitment and management of staff; vehicle specification and sourcing. Up until now this capacity building work had been funded by local authorities with the aim of increasing the number of possible tenderers. We are concerned that with spending cuts the emphasis on developing skills in the community transport sector could be lost.

Sub-Questions: 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?

From the aspect of community based transport we believe that there are many opportunities for civil society organisations to undertake work currently being delivered directly by local authorities.

We have been concerned for some time at the growing number of reasons given for keeping specialist transport work within the sphere of the local authority.

Examples include:

- **A local authority that believes the 'State aid' rules prevent them from allowing a contract to be given to an organisation they are funding to complete other work;**
- **An allegedly 'arm's length' transport department within the local authority submitting tenders to their authority that are priced below the level tendered by a not-for-profit organisation that has only one supervisor and pays a third less wages than that of the council. Thus giving the impression that some of the overhead costs associated with the in-house bid are being ignored.**

We believe that the Bill should provide a simple legal process for challenging and resolving these unhelpful occurrences.

Sub-Questions: Are there types of assets whose viability, when transferred to civil society management or ownership, would be particularly dependent on a continuing income stream from service contracts or public sector tenancies? What are the main barriers that prevent civil society organisations taking over asset-based services?

In general terms we understand this question to relate to buildings and elements of major infrastructure. In the transport area we are not aware of any current examples and, as the consultation document comments, the viability of such an arrangement would depend on a long term guaranteed income stream.

We are aware that several local authorities have already subcontracted the whole of their in-house passenger transport provision to commercial undertakings on extensively long term basis. This includes the role of the council in issuing bids to subcontractors for what was council work. We are also aware that these are seen as 'good models' of how to proceed and we know that other authorities are planning to do likewise. Once such an arrangement has been made it prevents any not-for-profit operator bidding for this work because the Transport Act 1985 – permit regime does not allow. We view these moves as counterproductive in terms of the use of public money and the lost opportunities to enhance the social value that

could have been provided if a more integrated and flexible solution had been chosen.

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

The civil society organisations in the transport sector are split into two distinct categories. There are few community transport operators in the sector that have a trading arm operating under normal commercial arrangements with a view to profit using an Operator's Licence. Often this profit is gifted to the parent charity for use in their charitable activities. There are no difficulties in these organisations working with employee led mutuals. It may be appropriate for subsidiary trading arms of community transport organisations to work with employee-led mutuals because pooling the skills of both types of organisation will be jointly beneficial. We cannot suggest any specific measures that would encourage greater co-operation.

However, the majority of organisations in our sector operate under Transport Act 1985 permits and, with this, comes specific requirements to, both, be a not-for-profit itself and not to operate in connection with an activity which in itself is carried on with a view to profit. On the basis that most employee-led mutual organisations will have an ambition to make a profit, it is difficult to see how they could work with not-for-profit transport organisations.

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

We believe many of our suggested changes are contained within the Public Services (Social Enterprise and Social Value) Bill, which we very much welcome and endorse. Please refer to the sub-question below.

It is our view that decisions about which public services are to be offered for external tendering are made on the basis of simply whether or not the local authority has the existing resources to complete the work. To create more opportunities for civil society organisations, local authorities should be obliged to maintain a list of such organisations in their area and review this on a regular basis to establish the extent of their involvement in public service contracts.

More Accessible

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

Commissioners should remain conscious of the needs of potential new providers from the ranks of civil society organisations in the following ways:

- **Recognise the emerging suppliers in the various areas of public contracts and their needs. (Whilst, commissioners would not normally see this as part of their responsibilities, it is interesting to note that in the public transport area the average number of bids for all tenders issued is less than two. This must indicate that the commissioners' achievement of value for money must be questionable)**
- **Look at opportunities to use de-minimus limits to issue short term 'trial' contracts to encourage new suppliers**
- **Take care in 'batching' contracts together which can mitigate against new entrants in the field**
- **Examine whether PQQs need to place any reliance on previous experience of undertaking local authority contracts.**
- **Create opportunities within tender documents for alternative bids that offer different solutions to the one being specified in the tender. In the transport field, this could be the use of a smaller vehicle than the one specified or a demand responsive services rather than a timetabled bus service.**
- **In order to engage smaller organisations offer operating contracts with 'free issue' assets, (such as minibuses). Commissioners can often get better value for money when purchasing and owning assets is separated from operating them. (We are aware of a number of authorities who already adopt this approach and consider that they achieve better value**

for money and reduced the risks associated with large value contracts being offered to small enterprises).

- Take a longer term approach to commissioning to allow time for smaller civil society organisations time to develop partnerships and consortia to enable them to submit valid and, probably, innovative tenders

As a series of more general points:

- We suggest that commissioners should be statutorily obliged to ensure diversity of suppliers. This would avoid the creation of a stagnant market with a small number of big, quasi-monopolistic, companies.
- We also suggest that commissioners should be statutorily obliged to ensure a diversity of suppliers, with ceilings on the proportion which any single supplier can provide;
- We also suggest that commissioners should be statutorily obliged to ensure a proportion of all public money spent should be specifically reserved for civil society organisations, with an obligation to report their success in achieving this target.

We would suggest that the Competition Commission or someone similar to have the power to scrutinize the awarding of contracts to ensure these obligations are fulfilled.

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

- 'Cut away unnecessary bureaucracy' - we would particularly welcome a negative view being taken on the use of e-auctions – where the tenderers are expected to submit reducing bids until the lowest price per route is achieved. This may be appropriate for very well specified simple commodities but is totally unsuitable for sophisticated transport arrangements – for example taking disabled children to school and can leave operators winning contracts that they cannot realistically afford to run
- 'Improve the transparency' - we would welcome this move and would encourage a legislative requirement to publish the outturn

of every public procurement exercise. This should include an outline of any alternatives that have been offered to the original specification and a list of all bidders.

- 'Guarantee sub-contractors paid within 30 days' – we would welcome this as a legislative requirement.
- 'Standardised core pre-qualification questionnaire' - the critical aspect of this proposal is the elapsed time that organisations have between renewing PQQs. As civil society organisations often develop very quickly in their formative period and could easily miss out on new contracts if out of date PQQ are being used.
- 'Standard PQQ data just once' – subject to the concern shown about the timescale of refreshing the information in the PQQ.
- A 'Lean Review' – we would support this measure.
- A 'Contracts Finder' – we would support this measure. We would hope that local authorities would be obliged to contribute all tenders and it will incorporate an 'alert' system to notify organisations of relevant new additions.

Sub-Question: What issues should the Civil Society Red Tape Taskforce consider in order to reduce the bureaucratic burden of commissioning?

The Community Transport Association has not been invited to submit any input into this process. However, we would like to see an emphasis on the issues experienced by small organisations.

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

In any commissioning process the risk of awarding contracts to new and embryonic organisations is ever present. However, commissioners should be made aware that the risks in awarding contracts to this type of organisation in the civil society sector can be very different to the risks in a commercial organisation. In particular civil society organisations:

- will be more willing to share their costing / calculations with commissioners – this can be useful if negotiations are involved to vary contract arrangements

- will be likely to be looking for risk sharing solutions, which could be better value for money
- will be less likely to be motivated by financial incentives (except those sections operating with a view to profit)
- will be more likely to want the facility to change the services delivered to better suit a new situation – and will often instigate such proposals

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?

We believe that this issue is a significant barrier to civil society organisations bidding for public service contracts. Whilst there is adequate legal advice and support available to potential bidders, it is expensive and often has to be paid for whether or not the contract is won. An approach that could be introduced to support organisations new to TUPE regulations would be for the contract provider to offer an all-inclusive advice service at a fixed fee using their own personal department. Local authorities would have a vested interest in ensuring that TUPE transfers happen smoothly because this would maintain good industrial relations with their remaining staff – who could face the same process in the future.

Sub-Questions: 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?

The Public Services (Social Enterprise and Social Value) Bill addresses these issues – see below.

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?

We strongly believe that the Government should make sure that the Big Society Bank is introduced with minimum set-up costs. We are concerned that using any part of the funds available to establish a new organisation could be seen as wasteful.

The Big Society Bank should:

- encourage partnerships and joint undertakings to spread the risks and reduce defaulting on loans
- encourage groups of organisations applying for loans to purchase collective advice and support from other civil society organisations that have expertise in the particular area.
- Understand that civil society applicants may have been operating on a deficit-funded basis and will not have the history of financial viability expected of commercial organisations seeking a loan. Punitive interest rates and bank charges should not be imposed purely on the basis of this record without further consideration of previous “survivability” and potential “sustainability”. The government should increase its small firms loan guarantee from 75% where this supports civil society organisations in the provision of public services

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

The use of a quality assurance process such as Merlin would definitely benefit the entry of civil society organisations into public service contracts. However, specific issues with respect to charities and other not-for-profit organisations need to be developed.

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

We have no particular observations on this question.

Value

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

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

The hurdle faced by civil society organisations in convincing commissioners that their proposal is superior is the compartmentalising of local authority budgets. For example, a dial-a-ride service that provides people with access to shops, medical

facilities, education and other social contact will inevitably provide benefits for social services, health and economic development departments. Yet, when the budget heading is transport, none of these cross sector benefits can be taken into account.

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

We support completely the aims and objectives of the Bill and consider that all public money spent should be 'tested' against the question – 'Have all the potential social benefits been realised by selecting a particular supplier?'

It is sometimes difficult to see the longer term outcomes from reasonably simple legislative changes. However, the following are likely to be positive benefits of this measure.

Civil society organisations are being asked to take on the delivery of public services. This is a valid policy because such contracts invest public money into society in general. The fact that these organisations provide these additional benefits is not currently recognised by conventional procurement policies. Every government contract creates resources as an integral part of delivering the principle outcomes. However, in the case of civil society organisations they make full use of the resources to benefit the community. Typically, these are:

- Buildings and Land;**
- Assets obtained for the contract (tools, machinery, office equipment, vehicles, etc.);**
- Expertise of staff and improved governance skills;**
- Expertise and willingness to help amongst volunteers;**
- Financial contributions to contingency reserves.**

Private and public companies are likely to realise that, once this measure is in place, they too will need to show their social value contributions. It is difficult to second guess the actual changes that private and public companies could make as a result of this measure – however, the following list is suggested;

- Financial contributions to charities and other socially necessary work;
- Increased involvement in work experience placements, apprenticeships and the recruitment of difficult-to-employ job seekers;
- Active engagement with diversity policies;
- Encouragement of employees to volunteer and become involved in public duties;
- Sub-contracting to social enterprises and charities.

All these would be beneficial to the social infrastructure of the country and would have little detrimental impact on profitability. We know this because they are all existing actions of successful companies.

The measures in the Bill is not just trying to give an advantage to social enterprises and charities because the only allowable outcome of any change to procurement rules would be to apply them to all companies that put in a tender. Some commercial companies already provide added social value which is not currently recognised. In fact, the effect on the country's social infrastructure as a result of public and private companies becoming more socially aware and active will probably have a greater impact than any possible effect from civil society organisations.

There is no evidence to support the possible contention that every government and local authority contract will cost more as a result of this measure. Companies that have a significant corporate social responsibility policy still bid for, and win, public service contracts. There is also evidence that civil society organisations win contracts on a level playing field with commercial companies.

We would add that any measures of 'social value' used in connection with awarding contracts should be proportional to the number of staff employed or annual turnover to avoid large commercial companies outweighing the social value created by small organisations.

Citizen and Community Involvement

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

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

Some of our members have undertaken health related contracts and could be involved in consumer feedback schemes. We believe that a obligation on commissioners within the Health Service should require them to routinely consult with local community transport operators with regard to any possible contribution could be made to improve services for patients and health facility visitors. On the latter point we are aware of a Scottish health authority that has engaged with a community transport organisation to provide free transport to hospital visitors for patients who would medically benefit from increased social interaction.

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

Some of our members have undertaken health related contracts and could be involved in consumer feedback schemes. We have no specific suggestions to offer on this matter.

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

We have no specific suggestions to offer on this matter.

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

We believe that elements of the existing Compact that was designed with the help of national charitable organisations would improve working relations between statutory partners and civil society organisations

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

It is important that public service commissioners have an awareness of the particular issues raised elsewhere in this response.

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?

We believe that civil society organisations should have a significant involvement in community budgets. Furthermore, community budget guidance should avoid the “silo” approach which currently restricts the ability to obtain maximum impact of spend across a community. For example: a relatively small local authority subsidy for a rural transport service can enable a jobseeker to access employment, removing the need for substantial payments from the DWP budget. However the diverse responsibilities between the two budgets can mean withdrawal of a service which benefits a range of users and increases the overall cost to the public purse. Civil society organisations tend to have a better understanding of the broader local impact. We are aware of one instance where a rural supported passenger transport service was introduced on two days a week basis. Patronage on one of these days was substantially lower. An inquisitive driver established that the mobile grocery van called at the villages on that day so the bus service was changed to run on a different day. Patronage immediately rose and the likelihood of withdrawal of the service was avoided

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

The experience of our members in working with many disadvantaged people is that they are already highly regarded in the communities in which they work. We suggest that this may be a strength of the community transport organisation under the Local Integrated Services arrangement.

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

Not applicable

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

Existing collective arrangements for people requiring additional support, including transport provision has a cost which is very dependent on the extent of the uptake. Typically existing transport arrangements will be priced on the basis of multiple occupancy of the vehicle. However, the introduction of personal budget holding will cause a service provider to price a service on the basis that a smaller number of participants will use the service, thereby increasing the price. To control this potential disadvantage, particularly with regard to transport provision, we believe there is a need to provide more information for personal budget holders, possibly including forums or focus groups to discuss collective decision making in order to develop cost effective solutions. It is not clear how these collective processes will be organised but without them, many new budget holders will find their funds will be very quickly depleted.