

# Modernising Commissioning – Consultation response

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As the world's only professional accountancy body to specialise in public services, CIPFA's portfolio of qualifications are the foundation for a career in public finance. They include the benchmark professional qualification for public sector accountants as well as a postgraduate diploma for people already working in leadership positions. They are taught by our in-house CIPFA Education and Training Centre as well as other places of learning around the world.

We also champion high performance in public services, translating our experience and insight into clear advice and practical services. They include information and guidance, courses and conferences, property and asset management solutions, consultancy and interim people for a range of public sector clients.

Globally, CIPFA shows the way in public finance by standing up for sound public financial management and good governance. We work with donors, partner governments, accountancy bodies and the public sector around the world to advance public finance and support better public services.

## **General Comment**

CIPFA welcomes the opportunity to respond to the Office for Civil Society consultation on modernising commissioning and exploration of how best to support civil society organisations in meeting the opportunities and challenges that change will give rise to. This response considers the questions in the document 'Modernising Commissioning'. We have numbered the questions as an aid to reviewing the comments.

CIPFA plays an active part in the civil society. As a charity, social enterprise, accounting institute and member based support organisation, CIPFA has direct experience of contributing to building the capacity of civil society organisations within a changing public service delivery landscape.

### **1.0 Main question**

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

There is a wide range of opportunities for developing the delivery of public services by civil society organisations. Examples already exist both in the UK and further afield, of civil society organisations providing a variety of public services, including: health, social care, housing, advice, leisure, arts and community services.

A major stumbling block in many partnerships or third party arrangements – in the commercial world as well as in public service – has been the failure by each party to understand and accommodate the operational, financial and cultural characteristics and limitations of the other party.

An essential component of the process of creating opportunities is careful assessment of the applicability, resilience and effectiveness of any particular type of civil society organisation to deliver specific services and desired outcomes.

Not all civil society organisations are the same and it is crucial that those tasked with looking at the potential transfer of service delivery fully understand the key characteristics of differing types of civil society organisation. This can include for example differences in regard to: social purpose and objectives, member participation, governance, retention and reinvestment of profits, income streams, and trading and taxation issues.

Clarity regarding civil society organisational models and their differences will greatly assist in avoiding unnecessary risk and in improving prospects for long term success in new approaches to public service delivery.

#### **1.1 What are the implications of payment by results for civil society organisations?**

As mentioned in the previous section, it is essential that both commissioner and provider understand each other's dynamic. A payment by results mechanism would need to operate within the commissioning body's budget limits. Civil Society organisations would need to have a clear understanding of any features of the payment system that are designed to cap or reduce payments above particular result thresholds.

The Green Paper acknowledges the challenges that some civil society organisations will face in terms of accessing working capital. Sound financial management of cash flow and effective project risk management will also be critical to an organisation's ability to work within a payment by results system.

Payment by results could prove difficult to apply to small contracts and for small civil society organisations. In such cases it may be appropriate to stipulate a different approach, for example allowing for partial advance payment.

### **1.2 Which public services areas could be opened up to more civil society providers? What are the barriers to more civil society organisations being involved?**

As already mentioned above, examples already exist both in the UK and further afield, of civil society organisations delivering a variety of public services, including: health, social care, housing, advice, leisure, arts and community services. We can also add to this the delivery of functional services such as transport, media design and production, catering, events and facilities management.

In terms of barriers, the commissioning processes themselves can prove daunting to all but the largest of civil society organisations. Sometimes these can be overcome through the provision of skilled support through local infrastructure organisations or by the removal of unnecessary conditions regarding both the application and reporting processes.

Barriers identified in various reports include:

- Managing TUPE
- Transfer of final salary pensions
- Imposition of public sector reporting requirements over and above that which is genuinely needed
- Civil society organisations' own resource constraints
- Limited commissioning experience/knowledge in civil society organisations
- Lack of infrastructure support organisations
- Partial understanding of and/or mistaken perceptions/attitudes between public service and civil society organisations

Simplification of commissioning processes and removal of unnecessary reporting burdens could prove helpful, although such changes would need to balance the risk implications for the commissioning body and for service delivery.

### **1.3 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?**

Civil society organisation can provide effective, efficient and resilient services. Opportunities to extend the model to other state-run services should be pursued.

Potential benefits are wide ranging and include:

- engaging communities in the design of public services as well as their delivery
- improving employee working through a sense of 'ownership' resulting in improvements in service delivery
- retention of profits to be reinvested in improving service delivery in the communities in which the organisations operate
- an increased sense of 'ownership' of local services and assets by local communities

**1.4 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?**

The main determinants of dependency on assured income streams are the types of services delivered through that asset, together with ongoing maintenance requirements, legal questions such as freehold or leasehold arrangements, or control over use of the asset, and any ongoing obligations linked to the asset. Clarity and transparency is essential regarding the transfer of assets and associated costs and risks for the civil society organisation taking on the asset.

Barriers can include:

- Lack of resources for feasibility study and asset/service development studies
- Insufficient access to capital
- Lack of access to legal and financial management expertise
- Uncertainty regarding long term income streams
- Over dependence on a small number of income sources
- Aging, inefficient assets

Before transferring any asset to another organisation, it will be essential to run a risk analysis, and to identify a default position should the organisation run into difficulties. It is also very important to make clear to what extent ongoing support will, or will not, be assured.

**1.5 How can we encourage more existing civil society organisations to team up with new employee-led mutuals?**

Employee-led mutuals are likely to gain most from applying lessons from other existing co-operative and mutual organisations.

Employee-led mutuals will have different legal, governance, ownership and profit distribution structures from, say, charities. It would be unhelpful to underestimate or skirt around these differences.

There are two ways in which teaming up with existing civil society organisations would benefit new employee-led mutuals:

1. Employee-led mutuals should build strong links to existing mutual and co-operative networks and understand how to best manage their particular organisational 'difference' in respect of: purpose, governance, membership, financing, profit retention/distribution, taxation.
2. Employee-led mutuals should also look at opportunities to draw on the wider civil society for examples of effective public service delivery as well as opportunities to build operational links.

**1.6 What other methods could the Government consider in order to create more opportunities for civil society organisations to deliver public services?**

There are examples of local civil society commissioning frameworks designed to improve civil society organisations' engagement in commissioning processes. Take up of proven frameworks by all local authorities could be encouraged, including the active involvement of

civil society organisations in the design of these frameworks. A key challenge here would be to widen out this process to ensure mutual and co-operative organisations are also engaged in developing such frameworks.

## **2.0 Main question**

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

We have dealt with this under the various sub-questions below.

### **2.1 What issues should commissioners take into account in order to increase civil society organisations' involvement in existing public service markets?**

For larger contracts, commissioners should consider issuing more regular Prior-Information Notices under OJEU or similar in the local press or trade magazines to allow time for research, preparation and possible consortia/sub-contracting arrangements to be put in place by civil society organisations.

Bidding and evaluating tenders is an expensive process. Efficiencies can be made by better preparation and publishing of forward annual procurement timetables by commissioners. This seems to occur relatively rarely at the moment but could greatly help bidders in terms of planning for potential future tenders.

Whilst transparency from the commissioners will make civil society organisations more aware of what is available, help with assessing resource/financial viability is also required. One possible approach would be to establish an independent system to rate tenders or markets, to enable civil society organisations to know the level of capacity required to successfully fulfil the required service. This should help to offset the time lost in participating in inappropriate bids.

Care needs to go into drafting the specification and tender documents. They should avoid unnecessary complexity or application of irrelevant requirements. The use of updated old documents should be avoided, as it can lead to unnecessary evaluation criteria and Pre Qualification Questionnaire thresholds. This can particularly disadvantage those civil society organisations with limited tendering resources but who do have frontline capacity to deliver services.

Without breaching EU procurement rules, some parts of the tender could be split or require delivery only through civil society organisations or sheltered workshops (which can already be legally done under Regulation 7 Public Contracts Regulations 2006 – although fewer than 20 tenders from the UK last year were issued under these special rules). Requiring some elements to be undertaken by civil society organisations would put the onus on private sector organisations to partner with civil society organisations so as to have a chance of winning the full tender.

To educate civil society organisations on how current services are delivered, public sector organisations should be required to publish useful information and feedback over the life of a contract. At the moment, significant amounts of information are published at the beginning of the process, and up to the point of awarding a contract, but in some cases very little information is disseminated through the subsequent course of the contract delivery period.



Commissioners also need to ensure strong controls, both in the detail of the contract terms, and by way of default plans, to protect their ability to ensure delivery of services. Delivery of vital public services will be put at risk if organisations lack the necessary systems and quality controls. A gradual process of transfer of services should therefore be encouraged.

## **2.2 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?**

Commissioners should seek to involve civil society organisations as early as possible in the design of services and give them the opportunity to influence the commissioning of services. This process also needs to ensure that resilient civil society markets and supply chains are established in a way that will work for both parties and keep risks to a minimum.

There are additional risks associated with moving quickly and engaging widely. Where many organisations, stakeholders and community groups are consulted about public services delivery, all parties' understanding and expectations need to be carefully managed. Potential dangers include expectation gaps or an uneven allocation of resources. For example, certain popular services may be given priority over other equally valid or critical services. Commissioners should therefore ensure clarity early on in the process regarding the boundaries for decision making and prioritisation of resources.

As already mentioned, information must be made available effectively to civil society organisations and communities. Information needs to be clearly communicated in plain language and with plenty of time for discussion and consultation.

## **2.3 What issues should the Civil Society Red Tape Taskforce consider in order to reduce the bureaucratic burden of commissioning?**

The elimination of unnecessary bureaucracy is to be welcomed although it is important to balance the removal of perceived bureaucracy with the subsequent potential increase in risk and costs caused through the removal of certain controls and checks earlier in the process.

Standardised and simplified specifications could be mandated in specific areas to enable processes to be streamlined. Whilst local variations could be allowed, it may be the case that the core elements of certain public services should not vary greatly in different parts of the country.

## **2.4 How can commissioners achieve a fair balance of risk which would enable civil society organisations to compete for opportunities?**

Commissioners working with private sector contractors are used to discussing risk and allocating it appropriately. They will need to use this experience when working with civil society organisations, sometimes on behalf of both parties, as some civil society organisations may have limited skills in this respect.

Current constraints on public sector budgets will have a huge impact on how commissioners will react. The budgetary impact could be felt by civil society organisations as commissioners try to protect their organisation from the impacts of reduced resources. Commissioners may be tempted to drive hard bargains for short term gains. They must remember however that in the event of major service failure, the impact on the public body could be immense. It can result in expensive direct or indirect costs ranging from decreased workforce morale, low productivity, to legal action by or against the authority.

As mentioned above, the starting point has to be a clear and open timetable of commissioning activity over the next four years. Once all of this is mapped out, the commissioners are in a better position for making informed, balanced and risk-aware decision-making.

This will require new management techniques and a different set of skills from those delivered during the relative comfort of recent years. Most importantly, it will take good leadership and a creative and sensible approach to risk management to allow commissioners to create a level playing field for civil society organisations.

## **2.5 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?**

TUPE is often perceived by all to be too complex – this is especially so in tendering as procurement and commissioning staff only have basic understanding of TUPE. Legal resources in commissioning organisation may also not have sufficient capacity. Very often, external advisors are used, which can make the process even more complex, expensive and time consuming.

Standard documentation needs to be produced to deal with TUPE. This can vary depending on the type of commission/tender.

The removal of the two tier code of practice will assist civil society organisations in the future. However some safeguards would still need to be built in to the contract to manage associated risks.

## **2.6 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?**

This is currently very difficult as specifications are still input/output orientated. Commissioners lack experience and time to prepare fully outcome based specifications. Arguably another two to three years are required before competence levels are high enough to result in better outcome commissioning.

In addition, contract management and auditing is relatively weak in many organisations and measuring outcomes over the duration of the contract could prove challenging for such organisations.

A well managed tender process and a clear agreement, reached before the contract commences, on how outcomes will be monitored and measured before a contract is signed will be vital to ensuring the longevity and security of any relationship.

Current budgetary considerations result in a risk that tenders will be won by the cheapest price, with insufficient attention paid to qualitative criteria and achieving better outcomes over the duration of the contract.

Payment by results may work in areas where it is not too difficult to apply measurements to outcomes. In other areas, where this is more difficult to quantify, there is a danger that it may result in an adversarial relationship between the parties. A compromise could be to cover basic actual costs for the services, but only pay a premium or amount to support future investment once an outcome is recognised as achieved. The Government may need to set up an independent agency to adjudicate in the event of a dispute around achievements of outcomes.



Smaller civil society organisations may be disadvantaged by payment by results, as many of them lack sufficient reserves to manage the financial risk.

## **2.7 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?**

The bank should set out standards for civil society organisations in regard to implementing robust financial procedures, controls and governance arrangements.

Application processes need to avoid unnecessary complexity or jargon.

There should be assistance for civil society organisations in developing business plans and making applications, although this should be in the nature of enabling an organisation to gain the skills necessary to do this themselves in order to ensure 'ownership' and appropriate internal management and control of the process.

## **2.8 What issues affecting civil society organisations should be considered in relation to the extension of the Merlin Standard across central government?**

A survey of civil society organisation's experiences of the sub/prime contractor model in the delivery of DWP/Jobcentre Plus contracts<sup>1</sup> noted that some participants identified issues around:

- communication problems
- the end loading of contract payments (linked to results)
- difficulties with credible pricing of work

The above suggest the importance of ensuring civil society organisations have the necessary skills to:

- successfully manage cash flow and variations in payments linked to results
- accurately cost and price their goods/services
- successfully negotiate and liaise with prime contractors

## **2.9 What barriers prevent civil society organisations from forming and operating in consortia? How could they be removed?**

Many small to medium sized civil society organisations lack the commercial and negotiating skills required in order to take an active and leading role in consortia arrangements.

Civil society organisations that invest in robust financial planning and control, tight contract management, good negotiation skills and clear communication and reporting channels, will be in a stronger position to enter in to consortia.

Additionally, private sector organisations are not always interested in having civil society organisations as part of a consortium. When civil society organisations form part of the consortium, it can be a very small element. In such cases they will not have significant control of directing consortia and will not gain much advantage.

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<sup>1</sup> Survey of third sector organisations' experiences of the sub / prime contractor model in the delivery of DWP / Jobcentre Plus contracts. Pentagon Partnership 2010.

### **3.0 Main question**

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

An approach to commissioning which incorporates a more comprehensive understanding of the social, environmental and economic benefits arising is to be welcomed. However the difficulties in accurately assessing and quantifying all impacts resulting from transferring a service delivery should not be underestimated. There is also a danger of creating additional data collection and reporting requirements which could prove to be costly and time consuming, but have little impact on decision making.

One way forward would be to encourage the development of integrated reporting by civil society organisations as part of their annual reporting. This reporting could highlight and link key non-financial and financial information and compare performance, year on year, in respect of major social, environmental and economic impacts of service delivery.

The emphasis could be on clear concise reporting on a small number of quantifiable key non-financial indicators which provide information that is genuinely useful to decision making.

Examples of this type of approach to reporting include the Prince of Wales' Accounting for Sustainability Project – Connected Reporting Framework and the HMT Sustainability Reporting Guidance developed for central government bodies. While these examples focus on environmental indicators, the same approach can be applied in identifying and reporting key social and economic impacts.

What should be avoided is an expensive, resource intensive approach to assessing social, environmental and economic impacts which fails to provide robust or comparable information and which is not linked to improving decision making around effective delivery of services.

### **4.0 Main question**

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

Civil Society organisations can play a key role in:

- Facilitating community engagement in service design and development
- Improving local understanding of commissioning processes
- Providing opportunities to develop locally run services
- Participating in the development of local civil society commissioning frameworks
- Acting as a trusted intermediary
- Supporting consultation processes
- Piloting innovative approaches to service delivery

#### **4.1 What role and contributions could civil society organisations place, through Local HealthWatch, in informing the local consumer voice about commissioning?**

Civil Society organisations can make an important contribution to Local Health Watch including:

- Supporting service users in making their voice heard both as individuals and also as part of communities, self help groups or other organisations focused on particular health related issues.
- Enhancing communications between individuals and agencies, through advocacy, advice and representation.
- Supporting consultation processes including those looking at designing new services or improving existing delivery.

#### **4.2 What issues relating to civil society organisations should the Government consider when refreshing the Joint Strategic Needs Assessment Guidance?**

Civil society organisations have a clear role to play in terms of assisting with stakeholder involvement, engaging with communities and providing information useful to the JSNA process.

The Government would usefully draw on existing experience including examples of successful engagement with communities and the civil society organisations working in and with these communities.

#### **4.3 How could civil society organisations facilitate, encourage and support community and citizen involvement in decision making about local priorities and services commissioned?**

There are many examples of existing activities undertaken with the intention of engaging with communities, but this does not guarantee that wide representation is taking place. There is a risk that such engagement may favour a few established organisations and present only a partial picture.

Increased participation requires use of a variety of tools including:

- Use of new methods of communication and exchange via the internet
- Neighbourhood development work and planning
- Public meetings
- Local forums and consulting exercises
- Questionnaires
- Opportunities to share ideas and find partners for developing innovative approaches to service delivery

There is no single answer but there is a need to look beyond structured group meetings and look at ways of working that encourage those often on the outside of the process to feel they can have a voice and can have their ideas considered.

#### **4.4 What forms of support will best enable statutory partners and civil society organisations to improve their working relationships?**

The National Programme for Third Sector Commissioning has made a useful contribution as has the Partnership Improvement Programme. Lessons can be learned from both of these initiatives.

Improving working relationships is an ongoing process that requires a commitment of time and resources by both civil society organisations and statutory partners. More should be done by both sides to recognise the value of work in this area and understanding its importance in helping achieve the goals of Big Society.

Initiatives could include:

- Local commissioner/civil society forums
- Opportunities for shadowing between sectors
- Joint work on local civil society commissioning frameworks
- Joint work on simplifying processes and adopting a shared commissioning and service delivery language
- Open days/visits

#### **4.5 What issues should the government consider in the development of the future programme of training public service commissioners?**

- Continue to look at new ways of enabling dialogue between commissioners and civil society organisations.
- Methods for supporting and improving the bidding practice of civil society organisations.
- Methods for involving civil society organisations in improving commissioning processes.
- Identification of links between qualitative civil society characteristics to quantitative indications of effectiveness in service delivery and efficiency.
- Encouraging the development of local joint events or forums.
- Specialist technical sessions for commissioners which look at specific aspects of commissioning with the civil society. For example: developing local civil society commissioning frameworks, managing TUPE, understanding different civil society organisational models, types of service delivery, co-design of services, developing new social enterprises, etc.
- Training geared to various management and governance levels including: elected members, senior officers, middle managers, etc.
- Continue highlighting innovatory working with civil society which results in effective and efficient service delivery.

#### **4.6 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?**

Those civil society organisations with active memberships in local communities, as well as those civil society organisations with a track record in providing training and support on planning, should assist in engaging communities in the community budget process.

Civil society organisations with a track record in facilitating workshops and meetings should be asked to provide the important intermediary role of bringing various stakeholders together with a view to encouraging engagement in the co-construction and production of services.

Barriers can include:

- Lack of time and resources
- Limited or partial understanding by commissioners of the value of civil society contributions to discussions
- Limited understanding on the part of communities of what and who is involved
- Limited skills in respect of financial management and budgeting
- Use of less accessible management and accounting language
- Inexperience and/or lack of confidence in participating in this type of activity

#### **4.7 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?**

Those civil society organisations with active memberships in local communities and who have experience in engaging in local needs assessment, advocacy and planning are well placed to support the roll out of local integrated services. They are in a good position to assist in consultation exercises as well as in the various stages of service development.

A critical area where they can assist is in helping develop cross departmental and multi-disciplinary working. They are often already operating across different agencies' activities and may be able to identify service blind spots as well as opportunities for improved integration.

The barriers are not dissimilar to those mentioned in the question before.

#### **4.8 What can civil society organisations contribute to the development of Free Schools? What should Government consider in order to realise this contribution?**

There is a range of civil society organisations involved in delivering or supporting educational institutions and services. Government would find it useful to look at ways to draw on this source of experience and knowledge, in advising the development of free schools.

Alongside expertise in educational matters there is also a need to ensure adequate infrastructure support for the good governance and management of free schools which must include sound financial planning and control.

#### **4.9 What contributions could civil society organisations make to the extension of personal budgets across a range of service areas? What changes do both commissioners and civil society organisations need to make to adapt to an environment where citizens are commissioning their own services?**

Civil society organisations already play various roles including:

- Providing services to personal budget holders.
- Supporting other civil society organisations in responding and planning for changes arising from a transition to personalisation.
- Supporting budget holders and providing them with the skills and knowledge needed to successfully negotiate and manage their budgets.
- Providing a range of support services to budget holders around personalisation including advice, payroll, HR, and advocacy.
- Working closely with both the budget holder and the budget provider and providing a useful intermediary role.

The change is considerable and requires a major shift in thinking and in approaches to delivering services. CIPFA's Social Care Network has produced material on personal budgets including a working document<sup>2</sup> which focuses on key aspects of personal budgets including resource allocation, budgeting, costing, commissioning, accounting and financial systems. Areas of change and risk identified include:

- Duty of care and safeguarding
- Culture, leadership and strong project planning

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<sup>2</sup> Personal budgets: A rough financial guide. CIPFA Social Care FAN (2010)

- Resource allocation
- The importance of reviews and value for money for outcomes systems

Systems challenges identified for commissioners include:

- Collection and use of activity data
- Developing unit and standard cost information
- Appropriate location and use of support plans
- Approach to collecting and reporting data on personal budgets
- Deciding on support spending