



Consultation on the Modernising Commissioning Green Paper

Response from Bristol City Council

(Via The Enabling Commissioning Working Group)

Our response is based on consultation with the council's Enabling Commissioning Working Group and departments across the authority, as well as a report from our Third Sector Commissioning Select Committee (who produced the attached report in May 2010). This paper includes our response to the four main questions posed by the Green Paper consultation (A) with additional responses to some of the sub-questions posed throughout the Paper (B). We have also addressed some issues relating to service delivery (C).

A. Response to the four main questions posed by the Green Paper consultation

1. In which public service areas could Government create new opportunities for civil society organisations (CSO) to deliver?

- Payment by results will need clear criteria for evidence of 'results' with services, there are a number of services that 'maintain' equilibrium and help maintain good quality of life for clients, rather than make changes (e.g. disabled children services), how will these 'results' be evidenced?
- Soft outcomes have always been and continue to be a challenge to evidence. The paperwork required from services to show achievement of outcomes is currently proportionate but for many small and medium sized organisations burdensome. Feedback from some parents is that the level of input required is too much or too often
- For many civil society organisations that are of a charitable nature, payment needs to be upfront (so before results) to ensure sustainability of provision. It would be better to part pay for provision and then pay a varied amount dependent on success (again this needs guidance on qualifying)
- Any measure to make a percentage of a service delivered by civil society is a blunt method, which will not take into consideration the best provider for the delivery of provision. Also this will vary by area or locality due to market characteristics within a city/area and any such decision should be made at a local level (after consultation). The Coalition Government has made it clear that they would like to see 25% of contracts procured through the social enterprise sector and it is clear from the Localism Bill that the 'right to challenge' will provide a mechanism to enable that to occur resulting in competition for services.

- Ongoing flexibility would also be necessary after any such agreement as demand and supply for services changes.
- Lots of small Providers and broken up services will lead to a need for more commissioning capacity for contracting, monitoring contracts and monitoring quality of provision, facilitating coordination of providers
- This will also lead to a need for more management capacity in provider agencies, not just because of reduced economies of scale, but also because achieving consistency among parallel providers, and clear care pathways among providers at different levels of need, requires lots of facilitated management negotiation between providers (from our experience of having two NHS CAMHS providers - very time consuming and progress delaying)
- A plethora of service providers is confusing for service users, who generally want help from one known reliable source.
- Sub-contracting can lead to confusion in responsibility, as small organisations potentially subcontract to even smaller organisations. In this case who will monitor quality? How will an increase in provider agencies be inspected in terms of child protection, non-discrimination, and good child centred practice, staff training? This again will need more resources
- Consortia will also require increased management resources for negotiation to make them work.
- Guidance on how public service employees create mutuals, as well as time and support to be able to do so would be very welcome. To date there is little or no guidance or support available. They will also need dedicated funding for such a time in order to become sustainable.
- Barriers to involvement for civil society organisations include the degree of front line provision versus commercial staffing, knowledge for many small to medium organisations, and a lack of legislative knowledge
- Any transition from internally provided service to a mutual will raise issues around conflict of interest and a process must be created to limit and manage this
- The right to challenge local authorities if organisations feel they can deliver better services will lead to significant work for local authorities to prove otherwise. The challenge should be sufficiently detailed and specific to allow for a focused response. It would be better for an expression of interest process for CSO's to periodically offer their provision/organisation to run certain services against statutory bodies who would also apply. There is mixed ability within many local state-run services to participate in such activity. This is similarly the case for the ability to respond to such challenges.
- Essentially, tendering of all suitable service provision would eradicate the need for this challenge process, however for this to be successful, a clear Provider/Commissioner split within Local Authorities will be needed. In this case more guidance and encouragement is needed for Local Authorities to make the transition to a split of Providers and Commissioners as per the PCTs who already have that in place.
- The current position of mixed Provider/Commissioner roles and teams increases the risk of potential conflicts of interest if CSOs challenge to deliver provision that is currently managed by both a Provider and a Commissioner within the Local Authority.
- CSOs running a service, if part of a portfolio of services within a Local Authority will prevent any strategic commissioning changes within a market as that service will be out of the Local Authority sphere of responsibility. In cases where CSOs take over 1 out of 10

services, portfolios or frameworks of services that work together will break down and benefits of collaborative working break down.

- Will running services of the Local Authority also include the commissioning role?
- Barriers to CSO's taking over assets - there is a lack of commercial skills in some CSOs, and a variety of funding streams that do not start/end at the same time. Funding for such services are delicately balanced and there is a lack of long term funding for CSOs to guarantee coverage of affordable rents.

2. How could government make existing public service markets more accessible to civil society organisations?

- The government should strongly consider the level of bureaucracy for procurement at present, which is over-burdensome for all parties. There are long application forms and guidance notes. Overall the process reduces the potential for challenge, and whilst seeking to obtain the best outcome for the CYP, it leads to increasing the barriers for small to medium enterprises and for those for whom English is not their first language. This is obviously closely linked to EU procurement rules and the increasing ability for challenge throughout the process.
- Length of contracts (due to length of funding confirmed at government level) which does not allow for long term planning for either commissioning teams or the CSOs themselves are barriers to access.
- TUPE will also be a major barrier as the cost of taking on public sector staff will be considerable for some providers.
- A standardised PQQ is not possible due to the 20th December 2009 amendments to Public Contracts Regulations 2006 which stated that 'ability to deliver' must be determined at PQQ stage and therefore contract specific (therefore tender specific) questions regarding past performance must be asked within the PQQ.
- Any 'Lean Review' should firstly look at centrally prescribed procurement rules such as the amendment listed above as these primarily shape practice at Local Government level.
- Contracts Finder is a good idea, but is this not simply a replacement for 'supply2gov'? If so, can this be simplified for both commissioners and providers? Contracts Finder will duplicate the systems that many Local Authorities already have in place and there must be sufficient incentive to ensure all procurement and sub-contracting opportunities are advertised on both systems.
- To be fully inclusive, BME services and other hard to reach service Providers must be included and catered for, also those who struggle to use the Internet, postal versions for lower value opportunities should be allowed.
- Within services, funding the 'cheapest' option is not the case, the practice of assessing a balance of quality and cost within commissioning is well embedded, however there is a risk that this may be at risk in future years due to funding restrictions. Funding of overheads is permitted, however rationale behind the amount allocated for this is requested. Full cost recovery has been requested from Providers but few use it to apply for tenders, one potential reason being potential for being uncompetitive.

- For the Big Society Bank, government should consider the application process (give sufficient time, ensure simplicity) and coordinate with other areas of funding and governance, for example local authority funding.
- Merlin standard for supply chains of goods & works will not be for services I assume? Will there be a quality standard for VCSE organisations such as VISIBLE or NAVCA Quality Award?

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

- SROI (social return on investment) is highly resource heavy and for many CSOs would be very difficult to do. To help both providers and commissioners to 'consistently' assess social, environmental and economic value it would be best to recommend 1-2 tools to be used.
- Funding from government sources will need to allow sufficient time for such assessments to take place prior to tender decision-making, 3-6 months, as a minimum will be needed.

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

- Be expected to do this as part of service delivery and in tenders, as a rule. Again, funding from government will need to be clarified in sufficient time to allow for local authorities to set tender timetables that allow for consultation.
- There should be fewer and smaller, less complex consultations to better engage providers and parents. Constant ad hoc consultations prove least successful.
- Commissioning processes should be simpler for parents, service users and communities to understand to enable them to wish to and be able to consult
- Investment in a training programme for CSOs on how to work with local authorities and to understand public service and commissioning (much is done in Bristol in this respect, however, additional investment from government will enhance this)
- The 16 local areas for community budgets and the 20 for innovation feels piecemeal at this stage and more detail is needed. There is a concern about such a variety of working practice and legislation across the country.
- Locality commissioning as per the LIS concept introduced here will need significant resources to support and administer. There is also a 'clear' risk of a concentration of opinion by a small number of interested and active participants in the community and those who are harder to reach will struggle to be involved.
- Personal budgets and direct payments will require transitional funding of current services to ensure there is choice and provision available to purchase. Personal budgets and direct payments will be difficult for some complex families and individuals.
- It is not possible to transfer public funds automatically from commissioned services to direct payments without the loss of the services themselves. In the long term, the services will be paid for by the direct payments themselves, however it takes time for the services to adjust to this and there is the risk that good quality services will be lost.
- If citizens were to commission their own services, who would monitor performance and ensure safeguarding? Many citizens (particularly very vulnerable citizens) simply wish to

have quality provision that meets their needs, and to purchase and manage their own services will be over-burdensome and not what they require.

B. Response to sub-questions posed throughout Green Paper

NEW OPPORTUNITIES

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

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

Comment: If you set proportions of services that should be delivered by independent providers what is the market is not there? Is it legal for services to be ring-fenced to VCS/civil society organisations?

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

Comment: Civil society organisations are struggling financially at the moment. You are asking them to risk their financial viability by doing this. Essentially this is the state withdrawing from sharing in risk. This policy suits larger civil society organisations that can be very robust in securing local contracts, dominating markets locally to such an extent that they dictate prices, which will negate competition.

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?

Comment: Just about any council service could be run by civil society organisations

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

Comment: The right to challenge is to be welcomed to ensure that high quality and relevant services are provided and consistently improved. Civil society organisations already have a key role to play in this although their involvement can sometimes be inconsistent. It is recognised that CSOs have a wealth of expertise and local understanding to bring to public service areas.

Sub-Question: 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?

Comment: This can work with the transfer of buildings as assets but only as far as the organization is able to bring in other sources of funding and or sub-let parts of the building. Otherwise they will be dependent on continuing working streams.

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

Comment: Through a series of events that bring both together.

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

Comment: Dedicated compact post and close working with civil society orgs in embedding joint principles into commissioning practice much the same as Bristol is doing. This process does not happen overnight.

We need to encourage constant dialogue, training sessions for BEPs, capacity building and supporting civil society organisations, involving civil society organisations in development of procurement practice.

MORE ACCESSIBLE

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.

Comment: See comments above. This process takes time.

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

Comment: Agree with the action points in making access to procurement more accessible.

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?

Comment: Include them in the development of local practices.

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

Comment: See action points above about increasing involvement.

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

Comment: By not implementing payment by results. This places all the risk on the civil society organizations.

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?

Comment: Provision of free TUPE advice to civil society organizations.

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?

Comment: Provide funding to infrastructure organizations to capacity build. Provide additional resources (financial and advice) to civil sector organizations.

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

Comment: Civil society organisations face the same barriers that face the private sector. Listing organizations and their specialisms in a directory would help.

C. SERVICE DELIVERY

- Promoting independent provision in key public services
- Developing new rights for communities and public employees to buy and run services
- Attracting external investment and expertise into the public sector to deliver better and more efficient services

Comment: We would like to be more innovative in service delivery and not seen as risk averse but how can this be achieved when we have to abide by UK and EU law and regulations? How do we attract other investment to run public services?

- Extending innovative payment and funding mechanisms, such as personal budgets and payment by results commissioning in more areas

Comment: Payment by results will exclude smaller VCS organisations, as they can't afford to take these kinds of financial risks.

- Increasing democratic accountability at a local level
- And maintaining continuity of service and managing risks in light of these reforms
- Maintaining continuity would be difficult if you are inviting opening up an invitation to run any council services