

Cabinet Office note: bassac also attached the resource
'Benefiting everyone: Commissioning, community organisations and collaboration'.
This is available at <http://locality.org.uk/resources/benefiting-commissioning-community-organisations-collaboration/>



Modernising commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery

Response to the green paper

Background

Our common cause is this: *to make every place a place worth living in*. bassac and DTA members are already united by aspiration and common values. They tackle injustice and make extraordinary things happen. By coming together and combining our know-how in asset ownership, community enterprise, social action, and community development, we believe we can achieve even more.

We have developed our response together drawing on the evidence of our members, and in liaison with Acevo.

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

- Civil society organisations could be used to assist a range of state-run services: local community engagement in policing and emergency response planning, for example
- We would recommend a risk-sharing negotiated contract with basic payments against agreed targets and open book accounting to share rewards from strong performance
- Opportunities such as job swaps and secondments should be created to build stronger relationships between civil society and the public sector

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

This will depend on the contract. Payment by results will require:

- Policy research and service design funded by sweat equity, reserves, equity or risk capital
- Contract negotiation (funded as above)
- Service delivery - a working capital requirement balanced against gilt-edged income stream can be funded by debt finance as long as the delivery risk is acceptable. This is where an organisation's track record, financial management experience, and reputation for competent governance will be vital.

These requirements will have a bigger impact on smaller organisations delivering specialised services to vulnerable people. The impact on cash flow of delayed payment requires acceptance of a level of financial risk, subject to due diligence by civil society organisations and their trustees; the smaller the organisation the greater the risk may be.

- Monitoring and evaluation - costs must be built into the contract and be proportionate

Many public service users, particularly in areas of poverty and decline, have issues that require multiple long term interventions. Such work is complex, time consuming and may have results (outcomes) which are both difficult to evaluate and to apportion credit for achieving the outcome.

This has all the potential challenges of PFI if all risk is transferred: a complex and expensive competitive negotiation trying to cover every eventuality, with mixed results. We agree with Acevo that there is a risk of delivery organisations 'cherrypicking' the service users most likely to succeed. This is particularly true in programmes such as welfare to work and offender management.

We would recommend a risk-sharing negotiated contract with basic payments against agreed targets and open book accounting to share rewards from strong performance.

Scale is a sector problem which is both a blessing (local, accessible, better "reach", able to treat clients as human beings) and a curse (a lack of capital base, over dependent on key individuals, basic systems etc). Some of these drawbacks can be dealt with by consortium working, smart commissioning, and fair sub-contracts. This is ongoing work which requires support.

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

Health, social care, advice, diversion from offending and community safety are all frontline service areas in which civil society organisations could play a more significant service design and delivery role.

Away from the frontline, the same organisations have experience as social enterprises in supplying goods and services such as community transport, printing, facilities management, room hire and catering to the community.

While civil society organisations can offer responsiveness to local needs as a key strength in this context, many have problems with scale: delivering quality services at a competitive price. They cannot compete with the big players from both the private and the voluntary and community sectors.

We would like to see:

- Greater account taken of the added value to the community – local employment, use of local supplies, smaller carbon footprint, for instance – that services run by civil society organisations could bring to increase the local skills base and community confidence
- Where it is not possible for local organisations to deliver services themselves, greater recognition of the value that they can add in shaping and designing delivery
- Service planning through communities setting priorities in a similar way to, for example, participatory budgeting, using appreciative enquiry to work out what needs to change.

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 services areas?

Civil society organisations should be engaged in the design of public services of all kinds and could be used to assist a range of state-run service delivery: local community engagement in policing and emergency response planning, for example.

In addition, their experience of enterprise could be extended to deliver 'back office' services such as catering and printing to these areas. The potential increase in trading would ensure that greater profits could go back into benefiting the community in which these services operate.

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 basis on which the assets are transferred will affect the viability and attractiveness of the deal for civil society organisations. Taking control of the asset but not having control of the services which are run from the asset, does not adequately share the risk and could make such a proposition unattractive.

Asset transfer is not for everyone – but assets that are reliant on public sector income streams must be transferred with service level agreements of sufficient length to attract external finance. This is more true the further north you go in the country and especially in poorer communities where public sector tenancies or contracts are vital to viability.

The main barriers preventing civil society organisations taking over asset-based services are:

- Timely information about asset availability/fair leasehold terms
- Time, help and support often required to develop long-term business plans or investment readiness
- Access to risk funding for the development/feasibility phase
- Access to capital
- VAT/State Aid/Clawback.

There is the potential, as service delivery becomes piecemeal, that the strategic overview for the supply of particular services is lost. It cannot be guaranteed that the budget and support for particular local authority initiatives which may have been available from other nationwide sources in the past, will continue to flow to the new supplier. This could serve as an additional barrier to civil society organisations taking over asset-based services.

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

New employee-led organisations will have much to learn from civil society organisations: governance, legal structure, asset transfer, facilities management, financial management will all be major challenges for groups emerging from large organisations. Civil society organisations should be natural peers and partners.

Locally-based organisations will provide the link to the community and its needs that the ex-local authority employees, whether in a mutual or not, will not necessarily have. Creating opportunities to build relationships, get to know each other and have 'good conversations' will be paramount.

We would like to see:

- An openness to collaborate in the design and delivery of services
- Sharing of back office functions to save money
- Secondments and mentoring arrangements
- Invitations for local organisations to participate in the management of the mutuals

for effective connections to be made.

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

We would recommend:

- Encouraging job swaps and work placements between civil society organisations and public sector, backed by investment to build stronger relationships in the long term
- Resourcing some smaller civil society organisations to take part in commissioning processes
- Providing better and more accessible information around potential services and structural issues such as how to form a consortium, the bidding process.

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

- A pro-social clause in every contract that places economic value on positive social outcomes
- Rebalancing of contract requirements to allow for the added non-monetary value provided by civil society organisations
- Resourcing for greater involvement of civil society organisations in commissioning for these organisations and commissioners through Phase 3 of the National Programme for Third Sector Commissioning to build capacity, skills and confidence
- Assessment and evaluation of complex services to hard-to-reach groups made each time on a unique set of characteristics rather than using generic models
- We would like to see a weighting given to bidding consortia that can prove they are community-owned and run and prioritise benefits for the whole community in their service delivery, when considering larger contracts.

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

We too would like to see contracts of reasonable length, lower transaction costs in the procurement processes, greater flexibility of specifications, more transparency in decision-making and realistic timescales.

We would also like to see:

- Reasonable expectations on the part of commissioners around indemnity and employers' liability insurance that are proportionate to the size of the contract open for tender
- Removal of excessive jargon from the contracting process
- Value in bidding processes being placed on new and innovative ways to deliver services, without the condition that they must be 'tried and tested'.
- Training for commissioners in how to value the positive aspects of a new environment where civil society organisations are significantly more involved in the design and delivery of services, and an ensuing rebalancing of contract requirements.

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?

Many are in the process of being addressed by this paper and we welcome the harmonisation of pre-qualification questionnaires, sensible timescales for tendering processes and the reduction of redtape.

There is a timelag between Government enacting legislative and policy change and this getting to where commissioning takes place. In an environment of public sector cuts these changes and proposals will take longer to become embedded. Both commissioners and civil society organisations need resourcing for this process.

We urge the Office for Civil Society to consider how phase 3 of the National Programme for Third Sector Commissioning can deliver this and the urgent need to engage frontline civil society organisations with the potential to deliver services into the work of the programme.

The new Transition Fund, and other new sources of funding are welcome, but we ask that the criteria for such funding is made less explicit because it is at risk of excluding vulnerable civil society organisations currently providing grant-aided essential services. Additionally, we would point out that the very short deadline of 21 January will exclude civil society organisations that have not yet found out what cuts they are facing.

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

What is fair is often subjective: public service commissioners set the bar high and pass costs onto the civil society organisations and this is a barrier to many.

We ask:

- That the assessment of risk is proportional to the size of the contract and in relatively small contracts the public service contractor offers to cover some risks.

Member case study For a frontline signposting and first tier advice contract of just over £30,000 a year the local authority insisted on the equivalent of legal specialist liability insurance – an increase of costs of over £2000 for the civil society organisation.

The local authority had its own specialised liability; it should have explored the possibility of this being used to 'cover' the contracting civil society organisation.

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 over complex and subject to significant legal interpretation. There appear to be no legal consequences for organisations that manipulate the regulations to their advantage and at the expense of other civil society organisations. We ask that clear effective guidance be provided, particularly in potential contract transfers, for determining what is an 'economic entity'.

Transfer of general terms and conditions should not impose insuperable barriers and could be managed over time. Pensions are a huge stumbling block both at the time of transfer (central government pensions not funded, local authority pensions under-funded) and in the long term in the form of final salary schemes. The only solution if this is to happen at scale, is to extend the system used briefly by the department of health to "passport" pensions back to the public sector for existing staff, pending a longer term comprehensive restructure of public sector pensions.

Member case study Local authority advertised supported housing contracts at a much reduced level. Organisation A, which had an existing contract, said it would not be bidding but changed its mind and submitted a bid. It was unsuccessful. Successful organisation B had to make staff redundant as the new contracts were much smaller. So even though B had 'taken over' a contract previously delivered by A it had to be consolidated into a contract already delivered by B. Unsuccessful A said TUPE applied for all its staff on the contract even though B was making staff redundant to reflect the smaller contract size. Legal advice was mixed but if A transferred its redundancy responsibilities to B it was likely to bankrupt B. A's course of action seemed to be a deliberate ploy to avoid its own responsibilities with no apparent liability. Local authority insisted nothing to do with them.

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?

We welcome the Government's commitment to moving to a system which focuses on the price and value of a provider, rather than straight costs.

Government will need to consider civil society organisations' commitments to quality standards, benchmarking, transparency, adequate financial management – all proportionate to contract size, and measured against the real cost of doing nothing.

We would like to see:

- Successful outcomes of services aimed at people living on the margins of society with complex needs being assessed each time on a unique set of characteristics rather than relying on generic models.
- These outcomes balanced against the issue of economies of scale, and allowances made for small-scale programmes that, nevertheless, contribute to the overall wellbeing and development of the community.

The target audiences and types of services run by civil society organisations are often discounted by profit-orientated service providers.

Member case study A Women's Training Centre works with black and minority ethnic women in Coventry with the aim of supporting their access to life skills training. It identified significant issues with maternal and foetal health within some of its users and developed a pregnant women's health service, which is delivered at the centre and by outreach in order to reach into the community. The improvement in health of the mothers and babies is significant and meets health targets but also has an impact on the health and general wellbeing of extended family groups. This will help to improve their life chances especially in employment. However, the project is funded as a 'maternal health' project and is not assessed as contributing to welfare to work programmes, health and wellbeing of older family members, or contribution to keeping cared for people at home. Measuring the level of impact of a successful pregnancy and a reduction in maternal ill health across all these areas is impossible but it makes a very real contribution none the less.

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 Big Society Bank is intended to be a wholesaler investing in community development finance institutions (CDFI) and eventually linking to institutional markets. It should not get drawn into direct lending but should support the growth of the CDFI market.

In considering its investment in CDFIs, the Bank should also support a comprehensive network of providers of "risk finance" to enable them to enter into 'pay-by-result' type contracts. So Big Society Bank's balance of investment must include grants, equity, and quasi equity to CDFIs like Key Fund/Venturesome/Big invest who work at the riskier start up/growth end of the spectrum.

Many services delivered by civil society organisations are "people services" (high staff costs and low gross margins) which do not lend themselves to high debt gearing. We must be clear about appropriate use of debt and viable levels of gearing. In order to help with low/under capitalisation the Big Society Bank should also support Community Shares, and new philanthropy investments.

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

We welcome the Merlin Standard but have a concern that not all prime contractors have the capacity, skills or inclination (particularly where profit-orientated) to support those further down the supply chain. It is a new standard and as yet few Primes have been accredited, according to the Merlin website, so it appears that limited testing of the capacity of Primes to meet and maintain this standard is available.

We agree with Acevo that Merlin stands or falls on whether it has teeth to back it up. There must be a mechanism in place to ensure that the requirements of the standard are truly enforceable and enforced.

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

Through our bespoke support to all kinds of consortia through the Collaboration Benefits programme we have direct experience of a range of barriers, a few of which are:

- The need to find enough competent partners to be able to compete for large contracts
- The risks of taking on large contracts and the liabilities therein
- Money - the cost of setting up a consortium can involve investment by partners, often running into thousands of pounds; legal advice is a major component of the costs.
- The need to create a new incorporated body to take on the contracting role, if none of the partners is willing nor deemed appropriate to take on this role and its risks
- Possible need for organisations to change their memorandum and articles in order to work in partnership, trade and/or work outside their usual area of operation
- Complications of trust and confidentiality, when groups need to share sensitive information in order to put together tenders and some groups may be part of more than one consortium
- Tight timescales can often get in the way, as groups will need to involve trustees, especially if it is their first time working in a consortium
- Knowledge and skills - few groups will have experience and knowledge of contracting. Filling in a Pre-Qualifying Questionnaire, for example can be a steep learning curve
- Systems - the need to have a range of systems in place around risk management, quality and performance management and finance management.

We would like to see a weighting given to bidding consortia that can prove they are community-owned and run and prioritise benefits for the whole community in their service delivery, when considering larger contracts.

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

Commissioners should be required to consider, evaluate and award contracts on the basis of social (and environmental and economic) benefit on par with cost. Best value should be interpreted in its broadest sense. However, the evidence requirements should be proportionate to the contract and individual organisations should not have to invent metrics where this is the role of universities, accountants, or investors. Further development work is required to make these metrics accessible, quick and cheap to use.

We would like to see:

- A pro-social clause in every commissioning contract that places economic value on positive social outcomes
- Assessments of social value made on a range of information, research and experiential learning backed up by more joint working and practical initiatives to build better relationships and local knowledge
- A resulting readiness to commission long-term preventative work with no immediate financial gain but with the clear potential to save money in the future
- Commissioners anticipating and taking account of the local context in which services will operate as well as regional, national and even global factors around the economy and climate change that will have an impact on service delivery
- Longer term and engaged commissioning – an engaged investor model – with mutual liability and risk sharing.

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

- Community priority-setting, facilitated by civil society using methods such as appreciative enquiry as the starting point for commissioning, with resources attached
- Locally-based and owned civil society organisations have the potential to take up some of the roles and responsibilities allocated to Big Society's community organisers.
- Civil society organisations involved at the highest levels of commissioning to co-commission services for the local community
- If services need to change, the civil society organisation can be a trusted intermediary, facilitating the consultation around the changes with local people
- Community organisations that take a holistic and wide ranging approach to how they work with local people are perfectly placed to have an overview of what is already being provided, and therefore, what the most effective additional response to need should be.
- In collaboration with other organisations using the local integrated services model, provide a range of services and geographical cover, developing complementary service menus which are competitively priced and marketed together for service users to choose the 'bag' of services they want.

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

The role for civil society organisations will involve:

- Facilitating community participation and engagement in consultations around enhanced service delivery
- Providing advice, advocacy and, if needed, representation for local people, as a trusted part of the community itself
- Supporting individual consumers to have confidence to find out and speak up for their rights.

Member case study In 2009, the Independent Mental Capacity Advocacy service run by Cambridge House in Camberwell, supported more than 600 people to state what mental health services they wanted to receive.

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

We strongly believe that local people should set the priorities for their area before moving on to be part of the design of an appropriate response. Civil society organisations with a long-term commitment to the place and to communities of interest can provide the skills and resources to facilitate the participation and engagement of local people in the process, through such things as:

- Convening public meetings
- Community development work
- Neighbourhood planning
- Community consultancies.

The results may not mean large amounts of money are required; it might lead to recognition of what the community can do for itself before others fill the gaps.

Locally-based and owned civil society organisations have the potential to take up some of the roles and responsibilities allocated to Big Society's community organisers. bassac's community anchor assessment tool helps civil society organisations articulate their skills and capacity to support community development and engagement activity.

Member case study Castlehaven Community Association in Camden actively engages the local community on local development proposals around the Camden Market area.

Member case study St Margaret's House in Bethnal Green facilitates the engagement of a range of black and minority ethnic communities in planning and local social enterprise development.

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

Much of the support needed to improve working relationships is practical and has been seen to be successful in such initiatives as the Partnership Improvement Programme:

- Schemes for shadowing between sectors
- Familiarisation tours
- Secondments
- Developing a common language
- Independent facilitation.

In the past, neither statutory partners nor civil society organisations have built in the time to develop relationships; such 'soft' outcomes are very hard to measure and people struggle to value them appropriately. Supporting both sectors to start again and create the space to build

mutual understanding, confidence and trust is a crucial step towards achieving Big Society and intelligent commissioning.

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

Make this training compulsory so that over time, reach is nationwide. Our observation is that where commissioners have been trained, the results have been beneficial to all. The issue is that the current reach of training programmes is limited.

Consideration should be given to engaging civil society organisations in any training, events or seminars, possibly as trainers; not only those that deliver services already but also those that don't.

This could be time consuming, so an alternative would be to use national membership organisations that can bring an overview of the experiences of their members to the training or event and provide a voice for their members.

We would also like government to consider support for training commissioners in joint commissioning where civil society organisations are actively engaged at the highest level.

Member case study The chief executive of BARCA Leeds is on one of the city's youth service commissioning boards and actively works to support the public sector in difficult problem solving such as consultations about cuts in services. He is proactive in developing cross-sector understanding and relationships.

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?

Civil society organisations, based in a community, are well placed and have the connections to encourage community participation and engagement in processes such as budget setting and needs assessment.

If services need to change, the civil society organisation can be a trusted intermediary, facilitating the consultation around the changes with local people. They have a track record of delivering low cost but high quality services in direct response to community needs.

Design and delivery of integrated frontline services should involve civil society organisations, with, for example, the local school, working in collaboration with community organisations to provide a range of services to families with complex needs.

Furthermore, community organisations that take a holistic and wide ranging approach to how they work with local people are perfectly placed to have an overview of what is already being provided, and therefore, what the most effective additional response to need should be.

The obvious barriers to playing this role are time and funding. Support for skills building in community facilitation, negotiation and financial management and budgeting would lead to greater efficiency and staff better equipped to contribute.

Local government will need to engage positively in this process, through consultation particularly and direct collaboration with civil society organisations.

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?

Civil society organisations, rooted in their communities, are well placed, trusted and experienced facilitators of local priority setting.

Multi-purpose organisations have a well-developed overview of the range of needs in the neighbourhood, work in partnership already with other community-based organisations and many have good links with the local authority. They are in prime position, therefore, to lead consultations with local people to assess and then design the services the community needs. Many already provide 'one-stop' service shops within their local communities and have the potential to expand these services.

We believe links with the local authority and other service providers could be better in many parts of the country. It is essential to build and improve these relationships, possibly in the ways that we have suggested earlier, ie. through shadowing between council officers and staff from civil society organisations, secondments and familiarisation sessions.

We support the proposals set out in the Public Services (Social Enterprise and Social Value) Bill and would like to see this Bill become law in order to formalise the requirement that social value is considered when assessing the viability of civil society proposals to run services, thereby lowering the potential barrier of competitiveness on price that these organisations experience.

We want to see development of local and national social enterprise strategies to support the public sector in developing a holistic view of services delivered and move them out of a 'departmental silo' view of their services and the communities they serve.

Finally, as Acevo also points out, there is a lack of awareness within communities around the right to challenge and the concept of local integrated services and every effort should be made to communicate these opportunities to all citizens.

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

Civil society organisations can:

- Support and advocate on behalf of individuals around their personal requirements
- Develop specialisms
- Build up a bank of expertise
- Operate on a very local level and adapt to work more widely
- In collaboration with other organisations, provide a range of services and geographical cover, developing complementary service menus which are competitively priced and marketed together for service users to choose the 'bag' of services they want.

Their deep-rooted connections with people in the community mean that they know what works and what doesn't but are open to learning and innovation.

However, the cost of providing a diverse range of services has always been balanced out across block contracting payments. Personal budgets can reduce the choices available and put at risk the more 'social' elements of some services. This is likely to have unintended consequences for both service users and carer such as increasing isolation over time and reduction in service options.

Commissioners and civil society organisations need to work together to ensure choice is retained both in the range of services and the range of providers.

Future commissioning will rely on strong relationships between the voluntary and community sector, the public and the private sector (a positive example of this being Barton Hill Settlement's experience in Bristol).

There is an urgent need for a means of sharing good practice, learning and innovation as well as a central point of advice for all government departments and local authorities. We would like to see a national contracting unit, independent of government, to drive innovative commissioning

Case study bassac's current work in the National Programme for Third Sector Commissioning in Northumberland is working with civil society organisations, commissioners and service users to develop complementary service menus and check if they meet service user needs. In this way service users have access to a broader choice of services whilst retaining personal control of their budgets.

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