
Commissioning Support Programme (CSP) response to Cabinet Office Green Paper on Modernising Commissioning

5 January 2011

About the Commissioning Support Programme

The Commissioning Support Programme (CSP) was established in November 2008 to help local authorities and their partners commission more effectively in response to the needs of children and young people – ultimately allowing them to achieve better outcomes.

CSP has worked directly with all local authorities in England and also undertaken nationally and regionally co-ordinated support activities, including training, special interest groups.

Through all its activities, CSP has followed the principal of being sector-led. This has been characterised by co-designing all activities with commissioners and being flexible and responsive to their emerging priorities and issues.

CSP support for commissioning community sector organisations

Throughout all its work has emphasised the importance of partnership with the third sector as being crucial if statutory sector organisations are to respond effectively to the full range of children and young people's needs and allow them to achieve the best possible outcomes.

The Programme has worked with commissioners at a strategic and operational level across England to understand where and how commissioning practice can be improved. This included developing a facilitated self analysis and planning exercise which local authority area partners carried out to shape the support the Programme has provided. This and other activity has meant that the commissioning of community sector organisations (CSOs) has been identified as one of three strategic priority areas for CSP (alongside schools commissioning and commissioning for efficiency savings).

Responding to this priority area has seen CSP work closely alongside the Ministry of Justice, National Audit Office, Office for Civil Society, Local Government Improvement and Development (LGID), Department for Education and Department of Health. These organisations have been represented on a CSP steering group with has contributed to ensuring our support for commissioning of CSOs has remained focused on the real developmental need of local authorities, their partners and individual commissioners



Commissioning Support Programme
10 Greycoat Place
London SW1P 1SB

Our support offer has also been informed by the National Programme for Third Sector Commissioning and its evaluations as well as our direct involvement with commissioners and CSOs. We have worked closely with the VCS Engage programmes at a regional and national level to ensure that CSP work to support commissioning of CSOs has been responsive to varying contexts across the country.

We have also worked closely with the Kindle partners (Community Matters, Children England, NCVYS, NAVCA, ACRE and BASSAC) to produce two key documents, *Commissioning and the Community Sector* and *Commissioning and the Big Society* (sent as attachment accompanying this response), which are aimed, respectively, at CSOs themselves and commissioners and which explore how CSOs can best work in partnership with statutory sector commissioners.

Although the remit and focus of CSP has been the commissioning of children's services, in practice we are seeing closer and closer integrated working and commissioning between children's and adult's services commissioners and teams – increasingly reflected in the formation of integrated “people's services” directorates and partnership commissioning activity across traditional service boundaries. This means that we are confident in the assertion that what we have said in this response is applicable to the commissioning of CSOs in any area of public service delivery, not only children's services.

CSO's and SMEs, due to their sheer number, have often felt their profile was not as significant as it could be. As a programme we have been working through and with their infrastructure organisations to re-balance this.

The CSP response to *Modernising Commissioning*

In the section that follows we have structured our response using the main sections of the Green Paper – Context, New Opportunities, More Accessible, Value and Citizen and Community Involvement. While we have not tried to address directly to each of the “sub-questions” we have considered them in framing the responses but provided constructive observations and commentary in response to the stated objectives of the Green Paper.

In each case we have based our responses on the insight and understanding generated through CSP’s work with commissioners and CSOs since November 2008 (including but not limited to the examples of CSP work highlighted above). Given the CSP’s sector-led design we are also confident that the following commentary can be read as being reflective of the views and priorities of commissioners across England.

CSP response to the Green Paper – By Section

1. Context

This part of the CSP response to the Green Paper responds to the content of the Context section of *Modern Commissioning* but also makes some wider observations, drawn from the Programme’s work, about the context for commissioning of CSOs.

Improving the quality and efficiency of services through improved and/or modernised commissioning is potentially limited by their skills and capability of commissioners or commissioning organisations. All work to improve commissioning and to ensure that CSOs are able to play the fullest role in a Big Society must begin with clarity about the aims and characteristics of effective commissioning.

The CSP has consistently described effective commissioning as:

“the process for deciding how to use the total resource available for community in order to improve outcomes in the most efficient, effective, equitable and sustainable way”.

We are also clear the “resources” here should be taken to include money, employees including volunteers, buildings, community and cultural capital and, not least, those who will use the services themselves.

The definition of commissioning used in the Paper contains many of the elements of the definition given above work but we feel it should be strengthened to acknowledge that commissioning must not happen in a silo and that there are a range of commissioners out there who need to work together, pool resources where necessary in order to provide maximum value to the communities they serve.

CSP’s definition of commissioning is underpinned by an easily communicable description of stages of commissioning:

- Understand
- Plan
- Do
- Review

By grouping the elements of commissioning under these broad headings we have moved away from more complex and often seen as competing models of commissioning that were previously associated with particular services, sectors or geographical areas. This simple break down of a commissioning cycle has also been well received by CSOs and commissioners working directly with CSOs. (NB These easily transferable concepts are explored more fully in a series of CSP resources, including *Good Commissioning: Principles and Practice*)

The CSP has made greatest impact when we have facilitated opportunities for joint dialogue with commissioners and CSOs at a local, regional and national level. We involve CSOs in assessments of local commissioning change programmes, we contribute to regional and national infrastructure support events and we are facilitating training opportunities for CSOs, commissioners and procurement officers in all local areas in every region. All of this is followed up with dissemination of outputs to facilitate wider learning. The area of greatest interest to commissioners and providers alike in the children's sector, (identified in a recent survey of children's commissioners) is around tender selection and evaluation criteria: how that shapes the market through who can respond and how to approach writing a tender response.

Also identified were the following issues:

- Providing examples of where commissioning has gone wrong
- Commissioning in a mixed economy (e.g. local and country wide commissioning)
- Supporting small VCS in making commissioning bids
- Smaller/specific contracts vs. bigger/broader ones – added value/economies of scale issues
- When to grant fund/when to purchase
- Fundamental procurement principals which are also good practice for grant funding (equity, transparency and proportionality)
- Tendering, particularly around evaluation
- How to work with a sector that is so diverse (consultation/infrastructure etc)
- How to meaningfully involve young people in the process

Overall, the landscape or context in which commissioning of CSOs will take place is still perceived as cluttered with competing and/or conflicting initiatives. The paper mentions for instance Partnership Improvement Programme, 16 Community Budget roll out areas, Local integrated Services concept and Innovation Areas, Right to Control trailblazers, Merlin standards pilot and Healthwatch amongst others. Additionally the JSNA guidance due, to be published in 2011/12, the development of Health and Well Being Boards and other planned announcements threaten to create increased confusion for commissioners and CSO provider organisations. A clearly communicated timeline of when and how these initiatives fit together would be a significant contribution to shared understanding

An overarching comment is that clarity on plans to implement the proposals in the Green Paper at national or local government level is not always apparent and without this commitment and infrastructure at a local level, attempts to accelerate commissioning to deliver improved outcomes may have only limited effect.

After more than two years of close work alongside commissioners the CSP has also made the following observations of the current state of commissioning. We believe the following factors need to be actively considered when taking forward the implementation and development of the Modernising Commissioning Green Paper:

- There is now broad acceptance and increased understanding of the commissioning agenda
- There remains considerable local variation in the quality of commissioning practice
- Greater intelligent use of data and information invariably leads to more effective commissioning
- Issues of cost and value not always fully understood
- Turnover in commissioning posts risks loss of expertise and reduced capacity.
- There is an a growing trend to integrate commissioning activity across service areas (eg joint commissioning for children and adult services)
- Greater focus on developing services around needs, impact and outcomes rather than within traditional organisational boundaries – this should be actively encouraged Gradual move to “think family” not “think service”
- The current financial climates risks short-term procurement decisions overtaking the principles of commissioning for outcomes *and* efficiency
- Despite the commitment to prevention and early intervention, CSO early intervention and youth provision is the first to suffer cuts
- Reorganisation within the NHS and the move to GP commissioning risks creating uncertainty and inertia which will reverse innovative and effective commissioning practice and partnership between CSOs and the statutory sector.
- Often good commissioning takes place in relation to external services, but the lack of effective commissioner/provider split means the same rigour is not applied to “internal” commissioning decisions. This can set CSOs at a disadvantage.
- There needs to a coherent and consistent source of support for commissioners to help them fully improve and modernise commissioning practice
- CSOs need active support to help them become more “commissioning ready”

2. New Opportunities

Green Paper stated objective; To drive efficiency, effectiveness and innovation in public services by opening more public service areas to civil society organisations.

(As stated above the response to this section of the Green Paper draws on the totality of CSP’s work and reflects the views of commissioners and CSO umbrella bodies as expressed during their work with the Programme.)

Throughout CSP’s work we have seen that CSOs contain enormous reserves of expertise, understanding and commitment which have the potential to play an enormously significant role in improving public services and the lives of citizens. That this potential is not always fully realised clearly signals an opportunity for greater inclusion and integration between provision from different sectors.

The Green Paper raises the prospect of payment by results as a driver of improvement of commissioning practice and service quality. This will immediately raise concerns for some CSOs, particularly those smaller organisations that will carry no or low cash reserves and which have traditionally operated on up-front grant basis. The implementation of a payment by results model would also involve significant challenge in linking results to the work of a single provider in an environment where services and outcomes are increasingly acknowledged to be co-dependent. If full CSO participation in public service delivery is to be encouraged and secured then nationally and locally commissioners will need to look at variation in procurement mechanisms so that they are proportionally linked to the financial and results value of each arrangement in such a way as to encourage CSO involvement. The terminology of “payment by results” may itself present a barrier to CSO involvement where a more subtle concept of risk and reward may better reflect the realities and traditions of the way CSOs work.

The Green Paper also asks what new areas could be opened up to CSO involvement. It is our judgement that this question is more effectively defined at a local level in response to local circumstances and the particular resources (in the full sense given in our definition of commissioning, above). The barriers to CSO involvement will also be heavily influenced by local factors but will include the scale of many public service contracts, a lack of incentive for public bodies to transfer assets to community ownership (which may be addressed through a phased transfer approach) and the preparedness of CSOs to take on specific responsibilities with regard to public services and/or assets. Overall it is our view that there needs to be a consistent programme of support for CSOs to ensure that they are “commissioning ready” over and above any centrally introduced de-regulation of the public services environment. Such a programme of support for CSOs should include practical steps to encourage them to develop a spread of income streams to safeguard community expertise against over dependence on a single contractual arrangement.

With regard to collaboration between existing CSOs and new employee-led mutuals there needs to be increased clarity on the benefits of joint working and recognition of the different values and experiences of the different type of organisations. To avoid confusion service specifications will need to be clear about the relationships sought and how results will be evidenced regardless of the sector. Where mutuals emerge that are established via existing contracts rigorous performance-management frameworks need to be established (with service users at the heart of the evidence) to avoid the impression that CSOs are again being placed at a competitive disadvantage.

As a first principle, commissioners from the statutory sector need to fully understand the nature and extent of local CSO activity and the contribution it makes to local communities. At present there is considerable variation in the extent to which this is understood and appreciated. It is only from this starting point can opportunities for increased CSO involvement be meaningfully explored.

Steps to facilitate and encourage increased CSO involvement could include the use of frameworks contract to allow CSOs to step in and run a service deemed to be failing through inspection. This could be a first default option. Operating regionally or nationally it would provide a provider in areas of low CSO activity. This could be awarded on the basis of growing a local provider base and might include the providing a one off fee to attract providers in a failing service but a commitment to only the existing budget. This approach

may also help to overcome protectionism by existing public sector service staff and stakeholders eg councillors.

3. More Accessible

Green Paper stated 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

(As stated above the response to this section of the Green Paper draws on the totality of CSP's work and reflects the views of commissioners and CSO umbrella and provider bodies as expressed during their work with the Programme.)

The practical barriers experienced by CSOs in working with the statutory sector are often considerable and arise both from the cultural and regulatory environment within the public sector and the traditions of CSOs themselves. These need to be understood as two sides of the same coin, with historical relationships often also a factor, and to be addressed jointly if entry to the provision market is to be made fully accessible to CSOs and the full benefits to communities are to be realised.

Firstly, to ensure that all commissioning activity begins with an understanding of service users need, rather than preconceptions about how services are delivered, commissioners need to ensure that when they are developing service specifications there is clear input from users and that specifications are clearly de-coupled from procurement decisions. A role for CSOs in this involvement may be absolutely necessary and incurs costs.

Existing procedures around pre-qualification questionnaires often cause CSOs to fall at the first hurdle of partnership with the statutory sector. Many CSOs will feel unable to take on the scale of contracts that exist in many areas of public service but will play a valuable role of able to work in partnership. Commissioners can encourage consortia of CSOs by being clear that they will recognise the expertise and experience of component organisations within a consortium. Beyond this, a “developmental commissioning” approach could see commissioners directly facilitate the formation of consortia of smaller CSOs through the bidding processes. The adoption of a “competitive dialogue” approach to the tendering process may be one effective example of developmental commissioning. Commissioners can also significantly assist CSOs by producing clear and simple local guidance which explains all aspects of commissioning, procurement and contracting procedures and by providing a dedicated help desk function to guide CSOs through the bidding process – the best local authority commissioners already do this.

An agreed single, time-limited PQQ to be used across all services/organisations within a local area, sub-region or region or nationally would also remove unnecessary bureaucratic burden on CSOs. The use of tiered contracting processes will ensure that the administrative burden of the bidding process is proportional to the value of the contract being let (or the nature of the results being sought).

Commissioners need to operate transparently and share information on all providers and contracts and take steps to ensure that unnecessary risk is not unfairly placed on a single organisation in a complex, multi-contract environment. The Government could also

explore the options around a nationally underwritten scheme that would offset risk to CSOs meeting clear entry criteria.

The Red Tape Task Force can also play a crucial role by insisting on consistency in the use of documentation across the NHS, local authorities and other public sector commissioning bodies, this could include penalising those that do not comply. This consistency of approach will reduce the burden on CSOs seeking to work across public service areas and contribute to increased and transferable expertise among commissioners and provider organisations. The Task Force can also help provide national clarity around the rights and responsibilities of CSOs seeking to work in partnership with the statutory sector and adherence to the established guidelines set out in the Compact.

Issues relating to TUPE regulations are not fully understood by many CSOs (and commissioners) and present a significant barrier to them taking on responsibility for delivery in some areas of public service. This is a particular obstacle to CSOs taking on older (and therefore more experienced) staff who we need to retain within the public service arena. Clearer guidance on TUPE issues for CSOs would go some way at least to raising understanding of the issues around TUPE. Any such guidance should clearly set out the options to overcome these issues under current legislation – for example secondment arrangements for the length of a contract. As proposed above a centrally underwritten scheme could also provide significant reassurance to CSOs concerned with the implications of TUPE regulations. It is clear that without some active and secure steps to mitigate the risk to CSOs associated with TUPE there will be a natural limit on the opening of markets to CSOs and in-house delivery of public services will continue to be the norm.

4. Value

Green Paper stated objective; To enable commissioners to make strategic commissioning decisions on the basis of a full understanding of the social, environmental and economic impact

(As stated above the response to this section of the Green Paper draws on the totality of CSP's work and reflects the views of commissioners and CSO umbrella bodies and providers as expressed during their work with the Programme.)

Ensuring that commissioners have an agreed commissioning framework which they apply consistently (and which is widely and clearly communicated) helps to establish shared understanding of the benefits and transformation in service delivery that is being sought. By using a common framework, all commissioners, regardless of their organisation and agency, can work more effectively together and with providers, using commonly understood language.

One particular concern with this section of the Green Paper is the reference to commissioners "considering" whether to consult intended beneficiaries of public services. This is reflective of the worst of historic practice, whereby service decisions were made based on assumptions rather than true understanding of populations' needs. If commissioning decisions are to be fully linked to value there *must* be full and rigorous consultation with service users and that consultation needs to be revisited as services are

continually reviewed for effectiveness – for example through performance management processes.

In taking forward the Public Services Bill, national Government needs to be clear about the regime of performance indicators related to continuous improvement that will apply, ensure that commissioning is included and what the role of local authorities will be with regard to these.

5. Citizen and community involvement

Green paper stated objective – To enable CSO's to support and facilitate the increased involvement of citizens and communities in commissioning

(As stated above the response to this section of the Green Paper draws on the totality of CSP's work and reflects the views of commissioners and CSO umbrella bodies and providers as expressed during their work with the Programme.)

The Green Paper poses the question of the role of CSOs informing local populations about commissioning through Local Healthwatch. The question itself poses some issues as communities need to understand the totality of commissioning decisions, how they affect their lives and how they can influence them. There have been channels for the consumer health voice to be heard for a considerable time though PALS and, Hear by Right children's participation standards and other national and locally developed schemes. It is our view that before the Local Healthwatch initiative is launched there needs to be active consideration of how all this appears to the citizen and to look at joining up with other areas of public service consumer representation.

In refreshing the JSNA guidance the Government needs to specify a date at which the revised guidance will be available and will come into effect. If this does not happen, decisions may be deferred pending availability of the future guidance. The JSNA guidance also needs to provide greater clarity around the evidencing of local need and, in particular, the views of hard-to-reach service users. The guidance should also address how to contribute to the formulation of local proxy indicators for communities that are meaningful to the communities they serve.

CSOs themselves are often well placed to encourage citizen and community involvement as they may well have been created and staffed by people within those communities. They can take additional steps to encourage involvement by bidding directly or partnering with others to deliver services and by involving local volunteers in delivery thereby encouraging community responsibility and resilience and reducing dependency culture. CSOs can also stimulate involvement by establishing an ongoing role for local people in the review of services. CSOs role in facilitating community involvement (when decided locally) should also be commissioned and accountable to allow for clear water between their commissioner and provider functions. It is our view that the role of elected members as community representatives needs clearer definition.

Strong and effective relationships between statutory partners and CSOs can be underpinned by having an agreed and clearly understood commissioning framework (as discussed previously in this response) in place. The publication of governance arrangements for commissioning decisions, eg the level at which decisions are made and who the commissioners are, will also contribute to constructive and trusting relationships.

By taking the time to understand the environment of CSO provision and activity and by explaining the rationale for commissioning decisions (for example why grant funding is appropriate in one circumstance but more structured contracting arrangements need to apply in another), commissioners can actively foster constructive relationships which benefit local communities.

In developing the future training programmes for public service commissioners the Government needs to be aware of the need to build on existing support programmes (including CSP) and the success of sector-led approaches to skills development. Many people with commissioning responsibilities do not identify themselves as commissioners and some local organisations may need help in identifying who their strategic and operational commissioners are and in defining their training needs. Skills development and training programmes for commissioners also need to ensure that existing valuable tools and resources that are available to commissioners are kept up to date and widely disseminated (these include the resources developed by CSP as part of its *Commissioners' Kitbag*, available on www.commissioningsupport.org.uk). The approach indicated in the Green Paper also currently appears muddled in places through the confusion of strategic and operational commissioning. This should be revisited as a matter of priority.

CSOs have a crucial role in the implementation of community budgets by providing no / low cost solutions that can preclude a full-scale commissioning process. However, barriers exist in the perception that dialogue with commissioners to explain what is and is not working can lead to the threat of withdrawal of contracts. To mitigate this, commissioners need to develop relational contracting skills and have flexibility to amend contracts during their lifetime. Skills in stakeholder management and facilitation will be needed by commissioners and contributions sought from a range of both frontline staff and service users in the generation of local solutions.

With regard to the role of CSOs in the development of Free Schools, it should be acknowledged that there is already a plethora of CSOs delivering mentoring, behaviour support and alternative education provision in our schools. Profiling of this market to headteachers could provide stimulus for school partnership working on commissioning of these services. CSO infrastructure organisations can also be a local first step in the mobilisation of support/impetus needed for parents to form a Free School. National support organisations exist specifically for this purpose but local resources and networks may prove useful. The pairing of an emerging Free School with a commensurate sized local CSO could provide on the ground support more generally in the sector. However, such steps could also risk becoming a drain on local infrastructure and CSO resources - quick access to funding on case by case basis could potentially be a helpful mitigating step.