

MODERNISING COMMISSIONING CONSULTATION:

RESPONSE FROM NEWCASTLE CITY COUNCIL

JANUARY 2011

Note: Responders comments are in italics

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

The VCS has a contribution to make in just about every public service area. It is the nature of this contribution that requires thought and planning, especially now they are being given the opportunity to take part in non-traditional areas of operation.

Introducing payment by results across public services;

Payment by results is suited to larger organisations. Small to medium VCS organisations are, understandably, risk averse and may not engage. That said they often demonstrate the ability to react swiftly to changes in markets and may be incentivised by contracts which share risks and reward good performance. To make the most of this it will be necessary to ensure that financing arrangements are balanced, including balancing upfront costs and outcomes funding, as well as establishing worthwhile recognition of softer outcomes in advance.

- Social Impact Bond where voluntary and community services are financed through social investment

Social Impact Bonds may allow medium to large VCS organisations to access some of this government funding. The case is not proven either way.

One question is whether it is prudent to effectively exclude many smaller VCS organisations from contributing to the delivery of public services at a time of financial recession and increasing social need.

Setting proportions of specific services that should be delivered by independent providers, including civil society organisations.

This seems to be against the spirit of localism and thus ill advised. Again further planning and a suitable lead-in time would be required.

- The Localism Bill will give civil society organisations and local authority employees the right to challenge local authorities where they believe they could provide services differently or better

This sounds fine but it is not clear how this is different from the existing situation. Full details of the decision-making process would help.

There are also issues around the mechanism of challenge and around who will meet the transactional costs incurred.

Introducing new rights for communities to run services, own assets and for public service workers to form mutuals.

There is a huge capacity issue here i.e. who is going to do all this work? If these provisions are to be meaningful then an extensive and well-funded community development programme should be rolled out asap. Then time needs to be allowed for new groups to embed.

These new rights may conflict with existing European procurement legislation and challenges may arise around 'insider knowledge' giving mutuals an unfair competitive advantage.

- The Localism Bill will also create greater opportunities for communities to bid to buy assets that are of community value, and from which they can deliver existing and transformed services.

There is a question over the 'greater opportunities' referred to. In particular, where are the funds for communities to buy and run these assets?

If these opportunities are to be realised a full and sound business case should be a minimum requirement for any proposal. It should not be simply a case of offloading unsuitable public sector facilities.

Further, there may be a strong link between the bid to buy and the viability of the service delivered. Any such proposal will need to have the relevant costs factored in to the delivery of the service.

2 More accessible - How could Government make existing public service markets more accessible to civil society organisations by addressing practical, regulatory, legislative and cultural barriers to market entry in existing markets, with a particular focus on barriers that affect civil society organisations?

In short, by by-passing unnecessary procurement procedures and unhelpful regulations.

This could be done by setting up a national grant fund to allow the VCS greater access to public service delivery. Such funding has a proven track record, and suitable infrastructure already exists to facilitate this.

Such grant funding may be coupled to a move to contracting but the existing capacity and learning gaps need to be closed before the public sector will be able to have full confidence in such measures.

Not all VCS delivery is driven by grant funding and commissioned services could fall outside any national grant fund. In such cases certain procurement regulations could

be by-passed. However, unfair competitive advantage would need to be taken into account where non-VCS organisations were bidding to provide the same services.

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

- Cut away unnecessary bureaucracy by streamlining the procurement process;
- Improve the transparency of public procurement opportunities;
- Require major suppliers to guarantee sub-contractors working on Government contracts are paid within 30 days and encouraging them to pass these payment terms down supply chains;
- Introduce a standardised core pre-qualification questionnaire (PQQ) across central government;
- Investigate options to enable suppliers to submit standard PQQ data just once to further simplify the process for suppliers.

All reasonable suggestions, but see prior comments above.

- Undertake a Lean Review to uncover the causes of delay in the procurement process and to suggest actions to rectify them.

This would need to be managed against government expectations that best value approaches utilise Part A timeframes even when procuring Part B services.

- Launch a Contracts Finder system in March 2011. This will be a free facility for small businesses to find public sector procurement, and sub-contracting opportunities in one single place online. Contracts Finder will host all central government tender documents and contracts.

Things like Contracts Finder already exist. There is therefore a danger of multiplication – certain areas already have adequate or better arrangements e.g. the North East Purchasing Organisation.

There is no training mentioned so the system may prove to be inaccessible to many organisations. Any new system needs to be accompanied by a fully funded training programme otherwise it may prove ineffective. For a national system, the cost of this may be substantial.

Issues the Government should consider in order to ensure that they are fully inclusive of civil society organisations

- The Civil Society Red Tape Taskforce is considering the full range of burdens that fall on small civil society organisations, including contractual arrangements when civil society organisations provide public services.

Without full details this may be a red herring; contract law is contract law.

- many civil society organisations, identify disproportionate levels of risk in contracts as a significant barrier to involvement in public service delivery.

The public sector needs to understand the nature of VCS organisations whose reason for being, unlike the private sector, is not the generation of profit. The VCS may feel patronised by the dependence on “anecdotal evidence” here.

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

No, not without contravening existing rules on fair practice. You either allow VCS organisations to operate as not-for-profit or you do not. There is no fair half-way house.

However, these proposals cover the breadth of civil society organisations and suggest that they will all need to operate as viable businesses if they wish to deliver, or to continue to deliver, public services.

At the moment, the balance of risk tends to lie with the public sector. A move towards payment by results could support a reasonable transfer of risk from the public sector to the service provider.

Competition within such a market could be driven by training and the development of market awareness for all civil society organisations.

Citing TUPE misses the point. It is not the case that VCS organisations would engage enthusiastically with public service delivery if only they could deny employees their employment rights. The point about TUPE is that it is a necessary protection that means the attempt to integrate VCS organisations into private sector activities requires full and specific funding. Please note the risk here is to public services rather than to the VCS.

- What should Government do in order to ensure that civil society organisations are assessed on their ability to achieve the best outcomes for the most competitive price.
- What should the government do about the Big Society Bank?

We note that the latest Big Society Bank proposals appear to have failed. A much better, workable proposal would be to put the money into a hardship fund to be distributed, for example, according to the multiple indices of deprivation and administered, for example, by the relevant local authority or local Community Foundation.

An alternative, or an accompaniment, may be to streamline Social Return on Investment principles and amalgamate them into the payment by results processes. This would promote the development of VCS organisations in the direction indicated.

- What issues affecting civil society organisations should be considered in relation to the extension of the Merlin Standard

The Merlin Standard is not adequate for this task.

A separate commissioning standard should be set for the VCS, for example, through the Compact. This should be developed by the VCS with the involvement of likely commissioning partners.

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

Why should VCS organisations be obliged to operate in consortia or lose funding?

Indeed, the public sector may find working with a sole organisation easier than with a collection of disparate partners. So not operating as consortia may be a positive point to be regarded as such by commissioners.

Will VCS organisations be treated as equal partners? If the junior partner, VCS organisations may well receive less favourable terms than if they were able to operate as sole organisations.

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

- To underpin the Government's commitment to the introduction of payment by results across public services, commissioners must have a full understanding of the value of the potential results.

Payment by results is not a measure intended to assist the public sector fund the VCS, nor will it make it easier for small VCS groups to access government contracts. On the contrary, payment by results effectively rules out many VCS organisations from running public services.

- What approaches would best support commissioning decisions in favour of the VCS?

1 Either up-front payments and no payment by results or a sound and trusted yet-to-be-established financing system that recognises and accounts for the challenges faced by smaller VCS organisations.

2 Local or city-wide partnerships work better than national or regional arrangements.

This is in line with localism and neighbourhood-level decision making.

3 Added-value is problematic

It is relatively easy to think of ways of packaging the added-value provided by VCS organisations – basically, they are not-for-profit and have local knowledge. However, it is equally easy to think of ways in which the private sector can counter this approach for example by the use of loss-leaders and the employment of local staff.

One way to resolve this may be through a greater focus on Social Return on Investment principles. However, to date, we are not aware of any established work in this area.

4 Social value is problematic

The brute fact is that social value is very hard to define and equally difficult to place a monetary value on. No time should be spent on attempts to do this as, even if successful, the more straightforward financial considerations will usually outweigh any supposed social value.

Furthermore, there is little merit in a Public Services (Social Enterprise and Social Value) Bill. Quite simply, it will either not work and pay lip service to an ever declining sector, or it will - quite properly – be challenged then co-opted by the private sector.

5 Exception analysis

One positive option is to consider the situation if a service is not provided. What will the outcomes be in 5, 10, 20 or even 50 years? This, however, is not really measurable nor is it assessable, for example, from a PQQ.

6 Client contribution

Allowing clients a role in the formal assessment of services should be pursued as a method of assisting the VCS and other organisations who deliver public services.

7 VCS training for public sector commissioners

If the VCS is to be treated as separate from the private sector then approved and monitored training should be delivered to public sector commissioners. This will take time but nevertheless no one who has not received the training should attempt to commission services open to VCS bidders.

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

- Citizens and communities should have opportunities to play a leading role at all stages of the commissioning process.

Why should citizens be interested in the commissioning process? What level of public sector resource and how much public sector money should be spent on this? And from what basis of expertise would they speak?

Citizens and communities are experts in the areas where they live and the activities they regularly engage in. They should not be expected to take over the general commissioning process. So the question here should relate to who is active and how they are active. This would reflect the true spirit of co-production.

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

Local Healthwatch should be part of the local commissioning process, commenting on the effects the commission will have on local people and patients. They should also be clearly involved in the identification of commissioning priorities.

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

In the ways they currently do, and are able to, through adequate levels of government funding.

Contracting terms and conditions should reflect the expectation that this kind of involvement is to be part of the delivery process. Ultimately, however, whether VCS organisations wish to invest their resources in such activities is a question for them.

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

Here, as elsewhere, the green paper does not distinguish between support offered and support requested.

The government should listen to what local authorities and their local VCS partners are asking for, for example continuation grants, additional money for groups supporting vulnerable people etc.

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

As a bare minimum, public service commissioners need to understand the provisions of the Compact and the values of the VCS. They should not regard the VCS as cheap provision or as a way of cutting corners.

More generally, public service commissioners need better understanding of the legal standing of all civil society organisations.

- 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?

Communities are not experts in managing public finances and should not be presented as such.

Currently, the interface between communities and public sector budget holders is very largely on a complaints basis.

The idea of community budgets will get nowhere without extensive engagement and explanation, a role ideally suited to – properly funded - community development workers.

- What can civil society organisations contribute to the roll out of Local Integrated Services?

The above comments on community budgets apply to LIS. This can only be worthwhile if properly funded and if given enough time to embed in communities. It is a resource issue and is not a question of public sector willingness or public sector ability.

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

The nature of personal budgets is individualism; it is not for organisations to interfere with individual choice. For personal budgets to succeed the current and urgent task is the creation of a widespread and sustainable market.

Civil society organisations can play a huge part in this. Through the development of user-led organisations they could support the effective use of personal budgets by developing local solutions and by finding ways to increase purchasing power. The questions would then be a) whether they wish to do this work, and b) how they would be paid to do it?

Request for clarification

- “The Cabinet Office acknowledges that this is a regrettably short consultation period. This falls outside of the Compact but the shorter timeframe will be mitigated by more targeted engagement.” Page 26.

Please explain what is meant by “mitigated by more targeted engagement”. How will this be mitigation?