

Liverpool Charity and Voluntary Services
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Response to 'Modernising Commissioning'

New Opportunities.

The implications of payment by results for civil society organisations.

Organisations will need to be able to cost their outcomes, which implies a deep understanding of their own costs, external variables and having a record of delivery that provides sufficient evidence that the outcomes can be delivered. This will tend to direct providers to tried and tested models of delivery rather than innovation.

1.21 It is much easier to evaluate the costs and benefits of a tried and tested product, rather than something that may not have previously been used in practice, or may not even exist at the time the Government first considers using procurement as a means of solving a complex delivery problem. However, if a new and better solution is already developed or could be made available, this might provide better value for money than a tried and tested product.

Transforming government procurement (January 2007)

Payment by results is only one of a number of approaches that need to be appropriately adopted.

Basis of payment

'Basis of payment' can include payment:

- 'Up front' to finance set-up costs
- On the completion of stages of work or the achievement of milestones (steps towards an output or outcome)
- On the achievement of outputs or outcomes
- At fixed intervals
- At the end of the period of the agreement.

Payments can:

- Vary to reflect the cost of each stage, period or achievement in question

- Be spread out over a longer period.

The basis of payment can also include:

- The arrangements for the funder or commissioner to **recover** any underspent grant.

(This cannot apply to awards made through the procurement channel).

Financial relationships with third sector organisations Office for Public Management Ltd (2006)

Outcomes are achieved from the combination of a range of factors some of which are not attributable to the actions of the provider. Equally achievement of outcomes may be reduced by changes in the external context. See evaluation of DWP contracts between Primes and sub contractors.

'Payment by results' transfers almost all risk to the provider. Organisations often have little working capital or reserves and what they do have are at risk against failure to perform.

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

You could follow the example of a former Queen, Elizabeth 1:

Charitable Uses Act of 1601

'The relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives and the aid or ease of any poor inhabitants concerning payments of fifteens [a tax of one fifteenth, formerly imposed on personal property], setting out of soldiers and other taxes.'

Should the 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?

Should probably see how current changes work through system first.

1a) 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?

I don't think the type of asset is the issue. It could be a bus or a leisure centre. (Both proposed recently in Liverpool. The bus was transferred and the leisure centre was not.) The issue is one of liability and business sustainability. The LA needs to maximise its receipts. Capital receipts have been reasons for not transferring in past and will be more so in future as they try to mitigate effect of

government cuts. In example of Leisure Centre (in deprived area) it needed capital investment and did not cover costs with income. The proposed nonprofit transferee exercised due diligence and noted the books did not balance. They could not see a way of making it work as a social enterprise (where the user pays) and asked for guarantee income stream of £x p.a. LA pointed out that was reason it was a public service and the reason for transfer was to reduce their costs.

Another example is a public park transferred to community organisation in affluent area. LA could not afford maintenance. Transferred on peppercorn rent to community. Community develop park with (smoking) shelter for youth, run events etc. An apparent success.

Libraries. The very essence of a library is that there is no "point of sale" cost incurred by the customer. Any movement to push library provision into the third sector will require similar levels of tax payer funded financial support.

Any facility/service which provides for those who cannot provide for themselves, including certain social care based services.

1b) What are the main barriers that prevent civil society organisations taking over asset-based services?

There are considerable professional expenses in carrying out due diligence. There has to be an underlying sustainable business model. E.g. In provision of health and social care contracts are too short. If you are going to invest in a building based service with a payback of 20 years you need 7 year plus contracts and the ability to diversify income. Often local nonprofits are only able to attract funding from a max of 2 funders PCT and LA. There is so much uncertainty in market, in economy, in commissioning that it is a risky time to invest, especially if you have low reserves.

The level of reserves is often low as nonprofits cannot generate reserves from grant programmes and rarely from contracts.

Expertise in managing buildings and other capital assets may be low, again particularly for smaller organisations, which the government appears to want to grow.

TUPE is other barrier for transfer of staff/knowledge based assets.

Personalisation in social care will develop market of customer paying, but increases uncertainty of future cashflow, especially for smaller organisations.

The absence of training/transitional arrangements whereby community organisations can learn from the previous owners (e.g. Local Authority) how the assets had been managed previously, in terms of repair/rent, dealing with tenants etc. Organisations are reluctant to take on the full range of duties associated with a facility from day one. There is insufficient project management experience within many groups to oversee the taking over of community assets. All groups willing to take over assets should have guaranteed funding to appoint/utilise appropriate project management expertise.

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

Earlier answers apply, but what is meant by team up? Are we talking consortia, merger or takeover? What is the basis for the collaboration? Does it go through a procurement process? Public services are very rarely fully costed (all corporate overheads are not accurately recharged to frontline service delivery). Both public service employees and nonprofit will have to overcome the challenges of due diligence and determining a sustainable business model. Won't private sector organisations issue challenge on fair competition in procurement of services.

Provide funding to access training/support from infrastructure bodies or other support services e.g. solicitors, so that grass roots organisations can enter into arrangements with confidence.

3. 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?

This is a minefield where the costs of getting it wrong can ruin a nonprofit. The transferee will rightly want an indemnity from transferor against all liability. The transferor will not want to accept liability as needs to mitigate risk. The whole TUPE legislation is hugely difficult. Whilst applauding the intention to protect jobs it seems to result in contracts not being transferred without transferring the staff. The staff delivery is often the reason for wanting to transfer the contract. Just consider some of the TUPE decisions.

http://www.solicitorsjournal.com/story.asp?sectioncode=2&storycode=15609&c=1&eclipse_action=getsession

<http://www.employmentlawwatch.com/articles/employment-uk/tupe/>

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

TUPE can be an obstacle, where there is a lead organisation and a 'partner' sub-contracted to deliver service. If they are not performing or drop out for some other reason the lead organisation has to accept TUPE and still deliver improved service.

Organisations have different cultures or are operating to different standards or even have different cost profiles.

Trust is an issue as well as knowledge as how to do it. Due diligence to ensure not exposing organisation to liabilities of partners. Choosing an appropriate governance model, joint venture or partnership.

Can be overcome by giving sufficient lead in time and technical support from a CVS solicitor etc.

Lack of specialist support to project manage the process of entering into consortium. Funding should be made available for groups to access, whereby

a nominated project manager oversees the whole process of formulating the development of the consortium.

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

There is already lots of very good examples of partnership working, largely being dismantled by new administration. One always has to consider where the power lies in a relationship. Sometimes public bodies are tempted to add in additional requirements to grants and contracts that it is hard to say no to because the funder has power to hold grudges next round of procurement.

The Compact was a good basis for supporting the relationship. Having an informed 'neutral' such as a CVS to advocate for issues of nonprofit sector or mediate on issues from public bodies helps. Frontline nonprofits (even quite big ones) value CVS advocacy on issues as it avoids being 'picked off'.

Clearly building trust is issue so transparency in engagement, commissioning and procurement essential.

Have to remember private sector have similar issues.

Communities need to be involved and properly consulted in the commissioning process and not in actual procurement, only if they are competing for a contract. Also can bring groups together during the commissioning process. In some cases it is the community who have highlighted the need and what should be Co commissioned.

Need for equality impact assessment involving the community on commission specifications before reaching procurement stage.

6. What can civil society organisations contribute to the roll out of community budgets? What barriers exist to realising this contribution? How can these barriers be removed?

It depends what is at stake and how realistic expectations are. We have elected councillors as democratic elected representatives. They have steep learning curve when first come into office. Citizens/residents face equally steep learning curve. So what decisions are really open to residents to make? If you are asking should we fund this or that what is the appropriate process? How do you avoid vested interest packing a meeting with their supporters? How valuable is a process that determines the distribution of even £100k to non profit projects when decisions on closing schools, reorganising social care etc. are not open to same decision making?

What is role of paid officials? Presumably we acknowledge some specialist knowledge or skill that should be brought to bear on decision making?

Nonprofits can contribute some community knowledge, some expert opinion, some view based on possibly own vested interest. It will be a mixed picture. I think this is reinventing wheel of community empowerment networks.

Clearly barriers are time and commitment. Access to the table does not always or even often equate with influence.

Overcoming the barriers requires consistent, transparent community infrastructure.

Once decisions have been made who is accountable and who scrutinises the results? The decision maker has to be able to deal with consequences of decisions. How will that work? Communities or non profits on scrutiny and commissioning committees? Where though does the real 'buck stop'? Surely with elected politicians and officers?

If government is serious about this then they must also be prepared for communities deciding on spend that increases inequality, blocking spend on developing facility for mental health, fences to keep youth out of parks etc. If it is a choice between the service equivalent of, 'Do you want egg or beans with your toast?' then it is scarcely empowering or indeed likely to enthuse the local population.

Time, skill, local knowledge and expertise can all be contributed, particularly in providing local intelligence and facilitating the distribution of moneys. This will all need to be paid for however and groups should not be expected to do additional work without remuneration.

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