

Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery.
Cabinet Office: November 2010

Local Government Group response to consultation

Thank you for the opportunity to comment on the proposals set out in the Modernising Commissioning Green Paper. These comments are made by the LGA Group and shaped by experience of the National Programme for Third Sector Commissioning, Commissioning and Procurement work across the LG Group and the input of several councils.

The LGA supports a strong, strategic commissioning role for councils, working with other agencies in the places that we serve, facilitated to the fullest extent possible by the pooling and alignment of resources so that those resources can be used most effectively to tackle local priorities.

We have argued vigorously for this approach to be embedded in the public sector reform programme including reforms in the fields of education and children's services, health and social care, welfare, skills, policing and criminal justice and we are pleased that Ministers have listened to us and have to a significant extent taken on board our arguments.

We continue to press for clarity on the strategic commissioning role including in the legislation being introduced to underpin the reforms and in the White Paper due in the New Year.

It is important that we have clarity on this for civil society organisations and other providers of services but first and foremost the public need to have confidence in how local public services work.

This forms the context within which we view the Government's proposals regarding the commissioning of civil society organisations set out in the Green Paper.

Before turning to the specific questions posed in the consultation, we would like to address the definition of "commissioning" that has been put forward. Commissioning (at the population level) is essentially about matching resources to identified population needs, designing a service and then securing its delivery.

In our view, the description of the commissioning cycle on pp7-8 misses out one of the crucial elements which is "securing and allocating resources" and it confuses "designing a specification" with "designing the service".

Further, the current environment is clearly one of reducing state funding. This means that commissioners must look to other sources of funding to meet the identified population needs including the funding that can be secured by civil society organisations themselves. It also means that service design (the way in which resources are deployed to meet needs) assumes a more prominent place. The development of new delivery models calls for innovation (and some risk-taking) on an enormous scale. Capturing the design in a specification is a secondary matter.

Lastly, it has to be recognised that if alternative sources of funding (including funding through the social investment market and transitional support from Government), combined with the intelligent redesign of services, do not fully bridge the gap left by the reduction in state funding, services will not be provided or will not be provided to the same quality or extent. How to manage the transition to mixed state and social finance and how to accelerate the redesign of services are key challenges for commissioners right across the public sector.

Response to consultation questions

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

To a very large extent local government services are already delivered by third parties including civil society organisations (see research carried out for DCLG under the previous administration). Overall, the greatest opportunities probably lie in other parts of the public sector including Whitehall departments.

As described above, public sector reforms are driving the redesign of local services and this is already creating new opportunities. The social work practices being developed for adult and children's social care are an example.

In the current financial climate public bodies are of necessity reviewing the extent to which they can continue to fully fund all of their discretionary services. In the local government context, that means chiefly the "culture and sport" sector which includes arts and parks in addition to sport centres (which are already run predominantly under civil society "trust" models).

Clearly, there are opportunities of a different kind open to civil society organisations. That is to say, they could organise themselves to win a greater share of existing markets from their private sector competitors.

We see no case for setting specific proportions of local services to be delivered by independent providers. A central tenet of localism is that councillors must be free to make decisions best suited to the communities they are elected to serve, looking out to those communities not up to Westminster and Whitehall.

Payment by results (in the sense of linking payment to sustained outcomes) is a powerful idea. The key challenge that needs to be addressed for civil society organisations in particular is to develop new markets for upfront finance and access to working capital to allow them to work within a results-based funding model. For civil society organisations (particularly smaller ones) partnerships with other providers within larger contracts better placed to manage the cashflow implications might be required.

Social finance will need to be responsive and simple to access for local organisations who often have great ideas but who aren't great at complex finance. One possible model would be for local authorities to begin to develop a role as financiers of social investment within a results-based system; for example, the current early roll-out of community budgets offers an opportunity to use pooled budgets, bringing together funding for the services where both the immediate costs and the long-term savings from preventive work lie, as the tool to unlock the maturity transformation for the Exchequer which payment by results represents.

The "rights" included within the Localism Bill, (challenge, buy assets, and provide) are currently under consideration by the LGA and responses will be formed through the political processes. In general, the LGA welcomes the additional freedoms that councils will be given but will resist prescription and burdensome top down initiatives.

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

Current advice from Government is that it is not possible to give preference to civil society organisations when awarding public contracts due to the EU public procurement rules.

In certain parts of the EU national legislation does provide for preferential treatment of bodies in this sector (e.g. Flanders Region of Belgium) and the European Commission has stated in guidance that this is acceptable provided that the national legislation is compatible with EU law. National legislation of this kind is therefore one avenue open to the Government to explore.

Further, the European Commission is currently consulting Member States as a prelude to a major evaluation of the procurement rules. This affords the Government an opportunity to press for changes to European legislation too.

Otherwise, there must be a sustained effort to communicate best practices to commissioners and procurement professionals across the public sector. The Sector Commissioning Programme delivered by the LG Group has an important part to play in that.

It is our understanding that it is not TUPE as such which is the barrier (the European legislation) but the additional national provisions relating to the two-tier workforce and pensions which civil society organisations find problematic.

The Big Society Bank will have a vital role to play in the transition to blended state and social financing of services to meet the population needs identified through the commissioning process. It must act quickly and be a catalyst for the mobilisation of a vigorous social investment market capable of bridging the gap left by the withdrawal of much state funding.

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

The European Commission recently issued guidance on how to take social considerations into account under the reformed procurement directives (*Buying Social*). There is corresponding guidance on environmental considerations.

Even without a further reform of the directives (see above), there is a clear path through the rules for the consideration of these issues. Typically this might involve the specification of social and environmental requirements (which may be done on a performance or outcome basis), followed by the consideration of proposals for how those requirements can be met as part of the tender evaluation. Where appropriate, social and environmental criteria relating to specification items can be built into evaluation models.

Social, economic and environmental values of contracts could be greatly enhanced if pooling of central government funding could be simplified. The Community Budget pilots will undoubtedly provide experience to learn from. Increased capacity building programmes would help providers and commissioners to develop social impact knowledge and measures.

The LGA does not support legislation on this. The provisions in the Private Member's Bill currently before Parliament requiring social value to be taken into account run counter to the spirit of localism and potentially impose a significant administrative burden in an area where councils already have a good track record and wish to do more.

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

It is important that civil society organisations are involved in all stages of the commissioning cycle including the assessment of population needs, consideration of the funding that can be mobilised, testing of new service designs etc.

That is true of all classes of provider (provided that none are given a competitive advantage at the procurement stage) but civil society organisations embedded in communities and close to citizens needs have particular insights to contribute. They are also an important channel through which service users can be involved in the commissioning process.

The community budget pilots and the local integrated service pilots will provide a further opportunity to explore how civil society organisations can mobilise citizen involvement in the design of their own services.

In considering the Government's refresh of the Joint Strategic Needs Assessment guidance, the current confusion between strategic needs assessment, strategic response, developing the market and developing new types of provider needs urgent clarity. Both health and social care already operate in real markets, the latter more developed. They also have differing degrees of personal budgets (which bypasses traditional planning and commissioning) with users as micro-commissioners using

directly employed staff or micro-providers. Both too have advanced “right to request” ideas with social work practices and other similar activities in community health services. Children’s services have the foster care altruistic dimension too.

JSNA will scope the state of the market and how well it meets current and anticipated need. This will lead (through health and wellbeing boards) to join strategic responses. Both are “provider type blind” unless there are separate attempts to grow and develop new types of providers. Where there are established markets, commissioners will need to be sensitive to competition challenges as well as legitimate expression of choice by users.

This thinking is already part of the body of good practice built up through LGA and the Sector Commissioning Programme and elsewhere and the new pilots will enrich it. The continuous change brought about through the public sector reform programme means that the messages must be underscored to new audiences and in new contexts.