

# **Consultation on Modernising Commissioning Learning Together Cheshire and Warrington**

Learning Together Cheshire and Warrington (LTCW) is the sub-regional Learning Consortia. It is an infrastructure organisation which supports small organisations who are actively involved in the learning, skills and employment agenda. This response has been based on feedback from the member organisations, the majority of whom are small front line voluntary, community and faith organisations (VCFOs) that do not have the capacity to respond independently to this consultation.

## **New opportunities**

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

Your Objective: To drive efficiency, effectiveness and innovation in public services by opening more public service areas to civil society organisations.

### **Sub-Question: What are the implications of payment by results for civil society organisations?**

Payment by results has significant risk and cash flow implications for small and medium sized VCFOs who have limited unrestricted funds (reserves) to fall back on to be able to bid for these contracts. We know of many organisations who will not undertake projects which have European Funding elements e.g. European Regional Development Fund due to cash flow (payment frequently received 3-6 months after being incurred) and risk (changes made part way through contracts to the rules for being paid leading to reclaims for expenditure being refused after expenditure was incurred in line with the original contract and claim terms and conditions). Similarly, the current move to minimum contract values (MCV) for European Social Funded projects is making it impossible for even infrastructure organisations like LTCW to bid as a consortia on behalf of its membership. This will significantly reduced the number of small VCFOs who can engage in the delivery of specialised services. In some cases there are examples of organisations making a loss on ESF/ERDF funded projects which challenge the sustainability of those organisations (and the sector).

Trustees of charities have a responsibility to ensure organisations do not undertake unnecessary risks (Charity Law). Whilst there is a risk in any contract undertaken by organisations, the risk is far higher for charities with little reserves given the current volatile economic environment/factors. Whilst the sector can and does offer excellent and innovative delivery models these environmental factors can prevent organisations from achieving the minimum results necessary to receive sufficient payment. Any shortfall in funding would have bankruptcy implications on many organisations, with the additional loss of many thousands of jobs and the loss of an otherwise effective civil society organisation.

The risk of a contract paid purely on results will be too great for most charities and in particular where an organisation is an unincorporated charity (i.e. not a limited company as well as a charity). The liability to cover any deficit lies personally with the individual trustees and the result will be that less individuals will be willing to come forward to be trustees. Whilst the Charitable Incorporated Organisation is not the whole solution to this issue, its continued delay is a hindrance to charities taking an increased level of risk.

A criticism of procured services (based on current knowledge) is the lack of sufficient detailed monitoring and information recording systems and processes prior to contract. There is often a reliance on the commissioning body to provide information/referrals/support to enable the contractor to meet the required results. This can (and does) lead to disputes over results and hence increased costs/risk to payments. Our own experience has seen goal posts moved a number of times in the duration of a contract. There can be similar issues in the relationship between prime contractors – who by their nature are generally larger, more powerful organisations. One of the current primes stated in a recent meeting that they have three levels of payments for sub-contractors and our sector generally gets the least favourable because the organisation are small with little/no negotiation power. Clearly this needs careful monitoring if any part of a contract is to include payment by results.

To ensure a diverse delivery model for public service contracts, which would lead to the most effective and efficient delivery organisation being prepared to be commissioned will require a mixed funding regime, not pure payment by results and the Compact supports this stating that payment should be in advance for civil society organisations.

Some level of fixed price contract with staged payments, with a bonus for achieving different levels of results would encourage a results/output driven approach, whilst reducing the risk level that would prevent organisations from bidding for these contracts.

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

Civil society organisations would be interested in delivering a wide range of public services; they have a diverse range of specialism, knowledge and skills. However, Charities are restricted to services that can be counted as for the public benefit, whilst none charitable organisations would be able to tender to deliver any service. Barriers to civil society organisations being involved in delivery of public services include:

- The timescales associated with the commissioning process. This can include the length of time it takes to submit a bid, and revise a bid. Sometimes this is a long drawn out process and the cost/time implications of which has to be incurred by the organisation, and cannot be recouped from the contract. Conversely, others commissioners allow insufficient time to prepare a submission. In both cases the date the

contract was initially due to be rewarded is frequently delayed either leading to costs being incurred that cannot be recouped (whilst outputs remain the same), redundancies having to be made, and new staff recruited at a later date leading to loss of expertise and a less efficient contract start.

- A requirement for detailed costings from civil society organisations. Historically, a private sector organisation would generally submit a price to complete the work. How the price was created and how the money was spent on the project would be a matter for the private sector internally. Where more detailed costings are required, each element would have an allowance for overheads and profit eg the use of a day rate for individuals. With civil society organisations different rules seem to apply ie a requirement to provide the detailed breakdown which has historically been based on actual costs, eg actual salary of a post excluding overheads/surplus. This then leads to the overhead and surplus elements of a civil society organisation looking significantly higher than that of the private sector, when in effect private sector is likely to have built in. We have examples of organisations who have used full cost recovery methodology and who have been challenged on cost. Costs which could make the civil society sustainable.
- TUPE issues are prohibitive for most charities eg final salary pensions and the associated liabilities – there have been decisions to close these schemes by many charities – what cost on future social costs?
- Small local organisations are often experts in a particular geographical or specialist area, but they are often precluded from bidding by minimum turnover levels, and are wary of the inequality associated with Prime contractor/subcontractor relationships. Even local infrastructure organisations are being excluded from bidding because of minimum contract values.
- There is an assumption that best value is had by running fewer contracts with larger Prime contractors. However, the Prime contractors have to build in the costs of managing sub-contract relationships, and there is an increased cost of their lack of knowledge of a local area and the associated delivery issues. Best value in some areas will be by directly commissioning smaller organisations, who employ local people and have local knowledge; however restrictions on minimum turnover levels and minimum contract values means that this is not an option. The Primes could be accused of creating exclusive networks of providers (organisations they know and have worked with previously) to the exclusion of many excellent specialist **local** providers. These Primes expect small organisations to find them and to provide significant and multiple amounts of information if they want to engage – often it is too much for small organisations. Infrastructure organisations such as LTCW

could provide a conduit for smaller organisations to engage with the Primes, yet very few of the Primes are willing to work this way.

- The commissioning process should be built on the assessment of local need, in many cases this knowledge is held within very small frontline VCFOs who support the end users. However there is limited funding and support to enable these organisations to find/develop the capacity to engage in this process and assist the commissioners to truly identify need and design appropriate service specifications. Potentially this sort of engagement needs to be grant funded, rather than commissioned.

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

There is a general perception of the new employee led mutuals/social enterprises as structures that have been set up to access funding/contracts, rather than genuinely being set up to meet local need.

The new organisations are perceived to have an unfair advantage by starting with existing contracts which have not been put out to open competition – in effect their track record is already proven and they have an advantage over small VCFOs. To encourage the different types of organisations to work together contracts need to be put out to open tender and encourage joined up working utilising the experience of delivery from the new employee led mutuals and the innovative and locally based culture of the existing civil society organisations.

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

The Government could provide opportunities to deliver initially on a small scale, enabling VCFOs to gain experience of delivery; reducing risk and utilising local knowledge. As more experience is gained, larger contracts could be bid for. The focus on using Prime contractors prevents this.

More accessible

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

Your 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.

**Sub-Question: What issues should commissioners take into account in order to increase civil society organisations involvement in existing public service markets?**

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**Sub- Question: 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?**

Commissioners should ensure that processes are fair across all sectors. The North West Improvement and Efficiency Partnership have done some work on ensuring their standard processes are fair to civil society organisations.

PQQ forms should be standardised and requirements not just across central government but across local government and other public sector bodies eg health service, police, fire, offender management services – making the processes more accessible for small organisations.

Credit should be given for local knowledge and 'reach', which increase the effectiveness and success of delivery. Contracts need to be of a size and complexity to encourage local organisations whether this is SME's or civil society organisations. Whilst this may add burdens to the commissioning process and appear to go against economies of scale – the use of Prime contractor/sub-contractors means that the overhead of managing the multiple contractors is moved down the supply chain by a level rather than removed as an economy of scale.

There are specific organisations that have specialist knowledge of the end service user who would be best placed to assist in the design of the commissioned work; however they may also wish to deliver the final service. This can lead to perceptions of unfair advantage by those who also wish to tender for the service. This type of service could initially be run as a time limited pilot to test the service and identify potential changes, before it is formally commissioned in open competition.

**More generally, the Government has established a Civil Society Red Tape Taskforce to answer the question "How can we reduce the bureaucratic burden on small organisations, particularly in the charitable, voluntary and social enterprise sectors?"**

Within some statutory agencies there are different requirements for performance monitoring. Different departments of the same organisations can even have different payment processes, request information in different formats or require absurd levels of detail. Levels of bureaucracy need standardisation and proportionality.

The different culture, different quality standards of civil society organisations mean they are misunderstood and often treated as a cheap or substandard option over private sector companies. The sector does have quality standards like PQASSO (Practical Quality Assurance System for Small Organisations) which whilst self regulated is also based on the EFQM model like many other quality standards which are adopted by private sector organisations. For example, scoring methods used in the commissioning process need to be directly relevant to the ability of an organisation to deliver the service. There is an assumption that if an organisation has ISO 9000 as a quality standard it

is automatically the best with little or no credit given for the many other excellent quality standards (some of which are charity commission endorsed) that exist within the civil society sector. This leads to organisations having to maintain and be assessed on multiple quality systems (with the added cost). The question asked / scoring system should relate to a recognised externally verified quality system which includes more than just ISO 9000 scoring higher than an internal only quality system, and no points if an organisation has no quality system.

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

The balance of risk that an organisation can take on depends on its size, so the size of the contract/organisation needs to be taken into account and the level of risk that is shared should be proportionate. Often the risk is far greater for VCFOs in that they have a reputation to uphold in the local community, failure to deliver here is far more damaging. There needs to be an increase in the level of trust between both sides that the balance of risk is fair and takes into account the constraints on risk on charitable organisations.

**Sub-Question: 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?**

Pension provision is a key issue as many public sector employees are on final salary pensions, the associated liabilities of final salary pension schemes are a massive deterrent to taking staff under TUPE. In the private sector after changes in ownership, pension arrangements have been reduced from final salary to defined contribution and employees have been advised that it is a fair and reasonable change for an employer to make given the cost of liabilities. It may be that TUPE regulations need to change so that a transferred employee has to move to the pension terms and conditions of the new employer with any historic pension entitlement (and associated liabilities) remaining with the original final salary provider.

**Sub-Question: 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?**

VCFOs have a good track record of delivery whether this is based on value for money or added value, the fact that many have survive is a testament to this.

However, how can the best outcome be determined? This should include an estimate of the wider social value of the outcome, for example, the impact on the wider society and the reduced social cost if a service was not delivered.

**Sub-Question: 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?**

Debt increases the risk on small organisations and the individual trustees. There would need to be the agreement that trustees who had not been negligent could not be pursued for debts owed to the Big Society Bank.

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

Few members of our network have direct experience of the Merlin Standard, however these standards could be extended through Central and Local Government Commissioning opportunities?

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

LTCW is a Learning Consortia and our main problem has been lack of investment. We have the trust of our network members and there is a willingness to work collaboratively. We have held small contracts with the local authority and the Learning and Skills Council but the raising of the bar to minimum contract values will prevent us from bidding in the future and as a consequence our members who are small providers will be excluded from this type of local delivery (unless they are chosen to work with large Primes). We would like to see the opportunity for smaller contracts to continue to enable us to build our track record, working with our members as providers and supporting their sustainability.

## **Value**

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

Your Objective: To enable commissioners to make strategic commissioning decisions on the basis of a full understanding of the social, environmental and economic impact.

**Sub-Question: What approaches would best support commissioning decisions that consider full social, environmental and economic value?**

A Social Impact Assessment / Social Audit / Social Accountancy tool to go alongside the impact assessment process for environmental and economic issues and Equality Impact Assessments may be of use.

Such an Assessment should take into account:

- Local reach
- Local knowledge
- Engagement processes
- Social impact over and above the actual outcomes required as a minimum.

Currently there is no single agreed standard method of measuring the full social, environmental and economic value, and many of the possible methods eg social accountancy has a high level of administration and data capture requirement which makes it difficult for many small organisations.

**Sub- Question: What issues should Government consider in taking forward the Public Services (Social Enterprise and Social Value) Bill?**

LTCW welcomes the Government's support for this Bill, and endorses the concept of Full Value.

## **Citizen and Community Involvement**

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

Your Objective: To enable civil society organisations to support and facilitate the increased involvement of citizens and communities in commissioning.

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

Civil society organisations should be fully engaged in HealthWatch and should be able to bid for contracts to deliver this locally, just as they have been in LINKS schemes.

Experience appears to show that where a LINKS contract was given to a non local organisation, there has been a greater barrier towards developing community engagement. Local knowledge again should carry a higher weighting when scoring in the commissioning process.

**Sub-question: What issues relating to civil society organisations should the Government consider when refreshing the Joint Strategic Needs Assessment Guidance?**

It is important to include VCFOs in the JSNA process as full partners with a genuine belief that we can add value to the evidence. There appears to be an issue of culture and terminology between the different organisations that leads to a difference in understanding of the impact, reach and value of civil society and in the collation of evidence gathered by civil society organisations.

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

There are examples of community-led planning activity which has built up considerable bank of knowledge and information which is of great value to many aspects of statutory agencies. For example, local community learning providers have been encouraged locally to provide learning services to local communities supported by local authorities.



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

Many VCFOs including LTCW have been involved in supporting statutory agencies with their development at a strategic level; developing and designing services and in assisting individuals to engage directly with the statutory agencies. This work (and cost) is often not acknowledged. A continued lack of funding for this type of support will lead to it being marginalised to the loss of all civil society organisations have to prioritise their limited resources towards activities that generate income. Perhaps a fee for attendance at engagement events/meetings, for organising meetings with the individuals to feed into statutory agency decisions or for response to consultation/engagement documents could be supported?

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

The current minimum standard for public service commissioners is Level 2 of the Chartered Institute of Purchasing and Supply. It is our understanding that the view of the VCFS is, at best, unfavourable – treating the sector as second rate in comparison to the private sector. An understanding of the diversity of the sector, and the different types of organisations and their umbrella bodies and therefore the different types of quality systems and delivery models could be included in this qualification which could also be delivered (in part) by trainers/tutors from the sector.

**Sub- Questions: 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?**

Participatory budgeting events have been run by members with a number of statutory colleagues – putting decision making in the hands of communities. In every case, both the agency and the community members have come away with an increased respect for the other, and with a greater desire to have more, similar events. This should continue.

Community budgets and the distribution of them to be through an independent but community focused organisation takes away cynicism from the community that it is a publicity exercise rather than a genuine desire to support them.

**Sub- Questions: a). What can civil society organisations contribute to the roll out of Local Integrated Services?**

Ellesmere Port within Cheshire is an area where LIS is in operation. The former Area Board was chaired by the Police and they continue to be key drivers.

We believe that civil society organisations could lead and be the conduits to bring a LIS into a more dynamic framework as they can cross boundaries that each statutory agency is confined within, creating greater impact from the shared funding. This is backed by grassroots knowledge and reach.

**b). What barriers exist to realising this contribution? How can these barriers be removed?**

There is a lack of trust and the willingness to empower others. There is still a belief that only the organisations with funding are the true players at the table, the rest secondary.

**Sub- Questions: a). What can civil society organisations contribute to the development of Free Schools? b). What should Government consider in order to realise this contribution?**

Government need to ensure that supportive and advocating organisations are suitably resourced in order to provide that very key service to local groups and communities. None of this can happen unless that core resource is available.

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

The concept of Personalisation is welcomed; giving the 'consumer' the right to chose. However, there is a lot of work to do before this can be fully rolled out. Additional support is needed for those managing budgets and purchasing support/services eg isolated elderly persons or those with mental health issues. They need to be supported to understand their responsibilities too and this is where VCFOs are ideally placed to provide that support as many are already working with these individuals. However, this support cannot be offered for free and needs support to be done effectively.