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## NCVS response to Modernising Commissioning

This response is written from the perspective of Newcastle Council for Voluntary Service. We are the main support and development organisation for the voluntary and community sector in Newcastle. There are at least, 2,200 voluntary and community organisations in Newcastle. Many civil society organisations in Newcastle provide contracted services to the public sector. We have recently led a Task Group exercise looking at the issues facing the voluntary and community sector around commissioning in Newcastle, and this is included to provide additional information and resources.

Many of the organisations we support are medium sized (£10,000-£1,000,000) income per year. The term voluntary and community sector, and indeed civic society, covers many different types of organisations, and whilst large national, London-based organisations might be able to take on some of this work, many smaller and local organisations, do not have the capacity.

### 1 New Opportunities

#### a) *Payment by Results*

Although the Social Impact Bond pilot appears interesting, payment by results is not feasible for many CSOs as they do not have the money to put up front and/ or take the risks about not getting paid in full

#### b) *Areas for new opportunities*

It is possible to argue that all public services areas could be open to be delivered by civil society organisations (CSO), if new mutualised organisations were included; however many existing CSOs might not wish to enter new areas as that would not be within their charitable remit, or could provide mission drift. Our experience has been mainly with charitable organisations and small, focussed, social enterprises. However we regularly note that the independent, private, for profit sector often has better contracting processes (but maybe not service delivery), and once a service is put out to tender, the outcome isn't clear and public sector ethos and values could be lost

#### c) *Right to challenge*

For many organisations in Newcastle, the public sector provides the majority of their funding (whether in grant aid, contracts or a mixture of both). Many organisations will find it difficult to challenge local authorities (biting the hand that feeds them) as it will inevitably lead to a shift in relationships. It could be hard to challenge unless full information was made available about the true costs of Local Authority provided services. The local Compact has been used relatively few times and one of the reasons for this appears to be a reluctance to challenge the city council, as it is a major funder of the sector.



d) *Asset-based services*

The issues of risk and the guarantee of an income stream are key considerations in an organisation considering taking over asset-based services. Some organisations would not want the responsibility of total building management and ownership and prefer to be tenants or work through a management arrangement. There could also be the issue of finance, with organisations unwilling or unable to secure a mortgage or loan at this point in time. Charities are run by trustees who need to be clear about their financial responsibilities and duties and often they wish to minimise risk. Any transfer would need to go through a full business plan and due diligence process, which would involve professional and technical fees. To many organisations it can seem like too much risk without any guaranteed benefit.

e) *Employee-led mutuals and CSOs*

There are a number of new models of service provision and these will work together better where there is joint and mutual interest. The values, ethics and cultures of organisations are essential to looking at whether they cooperate, or don't, with other organisations. Public sector organisations are large and often inflexible; it is not clear yet how these new mutuals will operate; whether as a smaller replica of their former organisation, or as a totally new and different entity. Also CSOs are very different and the best partnerships seem to be at a local level rather than agreements at the highest level and minimal joint work operationally.

f) *Additional Opportunities*

A key issue for many CSOs is the size of the service. Many CSOs would not consider bidding for a contract if they perceive it as 'too big', or dealing with areas of work outside their expertise. However there is a dilemma as commissioners prefer larger contracts in order to generate economies of scale, and it is easier for them to deal with fewer providers. Maybe there could be a number of services packaged at levels below a certain amount e.g. £250,000. Another barrier is time, often contracts are advertised with minimal notice and most medium sized and small CSOs do not have the capacity to respond quickly as they don't have dedicated contracts/procurement staff. Also if the contract could be delivered through a partnership/ consortium/ joint venture, there needs to be time to establish these properly and define ways of working. Active commissioning, rather than formal contracting should be considered more pro-actively; this requires more skilled commissioning rather than basic contracting and procurement

## **2 More Accessible**

a) *Increasing CSO involvement*

As previously mentioned realistic timeframes would be of great help and possibly flagging up the opportunities in a pre-qualifying process in order to give sufficient time to establishing partnerships. The nature of the contracts needs to be simplified as a number are disproportionately long, often inaccurate and put too much risk onto the provider. Obviously this is public money and has to be dealt with in a proper and transparent process, however the experience is often cost and risk shifting to providers. Organisations have calculated that to apply for a contract can cost a minimum of £30,000 in staff time; and for small organisations this is disproportionate. Another prohibitive problem occurs if there are preferred providers and commissioners start to negotiate legally, and providers incur legal and technical fees. Again active commissioning rather than procurement should be encouraged. There is a lot of good

practice identified in the Cabinet Office Report 'Better Together', and the NAO 'Successful Commissioning Toolkit'. The NAVCA recent report on commissioning from the voluntary sector perspective, 'A Bridge between Two Worlds' highlights a number of the problems and positive actions that could be taken. Further research isn't needed, but instead the implementation of positive actions.

*b) New inclusive measures*

Many CSOs will work only with a limited number of contractors as they are bound by theme, geography, interest etc, so a basic standardised PQQ across the sector as a whole would help or each public sector organisation could do one PQQ. The delays in procurement are not the tendering process, but often the capacity of the commissioner to define what is needed or to report back the findings. A recent PQQ process in a neighbouring authority took eight months to report back to applicants. There needs to be a means of challenge and appeal if an organisation is not allowed to qualify, in order that positive development and support can be brought in to enable them to improve for next time. In the North east we have a free online contracts finder service for the public sector (NEPO) and many organisations are signed up to this.

*c) Red Tape Taskforce*

A single PQQ process, possibly on an annual basis, for each public sector organisation, would reduce the amount of duplication as a CSO must submit basic organisational information on accounts, insurance, workforce, policies, procedures etc. Having more mature relationships between providers and commissioners would be helpful. There needs to be improved reporting, monitoring and evaluation requirements, with a greater focus on outcomes, rather than inputs and the processes needed to achieve them; this could mean using a flexible framework, such as the Outcomes Star Methodology

*d) Levels of risk*

Many medium size and small charitable organisations often feel the level of risk being transferred is disproportionate to their organisation and / or the nature of the contract. Some of the recent contracts in relation to employment/ work have seen large private sector prime contractors trying to push small organisations into delivery with insufficient funding and too much risk. There needs to be a fair balance of risk within contracts which is proportional to the size. Large public sector contractors cannot divide and allocate risk directly and then have unfair penalties for failing to deliver

*e) TUPE regulations*

The nature of TUPE transfers under Cabinet Office guidelines are an inevitable disincentive for most CSOs as they cannot offer equivalent terms and conditions of service. Some contractors fail to offer full information on the employees to be transferred until after contracts are agreed, so the bidding organisation has no information on the size and nature of the potential risks and costs. NCVS recognises the importance for public sector staff to have the protection and security of their terms and conditions of service and would not wish to influence these; however the commissioning organisations must cover these costs in full, else most CSOs cannot afford to take this risk. We are aware of a current exercise with the NHS whereby a neighbouring local authority will not agree to cover TUPE transfer costs and this has become a major stumbling block as no provider is willing to take on these costs.

*f) Assessing abilities of CSOs*

The reality is most contracts are assessed purely on price/ cost, but we believe there should be greater emphasis on quality, local partnerships and development of local assets. Smaller organisations are likely to have higher organisational overheads and cannot afford to deliberately put in low prices in order to establish a foothold. There should be more recognition of existing partnership working and developing local assets as well as quality of provision.

*g) Big Society Bank*

Access to finance is a major issue to many CSOs; however the Big Society Bank should consider the use of grants as well as (low interest) loans. The application methodology should be reasonable with fair deadlines. It could be used as way of matching private and social investors with CSOs

*h) Merlin Standard*

The Merlin Standard is useful and should be extended across central government. All local commissioners, including GP consortia should sign up to the local Compact. The Merlin Standard should include the needs and limits of small organisations.

*i) Consortia working*

One of biggest problems with consortia working is the lack of time given in order to get arrangements in place. If potential consortia organisations were allowed to submit a declaration of working, which could be refined as the process moved forward, this would be helpful; however it is unlikely the organisations can agree to fully a signed up consortia document within the usual 10-15 days for a contractual response.

### **3 VALUE**

*a) Social, economic and environmental value*

We support questions on these issues, but there needs to be clarity over what is expected with Social Return on Investment; experience has shown this is not easy to measure and will often take longer than the lifetime of the contract. However it is very important to demonstrate wider benefits of commissioning decisions. The focus on localism could mean that questions could be included on the value of local partnerships, community development, and community assets (both places and people). This approach can take time and needs to be built in to the process. Once again, all services should be considered for specific commissioning rather than an open contract process

*b) Public Services Bill*

NCVS has supported the measures outlined in the Public Services (Social Enterprises and Social Value) Bill. Whilst recognising the importance of price in contracting processes, the full value of any contract should be part of all commissioning processes. This should be done by involving appropriate communities/ users/ carers well in advance of procurement processes so that commissioning responds to the community's needs and wants rather than the commissioning organisation's priorities.

#### 4. CITIZEN AND COMMUNITY INVOLVEMENT

##### a) *Role of HealthWatch*

Appropriate CSOs will need to be involved with HealthWatch, but as HealthWatch covers only health and social care there will be a number of CSOs who have no direct relationship with local HealthWatch. The organisational structures of HealthWatch are not published yet, but they could have direct representation from the CSO sector. For instance, former Community Health Councils had a third of their membership elected by the local voluntary and community sector, through the appropriate CVS organisation. The organisational support for HealthWatch is not clear yet, and it would need sufficient resources and appropriately trained staff and volunteers if it was to support local people in commissioning processes. Again resources – people, funding and time need to be considered to make commissioning work properly.

##### b) *JSNA process*

The current failings of the JSNA process appear to be the failure to link the assessment process to commissioning. Local CSOs have both formal and informal information about the people they support and this should feed into the JSNA process. Local people should be involved in setting priorities for commissioning, and then commissioning should be based on the evidence supplied by the assessment process. There are many well-established OCS groups and networks and this should be proactively involved in the early stages of the JSNA process.

##### c) *Involvement in decision-making processes*

Local CSOs have access to local people and communities. People will be involved in processes if they think they are being taken seriously, they are respected for their contribution, they are treated honestly and they can see how and where they have made a difference. If they are constantly asked about decisions where they have minimal or no influence, why should they waste their time about getting involved? Authorities need to re-establish trust, be open about what is genuinely up for change, and what can't be changed, and to report back to people and communities what has happened / did not happen as a result of their involvement. CSOs are no longer willing to invite people to meaningless meetings at the behest of authorities as it impacts on their reputations also. CSOs must be given sufficient resources, including time, to facilitate, encourage and support community and citizen involvement in decision-making about local priorities and services commissioned.

##### d) *Support needed for CSO*

As a local support and development organisation, we believe this type of support is best offered by a locally-based community organisation. We are able to provide support and development to local CSOs (funding advice, governance, information, community accountancy etc), together with networking and communicating opportunities. At the same time we work with key partners e.g. Newcastle City Council, Newcastle PCT, the Newcastle Partnership etc to provide a conduit to and from the strategic partners to local CSOs. As a single organisation we can be creative, flexible, and responsive and take an overview and give a perspective on behalf of the voluntary and community sector.

##### e) *Future programmes of training public service commissioners*

There could be a placement programme for commissioners in CSOs. At the very least, CSOs could be involved in the induction programme for commissioners.

*f) Community Budgets*

There needs to be clarity about what a community budget covers and doesn't cover. Any mechanism for allocating money must involve fairness and addressing inequalities. It can't be left to who turns up to a particular meeting. There are many tried and tested approaches – Citizen's Panel, Participatory Appraisal, Participatory Budgeting approaches – which all have advantages and problems. The process needs to be carefully supported with appropriate timescales.

*g) Local Integrated Services*

This concept is interesting but the Turning Point example involves a lot of resources and the concern is this would be introduced locally in a minimalist way i.e. inappropriate facilitation, and inadequate time and space. People see things from their own perspectives rather than the silos of service delivery so cross-cutting services make sense to them. However the reality is little partnership working between service providers. One stop shops/ resource centres have brought together staff from different disciplines e.g. Surestart Centres and local people like them; however organisational culture often introduce boundaries. To work properly LIS must be a bottom-up approach and not a centrally imposed blueprint. It asks the community what services mean to them, what services should look like and what works for them. Unless service changes are owned by the community, they are unlikely to succeed. It is a different quality of evidence - Communities learn a new skill set, they see the influence they have in designing a service and they can point to actual service improvements.

*h) Free School development*

It is not clear how this will impact on CSOs and we have had no involvement in this yet. There is a large question about equality and how it impacts on existing schools.

*i) Personal budgets*

CSOs offer a variety of services and could make a huge difference to the choice of services for people with Personal Budgets. There need to be mechanisms (market place) where CSOs can advertise their services and people can approach them for support. Is there any potential of a quality mark for a service, so Local Councils / NHS can endorse providers who currently deliver services. CSOs will need to package and market their services differently in order to make them attractive to potential purchasers. There could be issues about employment issues if services are not contracted 'en-block', on a regular basis and individuals purchase by the hour. There would be particular difficulties for CSOs providing building-based services and contracting these out on an individual basis

Appended to this response is the summary from the recent report of the Task and Finish Group on public sector commissioning practice and the voluntary and community sector in Newcastle. The group ran a survey and focus group and considered the recommendations, which are now the subject for consultation with senior commissioners.

## **Newcastle Wellbeing and Health Forum Task and Finish Group**

### **Public sector commissioning practice and the voluntary and community sector Task and finish group recommendations**

#### **1. What we expect from public sector commissioners and what they can expect from the voluntary and community sector.**

We acknowledge the challenging role public sector commissioners have and the complex rules and regulations they are expected to navigate. However, we also have examples of commissioners getting out and about to participate in networks and forums to listen to what voluntary and community groups have to say about the communities they work with. We also have examples of commissioners engaging in processes to work through the evidence and re-design services jointly with VCS partners. We would like to learn from this and ask commissioners to take a more active and determined role to see the voluntary and community sector as it is; a professional service provider able to offer high quality standards of expertise, innovation and resources.

For our part, we recognise that VCS infrastructure organisations and larger voluntary sector organisations can potentially do more to provide more clarity about what the offer from the voluntary and community sector is. It is also for the sector to support ways for small and medium-sized voluntary and community organisations with limited capacity beyond the activities and services they provide to contribute to the commissioning cycle.

*We recommend that public sector commissioners and the voluntary and community sector in Newcastle sign up to the principles of good practice outlined in the Cabinet Office report Better Together<sup>1</sup>: these are communication, collaboration, transparency, strong leadership and robust evidence.*

#### **2. Proposed national changes in commissioning structures.**

Changes in commissioning structures and a move towards place based budgets provide an opportunity to review how the voluntary and community sector should be involved in all the stages of commissioning.

We recommend that the National Audit Office's Successful Commissioning Toolkit<sup>2</sup> should be used as a framework and that the Newcastle Partnership should work with the sector to clarify how the sector can be better involved in the five stages of commissioning; needs assessment, service design, sourcing providers, service delivery, monitoring and evaluation.

#### **3. A shared vision between voluntary and community organisations and statutory sector partners to inform commissioning.**

Since the General Election much that has been familiar in recent times, such as partnership working, local area agreements, statutory set plans and strategies, is set

<sup>1</sup> <http://www.navca.org.uk/news/bettertogether.htm>

<sup>2</sup> <http://tinyurl.com/ydd826g>

to change or has already done so. Ultimately this change may be to the good, but at the moment it is naturally the cause of anxiety and uncertainty amongst a number of voluntary and community groups we spoke to and doubtless more besides.

*We recommend that the new shadow Health and Wellbeing Board, on which we hope all partners including GP consortia will be represented, should develop a clear vision, informed by the Joint Strategic Needs Assessment of what should be commissioned across Newcastle. This vision will need to be explicit about priorities and it will also need to be explicit about what is not going to be commissioned.*

#### **4. Focus on innovative, joined-up and cost-effective service redesign**

One of the weaknesses of current commissioning approaches is that they do not take sufficient account of the voluntary and community sector as a generator of new and cost-effective approaches to service delivery.

Voluntary and community organisations are distinct from equivalent public sector services in a number of ways. The sector is independent and free to develop new approaches to service delivery without facing some of the processes that can slow down public sector decision making. Voluntary and community organisations are often located within the communities they work with, which contributes to their understanding of service need and the dynamics of local communities. The sectors independence affords it a level of trust and confidence amongst communities and service users that statutory services can find difficult to match.

To date reviews of services have largely been about a review and re-design of existing service elements and they have not been about developing new ways of doing things. In the current economic climate we believe that this is essential and that the voluntary and community sector needs to be involved in this agenda.

*We recommend that the Newcastle Partnership should develop a forum for service re-design that includes the voluntary and community sector. This forum will need to take account of the priorities identified in the overall vision and for any particular topic or service area it will need to involve service users and their advocates and the whole range of service providers for the topic or area under discussion. The focus should be on developing better integrated and more cost-effective ways of doing things.*

#### **5. Development of local assets.**

Rather than bringing in new providers from outside we believe there should be a greater focus on developing local providers and on local providers working more effectively in partnership. This will require a systematic approach to provider development in response to local needs and priorities.

*We recommend that commissioners in the NHS, in public health and in adult and children's services identify and look at how they can best develop and support local providers in the voluntary and community sector. This may need to explore approaches to the development of lead providers who hold sub-contracts with smaller organisations and the development of voluntary sector provider partnerships.*



## **6. Clarity of language and definitions.**

It is clear from those we spoke to in the sector that the words 'procurement' and 'commissioning' are used synonymously and that this becomes a source for confusion when we all talk about commissioning public services.

The confusion that arises out of the misuse of 'commissioning' and 'procurement' is one reason we believe that voluntary and community organisations are not properly involved throughout the cycle. It is equally clear to us from our review of guidance that procurement is but one option for officers to take within the commissioning cycle. Commissioners however appear see it as their duty to maintain a distance from potential providers a situation which in our view should only apply during a formal tendering process.

*We recommend that the local Compact Advisory Group should develop a set of shared definitions for local public sector agencies and the voluntary and community sector of what commissioning and procurement means in order to bring transparency and clarity to the language we use. These should be based on the National Audit Office Guidelines. We believe this would provide a firmer basis for dialogue between commissioners and voluntary and community practitioners.*

## **7. Flexible and personalised service delivery.**

If services are going to meet the growing demand for more personalisation and choice in packages of care, specifications and contracts will need to be more flexible so that service providers can meet changing needs through a variation in provision.

*We recommend that commissioners develop a more flexible approach to service delivery with an increasing focus on outcomes rather than outputs. This will allow providers to adapt commissioned services in response to changing need*

## **8. Monitoring and evaluation**

Different commissioners and different funders still too frequently have different reporting, monitoring and evaluation requirements. These are also often out of proportion to the size of the contract or grant.

*We recommend that one of the early tasks for the newly constituted Health and Wellbeing Board should be to develop a common monitoring and evaluation framework, possibly using Outcomes Star methodology that is already being used by some commissioners. This framework should be sufficiently flexible, so that it can be adapted to be proportionate to the size of the contract or grant.*

We believe that if commissioners work with us on the recommendations which we have set out above to develop their current practice then using the networks and forums we have in the sector we can lead on a dialogue within the sector to develop our offer and relationship with commissioners.