

Public Services Team  
Office for Civil Society  
Admiralty Arch  
The Mall  
LONDON SW1A 2WH

Phone:  
Fax:  
Email:

Your ref:  
Our ref: MP/OCE/PO/AB/STJ  
Date: 5 January 2011

Dear Sirs

## **RESPONSE TO THE MODERNISING COMMISSIONING GREEN PAPER**

Please find below response on behalf of Lancashire County Council to the questions posed in the Modernising Commissioning Green Paper.

We have pulled together responses from commissioners across the authority and I have agreed this combined response as cabinet member for Young People and chair of the VCFS cabinet member-working group.

If you require any clarification on the points raised in this response please contact: Adrienne Banks, Principal Policy Officer, Corporate Policy Team,

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

It should be noted that commissioning is not just about procurement, which this green paper appears to be suggesting. The steer from government is clearly that CSOs should be providing a greater proportion of public services, however the concept of 'any willing provider' should be the first consideration and it may be that the best provider is the public sector itself or indeed the independent sector. The commissioning process does also involve considering new ways of working and service re-design, it is not simply a matter of sourcing an external provider.

### **What are the implications of payment by results for civil society organisations?**

Small and medium organisations are likely to find a move away from upfront funding a huge challenge, even impossible, and there is a need for civil society organisations to be supported in working in this new way – which will be new and alien to many. There is also a need to ensure that a shared understanding of outcomes exists between commissioners and providers. There is an assumption

County Councillor Mark Perks B.Ed (Hons)  
Cabinet Member for Young People  
PO Box 78, County Hall, Preston, PR1 8XJ



**INVESTORS  
IN PEOPLE**



2006-2009  
Improving Accessibility  
2009-2010  
Positive Engagement of Civil Society  
Raising Economic Prosperity  
Through Partnerships  
Culture and Creative Communities

that civil society organisations have infrastructure to support this working and the financial reserves to cope with a change in payment schedules. Experience shows that at the present time the larger organisations may be able to cope with this change, but smaller organisations are not in a position to respond and cope and do not have the infrastructure in place.

Robust mechanisms need to be in place to ensure market sustainability and prevent the bigger civil society orgs, who will be best placed to work in this way, from monopolising. If this were to result in large monopolies providing public services then there would be little difference to statutory provision, consequently doing nothing for building community capacity

Implications: (in particular for smaller CSO's)

- Negative effect on infrastructure and service delivery
- Creating more opportunities for bigger / well established CSO's and then consequently less opportunities for smaller CSO's especially start ups
- Difficult to plan for succession/ sustainability – reliance on meeting results and being paid fully
- Cash flow will be a problem if full or majority of payment is given on results
- Programmed capacity building would have to be built in but this will be a challenge in the current financial climate.

On the other hand the benefits for commissioners will be the improved performance and outcome monitoring this will bring. However public sector organisations will need to ensure that the capacity exists to effectively monitor this, particularly in light of current back office reductions. If the capacity does not exist then it is likely that payment will continue regardless, making the notion pointless. It is also easier to demonstrate results for some types of work than others and it is not clear who the financial beneficiary would be in multi agency and integrated services. Being able to effectively demonstrate impact/what works needs to be an underpinning principle of any outcome monitoring arrangements. This could result in complex calculations to assess the reward to different contributing agencies. It is a little concerning that this model is being launched on the basis of one example (Peterborough). Has the government considered how this would work, for example in Children's Centres?

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

CSOs could potentially provide any public services, however the risks associated with this method of delivery would have to be tightly managed by local authorities (and both local authorities and CSOs will need to be clear about where any legal responsibility lies). The key risks relate to safeguarding of service users, financial management and accountability. The barriers currently relate to the sector's capability to deliver, and in particular, often due to lack of experience the safeguarding capabilities of CSO's are not satisfactory and require further development. CSO's can offer greater efficiencies, however it should be noted that

they often do so through the use of volunteers and volunteers cannot always offer the same level of reliability as paid employees.

Other potential barriers include:

- Expectations & perceptions of some CSO's
- One badly performing CSO's can damage the reputation of the whole sector giving commissioners negative perceptions particularly in those service areas that have not traditionally looked to this sector as providers and do not therefore have a rounded view.
- Knowledge & awareness of the commissioning opportunities
- Unclear commissioning proposals and processes
- Unwillingness to work collaboratively or through consortia
- CSO's not having experience, knowledge, skills, confidence or infrastructure in place to apply, implement and evaluate the service
- Larger CSO's could take the lion share of the market and small organisations will suffer.

The proposal that a proportion of council budgets should be directed to CSO's is in contradiction to the concept of any willing provider. It also assumes that the sector is equally capable and developed in all areas of the country and that CSO's can offer better value for money, which is not always the case. However, ensuring that all services are contestable, regardless of who is providing them, is supported.

**Should 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?**

So many public services are now delivered by the non-statutory sector (even prisons, schools, hospitals) that really there is nothing from an ideological point of view that could not be delivered by somebody else.

However it is possible that 'whoever shouts loudest' could be handed greatest responsibility for providing services and that smaller organisations will not have as much as a fair chance as they currently do in open tenders.

Thought would need to be given to the scrutiny arrangements to ensure it isn't just the "usual suspect" or those "shouting loudest" who had the most influence. Also robust mechanisms need to be in place to ensure Right To Challenge couldn't be used for political/personal gain.

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

It is possible that the cost of delivering asset based services could increase if an asset is transferred to a CSO. Local Authorities have significant advantages in relation to economies of scale and in-house expertise and technical knowledge when it comes to asset management. This continuing support would have to be built into service contracts to ensure viability. This may not be achievable long term and there are few grants available for this type of cost.

CSOs often have a great deal of community-based assets themselves, particularly the faith sector. Commissioners should look to utilise these where possible.

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

Introducing incentives to work in this way could be helpful. However there are currently few examples of this kind of partnership approach. Many staff in the public sector would not have the first idea how to run a business, so the idea of CSO's linking with emerging mutuals is very attractive but there has to be something in it for all parties.

CSOs and public sector organisations generally need more information on employee-led mutuals and how they will work before they can decide whether they want to form or team up with them.

Public Sector could take a lead in promoting and facilitating opportunities for genuine partnership working and to provide support and mentoring for CSO's. This will be a challenge given the shrinking resources available within the public sector.

It should also be noted that CSOs are not a homogenous group and often have very different priorities and agendas from each other and from the public sector. This means it can be challenging to bring organisations together in a meaningful way.

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

CSO's currently receive core funding and capacity and capability building support from local authorities. This is unlikely to continue at the same level in the current financial climate. CSO's are likely to need this support from elsewhere, potentially through central government or from within their own sector

Government could support local authorities in making the shift to outcome-focussed commissioning which is essential in the current financial climate.

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

Government should take responsibility for ensuring that general information in relation to CSO involvement in public service delivery is widely available and accessible. This could be via a dedicated website with responsibility for development and management outsourced to a national strategic partner.

The crippling bureaucracy surrounding procurement needs to be addressed. Whilst this might be much about EU regulations Govt can presumably do something to lighten the expectations around aspects of public service delivery.

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

Commissioners need to have good communication links with CSO's and understand that they might need extra support in bidding for contracts. This should include local marketing of opportunities, providing a fair and open process to all CSO's

Ensuring that CSO's are routinely involved in the full commissioning cycle will help to develop Local Authorities understanding and potential of the sector and the sectors understanding of what is required to be a provider of public services.

Monitoring arrangements need to be proportionate to the value of the service or activity without compromising quality, value for money and proper accountability for spending public money. Business and succession planning should also be built into the monitoring process and CSO's should be encouraged to use contracts as an opportunity to develop new business and generate income.

Again the same 'proportionality' needs to be applied to the tendering and procurement process ensuring that it is not too onerous and overwhelming and discouraging to civil society organisations. Acknowledgement also needs to be given to legal/constitutional constraints on some civil society orgs in terms of their customer base – e.g. restrictions on age, ethnicity etc of citizens accessing services – therefore subcontracting and consortia arrangements should be readily accessible and supported.

Smaller organisations may have some initial problems with cash flow and payment arrangements need to be flexible to reflect this.

It should also be recognised that CSOs, including the faith sector, already provide a great deal of support to communities without local authority funding, and will continue to do so. Commissioners need to take account of what is already accessible for residents within their community as part of their needs assessment, before commissioning new services.



**In the implementation of the abovementioned measures, what issues should the Government consider in order to ensure that they are fully inclusive of civil society organisations?**

Government need to be mindful that CSO's are not a homogenous group (they vary in size, experience, etc) and a "one size fits all approach" will not be sufficient. The willingness of these organisations to work collaboratively with local authorities also varies, and the 'them and us' mentality is engrained in some organisations so some work has to be done in building relationships particularly given that CSO's will see their increased involvement in delivery as services on the cheap although some will see this as a great opportunity.

Strategic partners and infrastructure groups have a role to play in facilitating full engagement. However some infrastructure organisations have become providers of services in direct competition with those CSO's they are supposed to be supporting and representing. The line between infrastructure support and service providers is no longer clear and this is a problem.

The government could take responsibility for issuing clear guidance, protocols and procedures on a range of important areas e.g. CRB checks; Data protection legislation; FOI requests etc setting out what is expected from both CSOs and the public sector. A 'How to Guide' might be a useful tool for smaller organisations that are potentially more at risk of losing out in this new way of working?

**What issues should the Civil Society Red Tape Taskforce consider in order to reduce the bureaucratic burden of commissioning?**

This depends on what is meant by commissioning. If this question refers primarily to the procurement stage of the process then the red tape taskforce should have a good look at the regulations surrounding this.

The requirement to publish all items of expenditure over £500 will greatly increase the burden of bureaucracy within local authorities due to the increased levels of freedom of information requests this will prompt.

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

This depends to some extent on how well the sector is developed in the local area. If the sector is capable and relationships are good, open and trusting then it can be easier to manage risk. However, as stated previously, the sector is not homogenous, and it is therefore necessary for the commissioner to dedicate sufficient resources to the management of performance, risk and financial management of contracted services.

**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?**

The current TUPE regulations are prohibitive in relation to the transfer of public services. The Govt should review the regulations and change accordingly.

**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?**

Less focus should be placed on price and promote commissioning of services to a specific contract amount, with the assessments focussing on added value (i.e. use of volunteers, partnership working and SROI) and support authorities to commission based on clear achievements and relevant outcomes.

**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?**

The Big Society Bank could be used for capability development or to support VCFS organisations to become private entities – the criteria for the award of funding could specify capability building as a pre-requisite.

The criteria for accessing funds from the bank and the vehicle through which to access funds needs careful consideration. Funds will still be limited so should be allocated carefully to those organisations that can make the biggest difference for local communities. Decisions about allocation of funds should be delegated to local trusts that have sound local knowledge.

Given that the scale of funding available through the Big Society Bank is unknown and will therefore not provide a funding solution for all CSO's, then CSO's should be encouraged to develop new ways of working to become sustainable.

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

There is a need to ensure the sign-up requirements are not too bureaucratic or arduous and that the variety and diversity of CSO's is recognised. The promotion of good practice is an integral part of developing a standard, but any examples need to extend across the full range of CSOs to reflect the diversity of the sector.

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

This assumes that CSO's are a homogenous group that support each other. CSO's often compete against each other and there are tensions that exist. In order

to remove barriers there must be a cultural shift within the sector (supported by reasoned argument from government as to why the cultural change is needed).

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

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

Good commissioning achieved by following the commissioning cycle and ensuring consultation and participation of residents already enables commissioners to do this. However, it should be noted that locally focused consultation will be very subjective and the perceived social, environmental and economic value will differ from one locality to another.

SROI principles are not widely understood or used across CSOs and there is a need to promote the concept more widely and provide simple tools and techniques to make application easier. On a related note, the negative costing tool, developed as part of the previous government's family intervention programme has been removed from the DfE website, despite good feedback from the sector as to its value in assessing the impact and financial value of interventions. Does the government intend to provide an alternative?

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

There is again concern that those who 'shout loudest' could unfairly influence decisions at a local level. It is acknowledged however that all good commissioning should seek and consider the views of all relevant groups. Access to information is critical and e-access/e-tendering should be utilised, wherever possible by both commissioners and CSOs.

The Localism Bill (and in particular the elements around community right to challenge, right to buy and local referendums) needs to be examined alongside any proposals to ensure the impact of both Bills is complementary.

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

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

No response



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

Guidance relating to civil society organisations and their involvement in the JSNA would be welcome. This is always a complicated area, particularly in a county as large and complex as Lancashire.

The key issue for any guidance is to make sure that all related guidance is saying the same thing. In the previous round of JSNA guidance the requirements for the JSNA were laid out and were met. However, guidance in other areas then placed greater duties on the JSNA, which led to some dissatisfaction with the process. For example, the JSNA guidance stated that all JSNAs should include estimates and projections of the numbers of people with learning disabilities. However, the guidance for learning disability services was that the JSNA would provide all the evidence on the health and well-being needs of people with learning disabilities. In meeting the JSNA guidance we did not meet the requirements set out in the LD guidance, which led to much frustration for the commissioners of LD services.

Any further guidance should be comprehensive with clear and singular messages, rather than conflicting sets of guidance being provided to the creators and users of the JSNA.

Further refresh should also include and strengthen Joint Strategic Asset Assessment

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

There is significant value in encouraging CSO's in this area, as there is often a view amongst citizens that the sector is unbiased and impartial. In order to do this there is a need to share the wealth of experience that public sector bodies have in engagement and involvement. CSO's are well placed in motivating citizens across communities to become involved and to feel that their views/input are valued and acted upon.

However this kind of engagement should be a fundamental element of partnership and funding arrangements the public sector already has with CSO's and should not be a dedicated 'paid for' service as this is not sustainable.

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

Working relationships will strengthen naturally if aims and objectives, roles and responsibilities are clearly set out. There is bound to be conflict from time to time and an appropriate conflict resolution process should be in place.

There needs to be a clear channel of communication in place accessible and recognised by all partners.

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

Proposals for the Merlin Standard would need to be considered alongside any training programme.

What would the training focus on – the process of commissioning, or the development of skills and behaviours necessary for effective commissioning? There is scope for any training programme to focus on the issue of **joint** commissioning across public service partners.

**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?**

CSO's are well placed to provide advice and advocacy support to vulnerable citizens. Individuals can be supported by the public sector and CSO's to understand their needs and to navigate the route to service provision.

Conflict would arise however if advice and advocacy service providers were providers of services that individuals were looking to access. Ideally therefore advice and advocacy service providers should be independent and clear scrutiny and safeguarding protocols need to be in place  
CSOs could best contribute to community budgets and integrated services by ensuring that they are not dependent on the public sector for mainstream funding- this would enable them to develop as a market and have the ability to respond to spot commissioning for example.

Yours faithfully



Mark Perks B.Ed (Hons)  
Cabinet Member for Young People and Champion for Young People