



Nacro's response to the Cabinet Office Green Paper:

Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery

January 2011

1. Introduction

Nacro is the UK's largest crime reduction charity, with over 40 years experience of working with offenders and those at risk of crime. We run over 300 service delivery projects in communities across England and Wales and, last year, around 90,000 people benefited from their contact with Nacro. Our services include: prevention and early intervention for young people; education, training and employment for prisoners and offenders in the community; and resettlement services (including accommodation) for those on release from custody. Nacro Community Enterprises is a Registered Social Landlord.

Nacro is pleased to respond to this paper and, as requested, we have only commented on those areas where we have the most expertise.

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

For all of the reasons outlined in this Green Paper, we envisage numerous opportunities which could and should be offered to civil society organisations in order for them to play a greater role in the delivery of public services. This makes sense from the point of view of: cost effectiveness; quality of delivery; innovation; and public confidence.

In our main area of business - crime reduction - we foresee important opportunities in: crime prevention and early intervention; offender management and rehabilitation; and the resettlement of offenders.

This is not a new phenomenon.

Charities like Nacro have a long and successful track record of delivering services aimed at preventing or reducing crime, managing offenders, and resettlement of offenders. Some historical examples include:

- The present day probation service which has its roots in the voluntary sector
- The Victim Support and Neighbourhood Watch movements which have played such a pivotal role in the crime reduction field for more than three decades are prime examples of 'big society' in action
- Most of the developments in the Crime and Disorder Act 1998 were driven by voluntary sector innovations, created by organisations such as Nacro and the Crime Concern Trust.

This is against a backdrop of evidence that, despite Carter's intention¹ to open up the offender services market, voluntary sector involvement in the work of the probation service has actually declined since the creation of NOMS (The National Offender Management Service) in 2001. At that time, at least 7% of all probation delivery was outsourced to the independent sector. This figure is not being achieved today. Overwhelmingly, community based delivery is retained in-house by the public sector, while around 90% of prisons are publicly operated. The net effect is that civil society organisations have had insufficient opportunity to: provide hard evidence of their effectiveness over the long term; exploit economies of scale by delivering large-scale, high-volume contracts; be fully involved in the development and design of offender services; or develop their own research and development capacity, predicated on a secure funding platform.

On a general note, we are concerned about the use of the term 'Civil Society Organisation' because we believe the term is unclear and confusing. At a time when the term 'Third Sector' suffered because it was an umbrella term which covered such a diverse group of organisations, the new terminology broadens the scope still further.

¹ Carter, P: Managing offenders, reducing crime. Home Office 2003

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

We support the concept of payment by results because of its inherent focus on outcomes. Payments which reward actual reductions in crime and reoffending and associated societal outcomes are beneficial for victims, society in general and ex offenders. For Nacro, everything we do is predicated on reducing crime and changing lives. We reduce crime by changing lives and when we reduce crime we change the lives of victims, offenders and all those around them.

Payment by results shifts the focus from commissioning to investment. The Social Impact Bond Pilot in Peterborough is a prime example of a social investment model in operation.

Payment by results also presents real challenges for the sector:

- a. The evidence base of best-practice is small and immature, especially of payment by results being applied to complex situations such as offender management. Even in health care, where payment by results is embedded, this has been mainly confined to acute procedures such as hip replacements. It has not been applied on any scale in areas such as mental health.
- b. Charities pride themselves on being able to work with hard-to-help groups in hard-to-reach communities. It is crucial that payment by results incentivises intermediate outcomes with these groups and does not encourage 'creaming' by providers.
- c. Determining the right outcomes is a crucial aspect of making any of this work. This must be predicated on a mature dialogue between the investor and the prospective provider. Traditionally, EU tendering approaches were reliant upon tight specifications drawn up by the commissioner, usually in isolation. This appears to have changed and increasingly, there is a preference for competitive dialogue, allowing the specification to be developed in conjunction with prospective providers. In any event, a payment-by-results model must be based on precise determination of outcomes, emerging from close dialogue between those commissioning the service and those bidding to provide it.
- d. We note that the most often quoted example of a payment by results model – the Social Impact Bond Pilot, places the financial risks with the investors not the providers. We support this gradual approach as a means of testing the feasibility of the model on a relatively small, local-scale. However, if payment by results were to become a central feature of public sector commissioning, it would inevitably mean placing the risk with the provider. Civil society organisations will not all have sufficient cash reserves to take on the business risks associated with this. Therefore, the ratio of revenue payments, to results payments must be weighted in favour of the former.
- e. Sufficient planning time needs to be allowed in order for different funding models to be tested. We welcome the fact that this is reflected in the Government's Green Paper: Breaking the cycle; effective punishment, rehabilitation and sentencing of offenders.

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

As indicated above, we believe there is scope for civil society organisations to become more involved in the reduction of crime and reoffending. We welcome the steps which have already been taken towards the central procurement of the provision of Unpaid Work (Community Payback). There is an urgent need to raise public confidence and public involvement in the management of offenders. Tangible benefits can be achieved here by opening up the probation market to new providers. The problem of crime reduction should not be confined to one sector. Fresh thinking and new innovation needs to be brought to bear on this. This is best achieved by collaborations and joint ventures between charities, private sector providers and probation trusts.

The main barriers to involvement include:

- a. A heroes and villains mentality which foments misunderstanding between the sectors and gets in the way of joint working. In reality, all three sectors have an important role to play in driving down crime for the benefit of local communities.
- b. A culture where 'make or buy' decisions appear to lead to services being delivered in-house by the public sector. In other areas of business, outsourcing is used in order to: improve quality; share risk; and/or reduce delivery costs. These disciplines have not been applied in the field of offender management with the result that only a small proportion of services are outsourced.
- c. The mistaken perception that civil society organisations are good at providing ancillary, supporting services but are not equipped to manage 'mainstream' services. While the former is undoubtedly true, there is reason to believe that, given the chance, they could have a positive impact on public sector delivery more generally.
- d. Confusion created by the concept of volunteering being seen as synonymous with wider voluntary sector provision. Whereas volunteering plays a crucial role in the delivery of voluntary sector led services, most charities do not rely solely on volunteers in delivering services to some of the most vulnerable people in the community.
- e. The diverse nature of the civil society sector which makes it difficult for Government to engage with in an inclusive but business like manner.

1.4 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?

There could be circumstances where this would make sense. But in our core delivery areas, the Government has made clear its intention to involve civil society organisations in the wider delivery of public services. This being the case, we do not believe it necessary to resort to 'harder edged' mechanisms at this stage.

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

It is too early to say what effect the formation of mutuals may have on the provider landscape in our sector. As a matter of principle we would be willing to enter into alliances and joint ventures with mutual bodies if this had the potential of improving our service offering, enhancing our ability to achieve expected outcomes and raising our capacity to manage the business risks associated with high-volume contracts.

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

We agree that commissioning processes can seem overly bureaucratic. Notwithstanding our earlier point about the use of competitive dialogue, commissioning processes, as currently configured, are not always conducive to developing a two-way exchange between the potential provider and the commissioner. Exhaustive specifications, where these continue to exist, which allow little room for creativity or innovation, do not necessarily lead to contracts which provide the best outcomes. This, coupled with tight timelines around bids, and complex legal documentation around contracts, gets in the way of delivery on the front line. There is a need to continue streamlining tendering processes in favour of more collaborative approaches which reduce red-tape and enable providers more latitude in determining the best way of achieving results.

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

Many of the key issues are highlighted in the Green Paper. From Nacro's point of view, we support moves which enable greater civil society involvement in the design as well as the delivery of services. Opening up the market in this way would help organisations to manage the business risks associated with these market opportunities, invest in research and development and build a robust evidence base of their effectiveness long-term.

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

The task force should consider the following:

- a. A continued move towards the notion of *investment* in public services where those commissioning services and those providing services have a dual and shared responsibility for the social outcomes to be achieved.
- b. Leading on from this, the task force should consider the potential application of a business planning approach, whereby the provider puts forward a business plan as opposed to a proposal prepared against a tight service specification drawn up by the commissioner. This would allow the provider room to demonstrate how the defined outcomes will be met, on the basis of tangible milestones at a given price. Here, the role of the commissioner would shift from assessing the provider's ability to meet a pre determined

specification, to verifying the viability of the approach outlined in the business plan.

- c. This in turn, would shift the commissioner's focus to one of due diligence. Instead of relying on potential providers' to account for their capability to deliver, the commissioner would undertake a systematic and robust process of verification to determine the best partner/s in which to invest, based on the social outcomes which have to be met.

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

The business and reputational risks associated with large-scale public sector outsourcing present significant challenges for civil society organisations. These challenges are not confined to small and medium sized enterprises. Many provider organisations, particularly those which have traditionally relied upon Government grants and/or small, local service delivery contracts, will have to transform themselves by developing robust business risk assessment and management processes. Many such organisations may resist bidding for sizeable contracts on their own because the business risks are too high.

To counteract this, civil society organisations should be encouraged and properly supported in forming joint ventures and alliances with like minded organisations, which have the capacity and the collateral to manage these risks.

In addition, payment by results models should be properly tested to ensure that risks are transferred to providers incrementally, to allow sufficient time for civil society organisations to build risk management capacity.

2.5 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 long-standing issue which represents a significant barrier to civil society organisations in scaling-up their delivery of public sector services. While it is crucial that employees' rights are protected, service delivery contracts must ensure that such liabilities are not passed on to provider organisations without adequate compensation and financial support. There should also be recognition of the fact that charities are having to commit resources to obtaining the right independent legal advice in respect of these issues.

2.6 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?

In our experience bids are won (or lost) on the basis of two factors: (i) quality and (ii) price. At present quality tends to be assessed according to the congruity between the specification and the bid. It does not always follow that quality plus price always equals the best outcome.

It is important that due regard is given to outcomes, ensuring that the right performance targets are identified for the particular cohort the service is addressing. For example, it may be entirely feasible to expect reductions of reoffending of (say) 25 per cent with one cohort of offenders. But very different outcome expectations would need to be applied for different offender cohort by virtue of their age and offending history. If performance targets are properly negotiated and defined, it is possible to assess capability, based on the track record of the delivery partners.

One of our overriding concerns about the move towards payment by results is that this is being promoted at a time of recession. To achieve sustainable outcomes such as reducing reoffending, what is needed is the right combination of interventions, applied in the right way. This does not come cheap and a focus on outcomes may result in price increases at a time when the pressure is on to deliver more for less.

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

Over the last five years, we have seen a growing trend towards collaborative delivery partnerships and bidding consortia. Nevertheless, barriers remain, some of which are contractual. Others are cultural in nature.

Civil society organisations do not have a long history of forming joint ventures. Alliances with the private sector are also relatively new. Joint working between the public and voluntary sector tend to be based on a purchaser/provider split, not alliances predicated on a joint bid to deliver a service. The legal ramifications associated with all this can be daunting and can prevent partnerships getting off the ground. Civil Society organisations will require help and advice in overcoming the legal complexities inherent in joint ventures, to ensure that contractual risks/problems are foreseen and managed in advance. These are disciplines which are new to the sector and should be seen as important areas for development going forward.

Other barriers tend to be borne out of a lack of understanding about the cultural difference between sectors and organisations. A different way of doing things. A clash of ethos and values. These can only be removed within a commissioning climate which places the achievement of social outcomes uppermost in the minds of providers and investors, such that they have to form a shared understanding of what is most important and work together to achieve it.

3.1 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?

We agree that payment by results should help to ensure that services are commissioned in a holistic way, predicated on a shared view of what needs to be delivered in order to achieve the right outcomes. While we agree that commissioners

need to be encouraged to think strategically, it is important that the commissioner is not perceived as the sole arbiter of what needs to be commissioned. Innovative providers have an important role to play here. Under any payments by results system, the key to success is likely to be the degree to which investors and providers are able to formulate (and agree) the right outcomes and then commission/deliver against these.

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

In our experience, this is where civil society organisations fulfill a unique role in public service delivery. They operate on the ground, where people live, within the home and on the door-step. This applies to large national charities and to small local voluntary and community groups alike. These bodies are uniquely placed to inform people about local decisions that are likely affect them in ways they can understand. They are able to canvass the views of even the hardest to reach sections of the community. Furthermore they are able to engage people so that they become a key part of the solution. This is fundamental to our belief that civil society organisations should be given greater opportunities to take in both the design and the delivery of public services, thereby increasing public confidence and public involvement.

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

Advances have been made in recent years to improve working relationships between the sectors, with improved information sharing, joint protocols and co-delivery models. For example, in the field of youth crime prevention, this has led to young people being steered away from gangs in London. Here, a 'ring of confidence' is formed around the young person by the police, schools, the youth offending team and a multitude of local voluntary and community groups all work together to move the young person away from the gang and out of trouble.

This has been demonstrated to work at the relatively small, local level, where collaboration between individuals is an important driver to success. But as the agenda moves towards large-scale, high-volume delivery, alliances have to be envisaged more commercially. This will take partnership working to a new level, the like of which has never been experienced before. This will require a paradigm shift away from a purchaser/provider culture to one where civil society and public sector organisations see the merits of co-delivery and are enabled to overcome the legal and constitutional shackles which stand in the way of joint ventures.