

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

**work**

**well**

**together**

## Evidence from Swanswell

### January 2011

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[www.swanswell.org](http://www.swanswell.org)

**1. About Swanswell**

- 1.1 Swanswell is a national charity that helps people overcome drug, alcohol and other problem behaviour. Our core competence, developed through 41 years' experience, is behaviour change, particularly addictive behaviour.
- 1.2 Swanswell's responses to this consultation are based largely on our organisational experience, but we have also included responses based on experience beyond our industry.
- 1.3 We would be happy to expand on the responses that we have provided, add further data by way of evidence to support our ideas and become involved in the development, piloting and implementing of new commissioning processes arising from this consultation. For more information, please contact:

Debbie Bannigan, Chief Executive

**2. New opportunities**

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

- 2.1.1 Swanswell welcome the introduction of payment by results as we believe this gives us the chance to demonstrate how effectively, efficiently and cost-effectively we achieve our results, whilst maintaining high standards of quality. Swanswell consistently achieves excellent results against commissioned targets – our retention in effective treatment rate is 90%, which is above the target of 87% set by our commissioners.
- 2.1.2 However, we are aware that there is very little margin on our major contracts with the statutory sector and that there is very little price elasticity in the marketplace. Therefore, introducing a further risk to the contracts may make them un-biddable unless the risk is very clearly boundaried and the return for achievement is worthwhile.
- 2.1.3 Payment by results creates and transfers financial risk of non-achievement to provider organisations. So, as with any form of risk, it needs to be priced and managed. At a level of principle, charities such as Swanswell can (and should) take managed risk, but our Trustees, as stewards of charitable resources, have to ensure that the risk is reasonable. The test of reason will vary from charity to charity and, for some, payment by results may remove them from the marketplace, for example if they have insufficient working capital to cope with deferred payment routines and/or insufficient reserves to underwrite a financial loss arising from failure to meet performance targets. This is particularly pertinent for small or new organisations where capitalisation may be an issue.
- 2.1.4 One potential market response would be insurance against losses. We are not aware of any financial instruments in development to provide insurance against loss, but it would be an interesting test of the price of the risk to find out whether third parties would be interested in underwriting the risk and at what price.

2.1.5 However, as with any initiative, the “devil is in the detail”, so probably the only way of working out the implications is to pilot payment by results in a managed environment with robust charities like Swanswell and creative commissioners. We would welcome the opportunity to participate in the design and implementation of payment by results contracts as we believe that our extensive experience of contract and performance management would enable us to create viable models.

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

2.2.1 All areas should be opened up to civil society providers. This doesn't necessarily mean that we need to create more, new or different civil society providers – there are plenty already in the marketplace competing for scarce and reducing resources – but the market should be opened up to more participation by those that already exist.

2.2.2 In Swanswell's experience, the main barrier to involvement is an embedded statutory sector mindset or culture that demands complex, costly and bureaucratic control and excludes the possibility that non statutory organisations might know or do better. Whilst we accept the requirement for political and democratic accountability for effective expenditure of public resources, in our experience this often translates into a desire to micro-manage providers which creates an unnecessary and inappropriate burden of cost within the statutory sector, civil society organisations and the economy as a whole.

2.2.3 Current commissioning processes are often based on the concept of “winner takes all”. This automatically excludes from service delivery those organisations that are not awarded the contract even though there may be very little to choose between the competing providers in terms of price and quality.

2.2.4 To be involved in the delivery of public service contracts, civil service organisations have to be able to compete for large, multi-function contracts or be prepared and able to enter into consortia arrangements with other agencies. The former excludes smaller or single-service providers and acts as a barrier to new organisations joining the market, and the latter is complex, expensive and – since the contracts are usually very low margin – not worth the pre-contract investment required to make them work.

2.2.5 A significant barrier to involvement is the commissioning processes which are very bureaucratic and repetitive. This means that we have to invest significant resources to allow us to deliver multiple pre-qualification questionnaire (PQQ) or tender documents, which are often broadly similar but not similar enough to avoid the need for additional time commitment for their completion. We estimate that to complete a full procurement process, including PQQ and tender stages, the cost to Swanswell in time and resources is an estimated £10,300 per bidding opportunity. The margin on our potential contracts is small, and the competitive environment often means that the odds of winning are too small to make such an up-front investment worthwhile. It could be argued that investing to win contracts where the probability of win creates a return below the cost of bidding is inappropriate use of charitable resources. Because of these issues, we have had to become more

selective about what opportunities to pursue. We highlighted this issue to Oliver Letwin MP on a recent visit to Swanswell. Our briefing note, which includes outline costings of the bidding process and a financial risk assessment is attached as Appendix A. We are able to provide further, detailed analysis if this would be helpful to you.

2.2.6 In our experience, services are designed for the public sector by the public sector. When considering an opportunity to bid for a contract in Milton Keynes, we found that employing a Medical Director and a Local Medical Service Director were essential criteria for progressing through the PQQ stage. This acts as a barrier to more civil society providers being involved as it skews responses and contract awards in favour of public sector providers.

2.2.7 TUPE situations are complex and can be a barrier because of the financial risk. We've identified that often TUPE costs are disproportionate to the value of the contract. For example, when bidding for a contract in Sandwell recently, we found that the TUPE costs totalled over £1.4 million, compared to the total contract value of £1.5 million. The complex issue of TUPE needs to be discussed fully and appropriate advice sought. When we approached the Advisory, Conciliation and Arbitration Service (ACAS) recently for advice on TUPE matters they struggled to offer sound advice and recommended that we seek legal advice. This needs to be addressed so that TUPE is manageable.

**2.3 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?**

2.3.1 Yes, the right to challenge should be extended to all local state-run services and we would argue that this should also be extended to national, state-run services too.

2.3.2 One of the benefits civil society organisations can bring is our longevity of service delivery and reputation. Swanswell has a 41 year track record delivering behaviour change interventions and services that enable people to change and be happy. We have considerable experience and expertise running successful businesses which combine quality service delivery with cost effectiveness. This evidences that civil society organisations often have a wealth of experience and knowledge that enables them to identify where services could be improved and develop innovative solutions to identified needs.

2.3.3 Civil society organisations also bring the benefit of leveraging additional resources into service delivery. We have access to funding through money markets, we can raise funds from donors and beneficiaries and we can encourage people to offer their skills and time through volunteering.

2.3.4 We are also able to extend the scope of what we deliver both functionally and geographically, within our charitable objects or purposes, and/or join up with other organisations – civil society and otherwise – to deliver services in new and innovative ways. An example of this sort of innovation is Swanswell's partnership with Netmums, a social networking site for parents where we provide specialist drug and alcohol advice in their online coffee house. Providing support through this medium gives us a way of reaching people who would not usually access

treatment services and exploits new media in ways that the statutory sector hasn't envisaged.

**2.4 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?**

2.4.1 We are not aware of any specific assets whose viability would be impacted in this way. Asset viability is dependent upon flexibility of use and the subsequent asset value that derives from any covenants or constraints. Provided that assets are valued appropriately at the time of transfer, the risk of loss of income stream can be managed by the civil society provider. However, this may result in asset prices that do not resemble open market values.

2.4.2 There is considerable experience of transferring fixed assets from statutory sector to civil society organisations through social housing stock transfers. These have demonstrated that asset transfer is feasible provided that the asset values take into account certainty of future income and covenants which restrict future use. Clearly, the more uncertain the income stream and the more restrictions that are placed on future use, the lower the asset value. In some instances, the value may be negative and the assets may have to transfer with a dowry, as has been the case with some transfers of doctors' accommodation from hospitals to housing associations.

2.4.3 The main barriers which prevent civil society organisations from taking over asset based services are, therefore:

- mismatches between covenants which encumber the assets and certainty of future income
- lack of access to capital finance, which arises either because the organisation isn't bankable or because the balance of risk in the deal is unattractive to lenders
- risk to reputation arising from future withdrawal of service delivery – for example if the civil society organisation needed to cease to deliver a service from a particular venue (such as education from a particular school) in the face of opposition from the local community

2.4.4 If civil society organisations take on assets (e.g. buildings) that are required to deliver a particular contract and that contract ceases, the civil society organisation would need to be able to sell the asset. This should be confirmed and agreed at the start of any service contract or with any public tenancy through agreed contracts, in the way it would happen with any other business. If this does not happen then the risk posed may be too great and would be a significant barrier to taking on asset based services.

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

2.5.1 We believe that it is essential that new mutuals are set up within existing civil society organisations wherever possible, to avoid vulnerability from under-

capitalisation, inefficiency arising from duplication of functions and “burn out” following initial enthusiasm from key individuals who may not have the skills or infrastructure available to create a sustainable organisation.

- 2.5.2 This encouragement can best be given through direction, within the legislation that will allow establishment of new mutuals for this purpose or, failing this, through clear best practice guidance that places an imperative upon people intending to establish new mutuals to do so within existing civil society organisations.
- 2.5.3 Encouragement may also be offered by clarifying the pitfalls to setting up independently, in particular the risk carried by trustees and directors in the event of business failure. In any case, those aspiring to set up new mutuals may find themselves unable to do so because they lack the necessary working capital or access to finance to make the organisation viable.
- 2.5.4 Direction or guidance would need to be backed up with best practice models and toolkits to make the process of partnership between new mutuals and existing organisations as well-defined and simple as possible. In particular, it is important that constitutional issues are set out clearly and solutions offered including, for example, template legal documentation.
- 2.5.5 Pathfinder partnerships should also be established to provide visible and replicable experience of best practice. Supporting a small number of well-established and creative civil society organisations to develop best practice models would encourage others to join in.
- 2.5.6 Civil society organisations like Swanswell have a robust infrastructure in place which allows us to deliver the best services with the right people for the right price. Mutuals could be set up *within* existing organisations like Swanswell as the main risk to the success of mutuals is the lack of infrastructure to deliver the best service. Working together, with clear partnership arrangements, would allow new services to benefit from the strength of both parties. This could be initiated with some exploratory work to gather information about which civil society organisations are in a position to work in partnerships with employee-led mutuals.
- 2.5.7 Swanswell would be delighted to create and pilot workable models in which new mutuals could thrive whilst benefiting from the sustainability of our existing constitution and structure.

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

- 2.6.1 Swanswell advocates a move from the current “winner takes all” commissioning process and the adoption of a model which allows any willing provider to deliver services. The briefing paper in Appendix A, which offers a critique of the current commissioning process, also details an alternative model which, we believe, would overcome many of the barriers that arise from current practice. We are able to expand upon this if required.



2.6.2 This approach requires a change in the commissioning mindset from one which endeavours to exclude “unsuccessful” organisations from the marketplace to one which encourages as much participation as possible, embracing diversity of delivery and rewarding performance.

2.6.3 The components of this market would be:

- commissioners setting out the required impacts and outcomes
- regulatory bodies setting out minimum quality standards for organisations to deliver services
- customers being offered choice of service provider from those that meet regulatory standards and have agreed to deliver the impacts and outcomes required by the commissioners
- service providers delivering measurable outcomes and being paid for the results they deliver

2.6.4 This removes the bureaucratic cost of commissioning/procurement, opens up the market to competition and customer choice and allows providers to experiment with new ways of delivering services that are attractive to customers and deliver the required results.

2.6.5 We believe that removing the commissioning approach and moving towards payment by results will encourage innovation in service delivery and ensure diversity of provision. We have found that the whole commissioning process has worked against innovative civil society organisations like Swanswell offering more of our services across the country because the process is put together within the public sector, is repetitive, resource intensive and works against creative approaches which deliver better services. We would welcome open market competition in which we offer our services to customers alongside our competitors, placing choice with the end user of our services. We also welcome payment by results as an integrated part of this model – it is up to us to ensure that we deliver what has been agreed and to make sure we deliver it as cost effectively as possible. We have developed lean structures, robust management systems and a solid infrastructure to support us to do this well. And we would be delighted to design, develop and pilot sustainable payment by results models alongside an “any willing provider” service delivery model.

### **3. More accessible**

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

3.1.1 The current commissioning process is designed to exclude participation. It does this by restricting service delivery to those organisations that are awarded contracts. For the reasons outlined above (see question 2.2) this favours continued provision by the statutory sector and excludes smaller and different organisations from involvement.

3.1.2 As set out above (see question 2.6) Swanswell believes that commissioning should move away from the process of the specification and letting of contracts, to one of

market-making which encourages participation by all willing providers, subject to quality assurance and payment by results.

- 3.1.3 As outlined in question 2.2 above, the cost of tendering is considerable and the cost in comparison to the return is disproportionate. For every contract we pursue through the procurement process, we estimate it costs us approximately £10,300 per bid. When we consider that the annual margin for each bid is typically 10%, this equates to a margin of £22,000 on a contract value of £220,000. This, of course, is the maximum contribution available, not pure profit.
- 3.1.4 The competitive procurement process is non-inclusive, with the bidders who were unsuccessful at tender excluded from delivering services. Recent experience of feedback we have received from commissioners regarding our bid has revealed that scoring was very close with the winning bidder being decided by fractions of a mark. For example, feedback we received from commissioners in Sandwell showed that Swanswell scored 0.29% less than the winning bidder on the clinical quality criteria. The financial assessment was also incredibly close and led to the contract being awarded based on a difference in price between Swanswell and the winning bidder of just £3000. With so little difference in the scoring, this shows that good quality providers such as Swanswell are being excluded from delivering services by a non-inclusive commissioning process.
- 3.1.5 Another consideration is the disproportionate TUPE costs which often prevent contracts from being financially viable (see question 2.2.7 for more evidence). It is our experience that redundancy costs sometimes cannot be included in the contract value. For example, when tendering for a contract in Rotherham, we identified redundancy costs of £14,000 which the commissioners specified could not be included within the contract value. When we consider that the annual contract value was £250,000, this left us with redundancy costs totalling 6% of the overall contract value which we would need to incur. Forcing civil society organisations to bear these costs themselves excludes organisations who are not in a financial position to do this.
- 3.1.6 Civil society organisations can also be excluded from the process by the tight timescales and bureaucratic processes attached to tendering. Due to the strict transparency process, bidders can only ask certain questions, in a certain format and within a certain timeframe. Whilst we appreciate that this is in the interests of ensuring a fair process, it is also very restrictive and often leads to information that is vital to costing and designing a service not being released or being released too late.
- 3.1.7 Commissioners should also take into account the capacity for civil society organisations to devise creative and different ways of delivering services. In our experience, commissioners are not good at looking at what is emerging as good practice through new innovations happening elsewhere and tend to specify contracts based on existing service provision in their locality. To increase civil society organisations' involvement in service delivery, commissioners need to learn how to find innovative solutions and allow space and resources for them to be trialled and replicated in their own areas. For example, we recognised that a number of female service users were experiencing low self-esteem, which was impacting on their drug misuse. So we developed a workshop to deliver hair,



beauty and confidence building interventions, which we trialled with five women. The evaluation of the workshop and follow up session with the women highlighted increased motivation through self belief that life change goals were achievable. It resulted in significant, sustained positive action by all 5 participants, e.g.:

- beginning a methadone detox after being on a maintenance script for 12 years
- enrolling on a course to get back into the workplace
- becoming drug free because she believed it was possible

*“I’ve learnt that it’s not hard to actually get up and try something new”.* – Mandy, Swanswell service user

- 3.1.8 This programme is unlikely to be commissioned by a significant number of commissioners because they are simply not aware that it has happened and – if they were – would not have the capacity within their commissioning processes to include it in their local package of service delivery.
- 3.1.9 However, as a civil society organisation, Swanswell has access to independent resources and can develop this and other programmes and find ways of delivering them beyond the commissioning process. Sadly, this means that our work is not as “joined up” with others as we would like.

**3.2 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?**

- 3.2.1 Models and practices are often designed at a distance from service delivery and, in particular, exclude civil society organisations from the design process. It is Swanswell’s view that the measures considered in this green paper, and any emerging from this consultation, should be taken forward in the hands of civil society organisations, thus modelling the proposed inclusion from the beginning. Including civil society organisations with a long and robust track record of service delivery as leaders in this process would send out very strong signals that there is an expectation that what is being designed will result in services being delivered by civil society organisations.
- 3.2.2 This may not, however, be enough to “nudge” existing commissioners from their ingrained behaviour of replicating service delivery through the statutory sector. It may, therefore, be necessary to express in legislation and/or regulation and/or good practice guidelines the intention that statutory sector should be the service deliverer of last resort only and that letting a contract to a statutory sector provider is regarded as a failure of commissioning to create an appropriate civil society marketplace.
- 3.2.3 In addition, it may be a helpful “nudge” to include within the commissioners’ terms of reference the same payment by results models that are proposed for civil society organisations, linking their payments – and salaries – to their ability to enable services to be delivered by civil society organisations.
- 3.2.4 Organisations should be benchmarked against a set of quality frameworks which assess that they are competent to deliver high quality services. If they are able to

deliver services at or beyond the necessary quality, they should be invited to offer services in their locality and be paid a pre-agreed sum according to the results they achieve. It then becomes the *customer's* choice which service(s) they will use.

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

- 3.3.1 Our experience in Sandwell (see 3.1.4), is similar to what we also experienced in Rochdale. The tender scoring was extremely close with very little to separate Swanswell from the winning bidder. The outcome was that we missed out on being awarded the contract by half a point, and the feedback we received from the commissioners was that they felt they couldn't award the contract to an organisation that was 'unknown' in Rochdale. This is something we've experienced in the North of England several times, whilst our tender and subsequent presentation has scored highly, the lack of existing relationships has ultimately counted against us.
- 3.3.2 We believe this is the result of a rigid process that did not allow time for the commissioners to visit Swanswell to see how our services run in practice. Ian Houghton of the NTA who was on the interview panel in Rochdale has subsequently visited our service and was very impressed with what we deliver, so had their process allowed for this visit it may have made a difference to the outcome.
- 3.3.3 We have also experienced a great deal of duplication in the questions asked in tender documentation. It is time consuming and not cost-effective to be required to answer the same questions but phrased in a slightly different way. And this happens within tenders (i.e. the same question asked several times, in slightly different ways, within the tender documentation for a single contract) as well as between tenders, where commissioners ask similar but slightly different questions to those asked in other localities.
- 3.3.4 "Red Tape" also results in commissioners applying different criteria at pre-qualification stage and, generally, not being willing or able to publish the criteria ahead of PQQ. So we have to submit to pre-qualification for every individual contract and supply similar but subtly different information for each commissioner. We know that Swanswell is a robust organisation, so we expect to be invited to tender. However, there have been two occasions on which we have been excluded from tender processes at PQQ stage which, when challenged, have shown that the commissioners either didn't understand the information they asked for or assessed it incorrectly. As well as creating unnecessary duplication of work on the part of bidders, this must also give rise to additional and unnecessary work by commissioners.
- 3.3.5 Another area of bureaucracy is the "winner takes all" mentality that exists in commissioning. There is often one large contract put out to tender and any provider who chooses not to bid or is unsuccessful at tender is excluded from providing services in that locality, and the winning bidder becomes the sole provider. This means that service users often miss out on the excellent services that organisations are able to offer them, simply because they scored marginally fewer points at tender than another provider.

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

- 3.4.1 Swanswell takes a measured approach to identifying, assessing and managing risk. This has led us to choose not to compete for certain contracts, for example where TUPE costs have made the contract not financially viable, where the resources and time required to complete a tender within the timescale would impact on other business activities etc.
- 3.4.2 We take an innovative approach to service design and have on occasions put forward two alternative models to offer new ways of meeting the commissioners' needs. The commissioning process doesn't encourage innovative proposals because of the lack of time given to complete the bid and other restrictions such as questions that favour the current provider.
- 3.4.3 One option is to pay providers to tender – this would open up the market to more civil society organisations who could then demonstrate their innovative approaches and cost effective services in more places. Paying civil society organisations to bid would also make commissioners more aware of the full cost of the commissioning process and encourage them to take into account the cost of bidding when deciding how to put their services out to the market. As identified in our briefing note at Appendix A, we estimate that the total cost of bidding by provider organisations usually exceeds the margin to be made on the contract as a whole, so the bidding process lacks commercial common sense. When the cost of commissioning is taken into account alongside the absence of innovation and/or price elasticity, we believe that there is a net loss to the economy from the process, which has to be contrary to the over-arching intention,
- 3.4.4 The length of contracts should be considered – if contracts run for short periods of time this will impact on the investment of time and resources that civil society organisations will make to win these contracts knowing that this will have to be repeated in the short term. Investment in the services, for example to provide improved technology or training, will also be limited because of the short termist approach to contracting.

### **3.5 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?**

- 3.5.1 Some of the key issues include:
- significant pension contributions that are unmanageable for civil society organisations
  - ACAS are unable to provide sound advice on TUPE and have suggested seeking legal advice – this demonstrates the complexity of TUPE
  - the potential cost of TUPE transfer being disproportionate to the total value of the contract (see 2.2.7)
  - the complexity and risk posed by TUPE situations immediately removes some civil society organisations from the running. The government needs to consider

clarifying and simplifying the legislation, or providing clear direction to tribunals, around TUPE

3.5.2 The problem can best be solved by offering comprehensive indemnities against the risks associated with TUPE crystallising. That way, bidders would not have to price into the contract the cost of the risk (which usually exceeds the proposed contract value) but would have reassurance that, in the event of challenge, the civil society organisation would not be exposed to considerable financial cost. It may be possible for indemnity to be provided through a financial instrument or insurance policy. The willingness of the insurance marketplace to underwrite an instrument of this type would provide a good barometer of the perceived risk associated with TUPE.

**3.6 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?**

3.6.1 In Swanswell's experience, there is very little price elasticity in the contracts for which we compete. Price has already been brought down to extremely low margins, in relation to the specifications offered by commissioners so there is very little room to compete on price.

3.6.2 In our experience, cost reductions can best be obtained by:

- reducing the inherent cost of commissioning and tendering, and
- enabling civil society organisations to invest in efficiency improvements without detriment to the financial return on their contracts

3.6.3 Our experience shows us that commissioners dissuade civil society organisations from investing in service improvements, even if such an investment will result in the service becoming more efficient. Our Warwickshire supporting people commissioners have requested that money be paid back to them because we had invested in order to reduce costs. The effect of this is to dissuade civil society organisations from investing in technology etc in order to become more competitive in future.

3.6.4 The model which we have proposed (see question 2.6) allows the commissioners to focus on quality and outcomes. It places the imperative to deliver cost-effective services into the hands of the customer who has greater choice of service delivery and can compare the relative price and benefit of each provider. Market theory tells us that this model will result in optimal pricing because customers will choose the service which best meets their needs at the best available price. If the concept of market pricing is a step too far, commissioners can set a reasonable price, which is effectively what they do by setting a budget for services when they tender which is tightly aligned with the cost of delivery, and make payment based on achievement of results.

3.6.5 However, we would also encourage commissioners to set a price that allows providers to make a reasonable margin and to enhance their margin through service improvement. Accepting that civil society providers need to make a reasonable margin from the work that they deliver, in the same way that

commercial organisations do, is essential to civil society organisations' participation in the marketplace.

- 3.6.6 The tender process should be opened up to allow civil society organisations like Swanswell to clearly show how they have the ability to deliver well. Payment by results would be one way of achieving this. We know that the current tendering system and scoring method based on specific questions works against creativity and innovation and succeeds often only in maintaining a status quo, so Swanswell would be delighted to design and pilot a process that opens up the market and incorporates payment by results.

**3.7 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?**

- 3.7.1 Swanswell welcomes the creation of the Big Society Bank. Its success will depend upon the ability of civil society organisations to access funds at a good price whilst managing the risk of the investment by the bank, which is pretty standard banking practice.
- 3.7.2 In addition to the intention to place orphan funds in the Big Society Bank, it's worth noticing that many existing civil society organisations have considerable funds on deposit. In particular, many endowed, grant-making charities rely on income from investment of their endowments in order to fund their activity, others have considerable funds in hand in order to meet charity commission risk management guidelines and others hold fund balances because of the cyclical nature of their activities.
- 3.7.3 All of these organisations are required to obtain the best possible return on investment within their own ethical and risk management policies. So doesn't it make sense for civil society organisations to invest in each other, rather than place their investments elsewhere then require development of new funds that require statutory sector backing?
- 3.7.4 Provided that instruments can be developed that provide an attractive level of return at a managed level of risk, there is no reason why the Big Society Bank shouldn't be effectively capitalised through investment by existing civil society organisations.
- 3.7.5 Swanswell recommends that the Big Society Bank seeks to develop attractive and sustainable instruments and investments which mobilise these assets. This would enable civil society organisations to fulfil their objectives not only through their work but also through the management of their capital.

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



- 3.8.1 The Merlin Standards assume that large contract procurement is the way forward. As mentioned above (see 3.1.3) Swanswell's experience is that there is insufficient margin in public sector service delivery contracts to encourage many civil society providers to participate. The Merlin Standards don't reduce significantly the effort required to participate, and the insertion of prime contractors into the supply chain requires the small margin to be stretched even further. It also adds to the bureaucracy inherent to public sector procurement by requiring statutory sector commissioners to assume a function of assessing prime contractors against best practice guidelines, so it increases the inefficiency of the model rather than improving accessibility.
- 3.8.2 Swanswell's proposed model (see question 2.6) removes the need for the Merlin Standards because it enables civil society providers to participate in the market on their own merit and places the responsibility for making the market attractive and diverse with the commissioners. Market theory, and observed outcomes from other sectors (such as the construction industry), show that consortia and prime/sub contractor models develop naturally within such a market where there are specific and obvious benefits to the participants in these arrangements. The Merlin Standards and associated bureaucracy would therefore be redundant.
- 3.8.3 However, if the intention is to stick with existing commissioning processes that are moving towards large, single, multi-function contracts, supply chain management standard will be welcomed. In the past we have experienced problems when approached by large organisations who have been tasked with delivering a contract through sub-contracting. For example, in our experience, communication has been poor, timescales short and their capacity to interpret commissioners' requirements and include sub-contractor data in their responses has been woefully inadequate.

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

- 3.9.1 A significant barrier to formation of consortia are that they are costly and cumbersome to create and manage. As mentioned previously (see 3.1.3) the cost of tendering is disproportionate to the margin to be made on a public service contract, so there is little incentive to investing in the creation of a consortium in anticipation of success at tender as this only adds to the cost of bidding. In addition – since the consortium isn't likely to be significantly more attractive as a provider than other bidders and may, because of its lack of track record as a collective, be less attractive – forming a consortium is unlikely to add significantly to the likelihood of winning.
- 3.9.2 Fundamentally, the circumstances in which consortia are suggested don't usually answer the "what's in it for me?" question that has to underpin successful partnerships. Consortia of diverse organisations to build capacity that otherwise doesn't exist make sense; consortia of similar organisations all of which do more or less the same thing and want the same piece of pie don't make sense because there is too much competition and too little incentive to co-operate, yet these are the circumstances in which consortia are expected to flourish.
- 3.9.3 In Swanswell's experience, commissioners have poor understanding of consortia and tend to distrust them. Feedback we received from commissioners in Sandwell



when notified of an unsuccessful outcome was that the consortium presented some concerns regarding performance management of the contract. They failed to appreciate that the proposed consortia – delivered through a prime and sub-contractor model - provided enhanced potential for performance management by providing assurances from Swanswell as prime contractor backed up by identical assurances from our sub-contractors.

- 3.9.4 The barriers to forming and operating in consortia can be removed by answering the “what’s in it for me?” question. If the civil society organisations are involved in designing a model for delivery that joins up the diversity of each rather than seeks to homogenise them towards a pre-specified contract, and they can foresee an ability to deliver better quality services at a better margin by doing so, then consortia will emerge.
- 3.9.5 Swanswell’s proposed model (see question 2.6), which allows any willing provider to offer services into the marketplace, removes the hyper-competitiveness from bidding for public services and encourages more creative approaches to service delivery to improve efficiency and customer appeal. Market theory and experience shows that alliances will form in this type of environment where there is a clear business benefit from doing so.

#### **4. Value**

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

- 4.1.1 The current commissioning process is very bureaucratic and risk averse. In Swanswell’s opinion, it is unlikely that the current commissioning process will take account of full social, environmental and economic value unless it can be quantified for comparative purposes because subjective decisions are likely to be subject to challenge.
- 4.1.2 It is therefore probable that the inclusion of full social environmental and economic value will encourage commissioners to re-commission existing service providers, especially local statutory sector providers. This is because it will be possible to quantify the economic impact on the locality of commissioning from a provider whose head office is outside the area, which would give rise to loss of employment opportunities.
- 4.1.3 Commissioners will therefore require clear and supportable models through which full social, economic and environmental value should be assessed. These are likely to be complex and will therefore add to the complexity and cost of bidding and, in turn, discourage civil society organisations from participating.
- 4.1.4 However, Swanswell’s proposed approach to public service commissioning (see question 2.6), which allows any willing provider who can deliver quality assured services to do so and be paid for the results they deliver, answers many of the issues behind the demand for consideration of full social, environmental and economic value. This is because it provides for a diverse range of providers to participate in the market and supports the social value that small, single service providers offer to their communities without adding costly bureaucratic burdens to the commissioning and bidding process.

- 4.1.5 Payment by results would kick start this. Swanswell has set up a system to ensure that we get feedback from our service users on every aspect of the services we deliver to them and we involve them in the development of our services. We know what works best and what doesn't from speaking to the people who use our services. Having a quality assessment framework within the commissioning process would allow civil society organisations like Swanswell to demonstrate what they achieve and how, so that commissioning decisions can be made with the appropriate information to hand.
- 4.1.6 Swanswell would be delighted to design, develop and pilot models which evaluate full social, environmental and economic value within a commissioning process, especially if this incorporates commissioning processes which open the market up to participation by any willing provider.

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

- 4.2.1 Swanswell has systems in place to speak with, work with and involve our service users in making Swanswell the best at what we do. Our staff teams are fully engaged in continually looking at ways to improve on what we do: this needs to be built into what all organisations are required to do. If we are to provide any services then we need to understand what the people want from those services so that the right services are contracted to deliver those services. This is an important issue for the new Bill.

### **5. Citizen and community involvement**

#### **5.1 What role and contributions could civil society organisations place, through Local HealthWatch, in informing the local consumer voice about commissioning?**

- 5.1.1 Having defined routes for gathering feedback and a process for service users to be heard. We do this as a matter of course so there is no need to invent something when there are processes in place to get the consumer voice heard through organisations like Swanswell.
- 5.1.2 Talking to particular groups within communities, e.g. victims of crime as well as drug-misusing offenders. Civil society organisations have access to these communities and can make it happen speedily.

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

- 5.2.1 It should ensure that communications are clear and transparent. The guidance should start from the premise that civil society organisations are wanted and are expected to deliver public sector contracts and not referred to as "poor relations" or as an "afterthought"; that civil society organisations have access to the information from their customers and should be an integral part of information gathering from the public.

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

- 5.3.1 Having defined routes for hearing what people have to say. Why set up a new process when organisations like Swanswell already have a system in place to do this and do it well? In drug treatment a few years ago, service users had no voice but treatment services have worked hard and now have a huge amount of skill and experience in talking with, listening to and involving service users in designing the services that they want to meet their needs. This is transferable knowledge and experience.
- 5.3.2 Swanswell's proposed commissioning model, which provides customers with choice from quality assured service providers allows customers to be placed at the heart of decision making about service design because they would have economic power to determine which services they want and the ability to "vote with their feet" towards services that meet their needs. Civil society organisations would therefore be able to draw upon the finely tuned capacity to understand customer's needs and adapt their services accordingly rather than being constrained to deliver only to the specification provided by the commissioner.
- 5.3.3 We would suggest a need for a break with silo thinking. This has determined that commissioning and service provision uses a model where a citizen is either a user of various services. As a civil society organisation we can work alongside people within communities to help unlock their potential – not just to live in the community but to play an active part in its day to day workings. This would include a shared understanding of the problems facing the community, taking responsibility and sharing solutions in their community.
- 5.3.4 For example, one of the most hard to reach, disadvantaged and marginalised groups in the community is those with drug and alcohol problems. In every community there are those who access treatment for their drug and alcohol problems and those who don't. The current commissioning model offers provision for those who want treatment, usually away from their own communities with a veil of secrecy distancing the user from their own community. Our interpretation of the recovery model from drug and alcohol problems would offer to support the person in recovery but also seek to engage and recover the community at the same time.
- 5.3.5 Personal budgets and direct payments can support users. They can put together their own plan and purchase the support they need from a range of sources. To reward and fund recovery steps, direct payments could take the form of recovery capital rewards rather than cash and work within a contingency management approach. Travel passes, resources for training and employment could be offered after accruing recovery points for negative screenings, for example.
- 5.3.6 Civil society organisations like Swanswell could then assist in the identification of those communities known to have high levels of drug dealing or social deprivation and proactively assist in the recovery of the community. We can start the conversation in those communities about recovery, drug and alcohol use and its impact on the wider community and begin to facilitate change using volunteers

from within the community. This could then lead on to the joining up of communities within existing communities – e.g. families in need, recovery communities, carers and volunteers.

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

- 5.4.1 Commissioners need to meet workers and experience services through visits. For example, we held a VIP day where we invited visitors to see how our services work and took them out to visit shared care settings. The visit received some excellent praise:

*“Thank you so much for inviting me to the showcase day as I found the ‘taster sessions’ really useful and informative and it was definitely worth the 2 ¼ hr journey. I particularly enjoyed the shared care visit in the community”. – Liz Butler, NTA Deputy Regional Manager (Yorkshire and Humber)*

- 5.4.2 Let’s talk with each other rather than make assumptions based on old history. Most civil society organisations these days are hugely effective businesses able to respond quickly to change and innovation to improve their own performance and customer satisfaction.
- 5.4.3 In Swanswell’s opinion, commissioners should be required to bring to their role some experience of service delivery from within civil society and refresh their experience through secondment or shadowing within a civil society organisation at least once a year.

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

- 5.5.1 As previously mentioned (see question 2.6), Swanswell believes that the commissioning process needs to be subject to fundamental change. It is currently too costly, too complex and excludes too many good quality civil society organisations from service delivery.
- 5.5.2 If our recommendations are taken forward, commissioners would need to be trained to develop diverse markets in their locality and look for ways in which new ideas, and innovations that have happened elsewhere, can be rooted into their communities. While there would be fewer commissioners, the skills required for this activity would also be different and therefore the whole commissioning culture would have to change too.
- 5.5.3 This change may best be delivered by encouraging civil society organisations to take over commissioning processes. There may be an objection to this on the grounds of potential conflicts of interest, but since these are often managed poorly, in our experience and opinion, between provider and purchaser arms of the statutory sector anyway, Swanswell doesn’t believe that this should be a reason not to place public service commissioning into the hands of civil society organisations.
- 5.5.4 Swanswell therefore recommends that future programmes of training for public service commissioners should encourage civil society organisations to come

forward and be trained in commissioning skills so that they can take over commissioning processes.

- 5.5.5 It's also important to allow for creativity and innovation to be assessed appropriately and with full understanding of what is on offer – commissioners should visit and talk with potential providers before the process starts.

**5.6 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?**

- 5.6.1 There is a long history of civil society organisations delivering funding into local communities for social benefit and measuring the impact of the investment they have made.
- 5.6.2 Rather than developing a new model for community budgets, examination of the activities of significant grant making charities and community foundations will provide a wealth of good practice stretching back over many centuries upon which community budgets can be based.
- 5.6.3 This experience and expertise shows that civil society organisations are very capable of managing community budgets. The barriers to accessing this capacity, in Swanswell's opinion, lie in the statutory sector's tendency to have to invent and control initiatives rather than building on excellence outside their sector.
- 5.6.4 This barrier can be removed by making a clear direction in statute, or in regulation, or in good practice guidelines, which references this past experience and states a clear expectation that community budgets will be managed by civil society organisations.
- 5.6.5 Enacting this expectation can also help to remove the barriers as it offers an opportunity to model the behaviour expected of the statutory sector by placing the design of community budgeting in the hands of experienced civil society grant makers.
- 5.6.6 Another potential barrier is that different authorities will have different priorities (e.g. Police will want to see crime-related targets met). There will need to be clear guidance on how to resolve conflicting priorities in different communities.

**5.7 What can civil society organisations contribute to the roll out of Local Integrated Services? What barriers exist to realising this contribution? How can these barriers be removed?**

- 5.7.1 Civil society organisations are best placed to integrate services for customers because we have a long and effective track record of working with the whole person, not just the service. For example, in Coventry and Warwickshire we deliver a supporting people service alongside our alcohol treatment service which enables us to take a holistic approach to alcohol misuse, helping people with practical issues such as housing, money etc that may be impacting on their alcohol misuse. In the same way, we also join up with other service providers who deliver services that can help our service users.



5.7.2 Current commissioning processes work against integration for two main reasons:

- they compartmentalise service delivery into individual service specifications which are not necessarily joined up. For example, we deliver drug treatment and supporting people services in Birmingham which focuses on helping people with drug misuse issues to find work. However, the Department for Work and Pensions (DWP) spec for welfare to work programmes has been commissioned separately, rather than being joined up with our services. This creates a disjointed service for anyone using both services
- they create competitive barriers between service providers. For example, we are contracted to provide a service to reduce alcohol-related hospital admissions in Birmingham and have experienced difficulties encouraging referrals from the service provider who delivers the alcohol treatment services in this locality. Such issues actually work to the detriment of what's best for the service users

5.7.3 Swanswell's recommended new approach to commissioning (see question 2.6), which allows any willing provider to offer services, removes these barriers because it encourages civil society organisations to offer a range of services in a way that is attractive to customers whilst also delivering commissioned results. Integration of services is a natural extension of this process once the competitive barriers have been taken down and civil society organisations can join up what they do without worrying about giving away trade secrets.

5.7.4 Swanswell knows how to gather information from our customers in the challenging field of drug and alcohol treatment about what they want from our services and engage them with us in delivering this. This means we have a wealth of skills and experience to translate this into the community around any issue and support the community to deliver a locally tailored service that meets local needs and priorities.

5.7.5 Civil society organisations like Swanswell need to be involved from the start in the community engagement process and given the opportunity to do so. Swanswell would be delighted to be involved in the development and piloting of integrated service models

## **5.8 What can civil society organisations contribute to the development of Free Schools? What should Government consider in order to realise this contribution?**

5.8.1 The UK has a long history of schools being established and managed by civil society organisations. It is only in relatively recent history that the statutory sector has taken control of the majority of our education system. Whilst the reasons for this – universal access and quality assurance – are very important – it doesn't mean that this is the only way that schools can be provided. The continued existence of a private and charitable education sector shows this to be the case.

5.8.2 As mentioned previously (see question 1.5), Swanswell believes that where there is an intention to establish a new service it should be done if at all possible through an established civil society organisation. We believe that this is particularly important for Free Schools because the impact of business failure on the pupils of



the school and its community would be profound. A strong and established host organisation would ensure sustainability, in particular after the first flush of excitement has passed and “early adopter” parents have moved on.

- 5.8.3 Providing direction to this through legislation, regulation and best practice guidance encourages this to happen. Sponsoring a small number of pathfinder schemes to experience best practice would embed civil society organisations’ involvement in the process.

**5.9 What contributions could civil society organisations make to the extension of personal budgets across a range of service areas? What changes do both commissioners and civil society organisations need to make to adapt to an environment where citizens are commissioning their own services?**

- 5.9.1 The introduction of personal budgets into some areas has required a considerable change in culture by commissioners, providers and customers.
- 5.9.2 Civil society organisations may not be currently well placed to provide services through retail structures because many have become, in recent years, used to providing services wholesale through major statutory sector contracts. So some civil society organisations will need to make changes to their business models to make this happen, although there is plenty of experience across the sector of working in this way that can be drawn upon to create best practice models.
- 5.9.3 As previously mentioned (see question 2.6), Swanswell believes that the current commissioning process needs to be changed so that any willing provider can deliver quality assured services to meet customers’ needs. This model lends itself to personal budgeting because it demands that customers be given the choice to buy the services that best suit their needs which, in turn, creates a competitive imperative for civil society organisations to be as attractive as possible to their customers.
- 5.9.4 Within this model, commissioners will have to manage the tension between customers choosing services that are attractive to them, and payment by results, because customers may not necessarily choose services that provide the results that commissioners want. For example, customers may choose a service that is available at weekends, but which doesn’t provide the same results as a competing service that is only open on weekdays. The commissioner’s role will be to develop the market so that the service that is open at weekends is encouraged to improve outcomes, or the weekday service opens at weekends, or another provider enters the market that meets both requirements. This can be done through financial incentives or through development of quality assurance frameworks. Either way, it is a different and more creative role for commissioners. It also demands that civil society organisations are more responsive to customer demands.
- 5.9.5 Our position as an organisation that listens and responds to the needs of our service users puts us in a strong position to contribute to the extension of personal budgets across a range of areas. People understand and get the most out of any service that meets their needs services, where they have been asked what service they want, and this has been acted on. The first step is to set up the process for

understanding what it is that people are asking for in different areas of service delivery rather than making assumptions based on anecdotal evidence and getting it wrong. Civil society organisations can help with this initial step and the subsequent service delivery. This will involve responding flexibly and speedily to a range of changes so that the impetus is not lost. Swanswell would be delighted to develop and pilot services and processes that meet these objectives.