

Response to the Modernising Commissioning Green paper from East Sussex County Council Adult Social Care

Question 1 New Opportunities - In which public service areas could Government create new opportunities for civil society organisations to deliver?

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

Q1 (a) 1: What are the implications of payment by results for civil society organisations?

Payment by results for civil society organisations would be very challenging, given the current move away from outputs and considering a more outcomes focused approach to funding. Many outcomes which public sector commissioners may seek to achieve from Civil Society organisations such as an improved quality of life, prevention and inclusion in community for example elderly isolated people cannot be easily quantified, classified and costed into prices and/or tariffs needed to make a payment by results system effective.

Outcomes focused commissioning requires a more long term qualitative approach to measuring effectiveness and this does not lend itself easily to a payment regime. We support regular payments with monitoring of beneficiary satisfaction, for example through questionnaires.

We also recognise that a payment by results system for smaller organisations would be highly de-stabilising and expose them to financial risk which we would not wish to do - in keeping with our local Compact arrangements.

Q1 (b): Which public services areas could be opened up to more civil society providers? What are the barriers to more civil society organisations being involved?

The definition of civil society organisations is very broad and includes very small independent grassroots organisations and groups through to larger scale enterprises set up on a sub-regional and national basis. Provision already includes social housing, advocacy, information and advice, day opportunities, 'home from hospital schemes' and many other models of support integral to public service delivery.

Regarding the proposal of setting specific proportions of certain services to be delivered by independent providers our view would be that this should remain a matter for local decision-making and commissioning so that it can be sensitive to changing patterns of need. It is important not to undermine the purchasing power that local authorities have as a key lever in managing local social care markets in particular on a competitive basis – where we have to gain maximum value for public money through using the right balance of independent profit-based organisations, not-for profit civil society organisations and directly provided services across a range of service provision.

In addition a balance must be struck between the role of smaller community-based initiatives and larger formal regional and national voluntary organisations who can offer scalable efficiency. Care would need to be taken to ensure that social capital is supported in local communities whilst at the same time allowing for flexibility to commission appropriate solutions in relation to local need.

Q1(d): 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?

Assets such as community centres, day centres, and some sports and leisure facilities will be particularly dependent on the continuing income stream from public sector contracts/tenancies for their financial viability. For many civil society organisations operating such community assets, the guaranteed income from public sector contracts/users is critical to their business planning, given the ad hoc nature of much external funding available to them from Trusts and Foundations and the project based funding available from sources such as the National Lottery, which are unable to fund running costs in isolation. The difficulty in securing guaranteed income for civil society organisations is a major barrier to organisations in terms of managing risk.

Q1 (f): What other methods could the Government consider in order to create more opportunities for civil society organisations to deliver public services?

The *right to challenge and the right to provide* present challenges in terms of the risks involved which may impact upon attractiveness to local authority employees. As the Cabinet Office acknowledges, there are major barriers around public procurement processes to allowing staff who form mutuals etc. to be awarded a contract to continue providing services. Without guaranteed contracts, the risk is very high and therefore there are very few incentives for employees to leave paid employment to set up mutuals; this situation would have an impact on opportunities for the delivery of public services.

Question 2 More Accessible - How could Government make existing public service markets more accessible to civil society organisations?

Objective: To address practical, regulatory, legislative and cultural barriers to market entry in existing markets, with a particular focus on barriers that affect civil society organisations.

Q2 (a): What issues should commissioners take into account in order to increase civil society organisations' involvement in existing public service markets?

As identified in the Green Paper's example of barriers from the Public Administration Select Committee, tendering processes set up with the commercial sector in mind can be very onerous and discouraging to small civil society organisations. However, it is clear that competition and transparency need to be central to getting value for money and quality in public service markets.

In East Sussex we are trialling a new process of funding civil society organisations which is more accessible and on a more "level" playing field. Using the National Audit Office's Decision Support Tool, commissioners identified areas of service where they felt that it was appropriate to use a commissioning prospectus approach for civil society organisations based on (1) a clear link to the delivery of social capital in the funding objective; and (2) a relatively under-developed market for delivery – therefore making grant-making via the Prospectus appropriate.

This model builds on the good practice demonstrated by Birmingham City Council and the Isle of Wight. The prospectus seeks to allocate funding using an outcomes based approach, targeting funding objectives identified by commissioners from the relevant local Joint Commissioning Strategy. East Sussex County Council operates partnership boards and provider forums jointly with the local PCTS. These structures provide representation of user and carers, providers, operational experts and commissioners across older people, people with learning disabilities, people with physical disabilities, sensory impairments and long term conditions, people with mental health problems and carers. It is through this regular engagement in joint planning and service development with our beneficiary groups and

providers that we involve Civil Society organisations in public service markets for health and social care.

Building capacity in the Civil Society provider-base at the local level is also an issue. We have commissioned four learning networks for civil society organisations in the county designed to equip organisations with the skills and knowledge to bid effectively for funding from a range of sources including the Council, but not exclusively.

Q2 (b): 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?

Proportionality in relation to public procurement requirements should be considered: for example the levels of public liability insurance, professional indemnity insurance etc. can be prohibitively expensive for many civil society organisations as well as being regarded as inappropriate and disproportionate to the service being provided.

Q2 (c): What issues should the Civil Society Red Tape Taskforce consider in order to reduce the bureaucratic burden of commissioning?

Although helpful in some ways, procurement regulations established on the basis of commercial operators and European law do not lend themselves to civil society organisations providing small scale services. If there was a national legal framework for Civil Society commissioning it would support individual local authorities in managing the financial and legal risks involved, in proportion to the amounts of investment being made through commissioning in those organisations.

Q2 (d): How can commissioners achieve a fair balance of risk which would enable civil society organisations to compete for opportunities?

In order to have a proportionate approach to risk, it would be preferable to negotiate the terms and conditions with individual providers. For example, at East Sussex we intend to review individual applicants and undertake a risk assessment around the “25% rule”, (where an organisation cannot receive more than 25 % of their annual turnover value in revenue grant or income from the same funder). We are aware that historically many civil society organisations with whom we work have received more than 25% of their income from ourselves and recognise therefore that there has to be a realistic assessment of risk to prevent this becoming a catch-22 situation.

Q2 (e): 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?

Civil Society organisations’ employees can face inequalities and differing working terms and conditions when joined by co-workers who have been subject to TUPE. Within the public sector and civil society, transparency and equity of pay and conditions is generally the norm and variations from these long established practices can lead to poor morale and strained working relationships.

Q2 (f): 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?

The challenge around assessing the ability to achieve the best outcomes is that many outcomes cannot be quantified and are qualitative, and frequently, from the user perspective

highly subjective. Outcomes may also take much longer to be realised and are not always measurable or obvious within the duration of the service provided; for example narrowing the gap in health inequalities, health and wellbeing via outcomes of preventative services – could take a long time (generations in some cases) certainly longer than the term of a contract. It is also important to consider that success is not necessarily down to one provider/commissioner and may have come about as a result of joint/partnership arrangements.

The question should be (1) what do Civil Society organisations uniquely provide and in what service areas does that add the most value; and (2) how can this be assessed as part of a competitive process that allows for equal consideration of cost and quality. In East Sussex we have taken the view that the social capital uniquely delivered by Civil Society organisations can add value in certain areas of public service and we are developing a process that we hope will cover the issue of cost and quality, alongside the added value of social capital.

Q2 (i): What barriers prevent civil society organisations from forming and operating in consortia? How could they be removed?

A significant barrier can be the time required to develop a legally defined consortia if that is required for organisations in order to be eligible to make bids for services. Formal tendering is driven by procurement regulations which can be very restrictive and do not favour new organisations or groups of organisations which have little or no history/financial evidence of successfully working together – i.e. accounts. Therefore opportunities which might arise for organisations to work together may not be feasible due to the lack of established track record etc. This can restrict innovation and market development as people are not able to work together when an opportunity arises.

In East Sussex we are trying to support the idea of collaboration between organisations, rather than the need to form legal consortia, in order to reduce barriers. There is still the need to identify lead partners and have mechanisms for dealing with risk around partnership breakdown, but this should not be as burdensome as where there are legal arrangements. There are also issues around lost investment if resources are put into developing a consortium for the purpose of making a bid which then isn't successful.

Question 3 Value - How could commissioners use assessments of full social, environmental and economic value to inform their commissioning decisions?
Objective: To enable commissioners to make strategic commissioning decisions on the basis of a full understanding of the social, environmental and economic impact.

Q3 (a): What approaches would best support commissioning decisions that consider full social, environmental and economic value?

In East Sussex as part of our new approach to commissioning we are ensuring that the contribution to social capital of locally accountable civil society organisations in our county is recognised, by giving it equal scoring and weighting in the application process alongside cost and quality. This recognises Social Capital as a key component of the personalisation agenda and Putting People First.

East Sussex County Council and our local NHS partners want local people to benefit from the added value brought to services, largely through the building of social capital. We have produced local working definition of social capital which is clearly linked to the outcomes we would like to see funded and achieved through the Commissioning Grants Prospectus. The following paragraphs set out this definition, which we are using for the purposes of the Prospectus:

Social Capital is generally understood to be the value added to society by grassroots collective action that is driven by shared interest on the part of the people involved. The voluntary and community organisations that make up Civil Society provide the structures and opportunities for people to become more engaged and active in their communities. This results in bonds and networks being formed between people and organisations which have a shared goal or interest. The sharing of the knowledge and expertise rooted in local communities leads to activity and services that can change people's lives for the better.

Through the Commissioning Prospectus, the Council and the local NHS want to ensure that East Sussex has a thriving voluntary sector which can help people to help themselves. The Prospectus sets out the areas where the contribution of voluntary and community organisations can add value and improve outcomes for residents. Added value can be found in the following areas:

- *Increased choice and control – making sure there a range of options to suit individual care and support needs.*
- *Social capital – service models where there is ownership and leadership by the people who need and use the services. These models may use volunteers and will make the most of the connections between groups and services and the knowledge held by communities to create healthy, engaged and inclusive neighbourhoods, villages and towns.*
- *Early intervention and prevention - services that can support people to stay independent and healthy and stop situations getting worse*
- *Universally accessible services – enabling people to get the right information, advice and support easily*

Outcomes in these areas are informed by, and align with, the shared values set out in local Joint Commissioning Strategies. These strategies have been developed in partnership with service users, carers and other stakeholders in relation to local needs and priorities.

Q3 (b): What issues should Government consider in taking forward the Public Services (Social Enterprise and Social Value) Bill?

It is important to recognise that the implementation of Social Return on Investment and similar methodologies can be very onerous and the cost of assessments highly prohibitive for organisations whether public sector or civil society. Whilst recognising the value of involving local citizens and communities in determining what constitutes “relevant” value and consulting intended beneficiaries, local authorities already do engage with service users and carers through Partnership Boards and consultations on strategic developments in order to inform their commissioning. These existing involvement mechanisms and networks could extend their remit to include commissioning decisions that consider the issues in the Public Services (Social Enterprise and Social Value) Bill. It should also be recognised that it is often the same committed members of the public who volunteer to take part in these forums for a range of organisations and further demands on their time as an active member of the Civil Society could lead to “consultation fatigue”.

Question 4 Citizen and Community Involvement - How could civil society organisations support greater citizen and community involvement in all stages of commissioning?
Objective: To enable civil society organisations to support and facilitate the increased involvement of citizens and communities in commissioning.

Q4 (a): What role and contributions could civil society organisations place, through Local HealthWatch, in informing the local consumer voice about commissioning?

In East Sussex, our LINK will become the Local HealthWatch and they already feed into a number of our existing engagement and consultation networks such as Partnership Boards. In health and social care these are long-established and well developed mechanisms. Many members are representatives of key civil society organisations in our community and are currently informing the local consumer voice about commissioning through these mechanisms.

A key issue will always be to separate out the voice of the 'community' or users and carers from the view of the Civil Society organisations as providers of services as conflicts of interest can arise when contributing to commissioning and decision-making processes. Local Authorities should have in place clear processes to manage this developed in partnership with local organisations and user groups.

Q4 (b): What issues relating to civil society organisations should the Government consider when refreshing the Joint Strategic Needs Assessment Guidance?

The ability of grassroots Civil Society organisations to contribute a qualitative view to support quantitative analysis of datasets should be recognised.

Q4 (c): How could civil society organisations facilitate, encourage and support community and citizen involvement in decision making about local priorities and services commissioned?

Harnessing community and citizen involvement in decision making can be very challenging and time-consuming and as a Local Authority, we know that people can become overwhelmed or disengaged if bombarded with too many questionnaires, focus groups and public meetings. For civil society organisations to facilitate and encourage involvement in decision making, resources would have to be made available to support organisations to carry out this work as they will not have the capacity to deliver it, particularly when it would require skilled facilitators and administrators. Care would also need to be taken not to duplicate or undermine the role of existing statutory bodies such as Parish and Town Councils and any activity in this area should be done on a collaborative basis.

Many civil society organisations are focused on a particular issue and may not feel they have a mandate or are empowered to act as community advocates as outlined in the Green Paper. Communities in rural areas face even more barriers to full engagement whether this is due to poor transport links, isolation, poor broadband connections or absence of community hubs for example.

Q4 (d): What forms of support will best enable statutory partners and civil society organisations to improve their working relationships?

An increase in external funding from organisations other than Local Authorities will enable civil society organisations to be able to have a more equal position alongside the public sector. If civil society organisations are not dependent on public sector partners then relationships can only improve. Moving to a more business like relationship will enable more harmonious working and more equality.

The role of infrastructure agencies e.g. Councils for Voluntary Service in this area is fundamental if local authorities are to work effectively with the hundreds and thousands of Civil Society organisations in their areas. Minimum standards for delivering infrastructure support need to recognise the independence of Civil Society organisations and ensure a strong voice for the sector at the local level, as well as ensure accountability for the resource invested in achieving the outcome of genuine collaboration with statutory partners.

Q4 (e): What issues should the government consider in the development of the future programme of training public service commissioners?

Future training programmes need to be able to include guidance from legal and procurement experts about how systems can be made to work within the current legal and regulatory frameworks. The sharing of evidence-based good practice should be supported to reassure procurement and commissioning managers in public sector organisations about new and more flexible approaches to working with Civil Society organisations.

Q4 (i): 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?

Civil society organisations can help to increase choice for individuals using personal budgets and may potentially enable personal budgets go a little further if maximising “social capital” contributions to care packages. The advent of personal budgets in some circumstances predicates a move away from block contracts and funding awards. The challenge to be able to respond to individual choices will still require a level of infrastructure funding to provide a level of stability for civil society organisations and this will remain a challenge for commissioners as well as organisations. Suggested things that can help with this are:

Information sharing regarding emerging needs and choices needs to be facilitated by local authorities as part of their market engagement and development role, so organisations can respond to individuals as well as shape their service development activity to respond to emerging needs.

Acknowledging and promoting sustainable funding models 'across the income spectrum', which acknowledge charging as a legitimate source of income generation for Civil Society organisations (whether this is from an individual's publicly funded Personal Budget or their own resources). For example treating service users as consumers and using 'trading' to raise income through charging for particular services on the open market, and redistributing the surplus back into the organisation as part of a mixed income stream model. It may be that this requires changes to specific legislation such as the Charities Act and the development of sophisticated business models that can encompass universal access as well as income generation for specific services designed to meet higher levels of need in the population.

**Policy and Service Development Team
Strategy and Commissioning Division
Adult Social Care
East Sussex County Council**

5th January 2011