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Dear Sirs

Please find the Fusion 21 response to the Cabinet Office Green Paper – Modernising Commissioning increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery

1. In which Public Service Areas could Government create new opportunities for Civil Society Organisations (CSO's) to deliver?

General

The general principal should be that new opportunities for CSO's and particularly Mutuals should be in a field of operations where there is the potential for a wider market to be developed, allowing each new business to grow, and expand, through developing new revenue streams. This is necessary to avoid the CSO's and mutuals becoming "cost centres" that effectively recycle public money in a closed loop where expansion is not feasible, thereby effectively negating any possible short-run and medium-term unit cost reductions.

Engaging Service Users

This is a critical aspect of commissioning public services as the users requirements will, if satisfied, lead to the potential for delivering effective services that reflect the needs of the users rather than the professionals who have traditionally delivered services that appear to be focussed on satisfying the professional community rather than the service users.

Flexibility

Flexibility implies constant innovation to respond to the users' needs rather than the controlling framework of a large bureaucracy. CSO's generally will have the ability to respond to users requirements for changes ion the range and content of services. If the CSO is operating in a genuine market they can make decisions regarding the allocation of resources that are not fettered by the internal controls in a traditional Public Sector control framework.

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

A fundamental issue in achieving the desired outcomes is to avoid "Cherry Picking" that would lead to only those clients or beneficiaries that can be passed through the process to achieve an outcome with relative ease. The more difficult cases could then be ignored, thereby diluting the social and other benefits of the service as the provider concentrates on revenue maximisation alone.

The time lag between the defrayment of expenditure in delivering the service to the recording of the positive outcome will need to be funded. Unless there is a clear unambiguous definition of a positive outcome this could further delay the payment to the Civil Society Organisation. The consequence of this will be the cost of funding being factored in at a relatively high level to anticipate the delayed payment from the public sector.

To avoid the need for high levels of working capital funding in SME's wishing to participate in programmes the definition of a positive outcome should be set out clearly at the commencement of commissioning based on an assessment of the needs to be addressed. Consideration should be given to payment for the achievement of intermediate outcomes that can be identified in the assessment of needs, and recognised in the specification and the services contract. This would serve to alleviate the working capital investment needed to fund an outcome based programme.

The Big Society bank may be able to provide funding of this nature, recognising that there is a risk attached to this funding. Additionally social impact bonds, in part funded by the Big Society Bank, can be used as a means of funding these projects in the short and medium term.

The availability of such funding could reduce the costs associated with the demand and delivery risks that a CSO would have to factor into their proposals in projects based on payment by results

1.2 Which Public Services areas should be opened up to Civil Society Providers (CSP's)? What are the barriers to mere Civil Society Organisations (CSO's) being involved?

Public services areas to be opened up to CSP's - the question is best answered by what areas should not be opened up to CSO's. Obvious areas include the Security Services the Armed Forces, collection and enforcement operations such as those in HMRC. Services that directly impact local communities such as social services, infrastructure investment in local communities, Worklessness initiatives and leisure services are obvious candidates.

Barriers to entry for CSO's include:

- Finance; working capital and capital investment may prove difficult to access given the potential size of some contract and the current difficulties in accessing competitive finance by SME's;
- Commercial expertise to develop the opportunity wider, thereby achieving the efficiencies inherent in economies of scale as represented by lower unit costs of deliveries;
- A lack of understanding of the operation of markets and non-governmental organisations in the public sector commissioning bodies;
- Bureaucracy – the tender process has typically been too protracted and convoluted and therefore forbidding to SME's and CSO's.

1.3 Should Government explore extending the right to challenge to other (beyond Local Authorities) local state-run services? If so, which areas and what benefits could CSO's bring to these public service areas?

The right to challenge should be extended beyond Local Authorities, providing safeguards can be introduced to prevent frivolous challenges, without making it too difficult for a competent challenge to be considered. The cost of responding to a challenge could represent a significant cost to the public sector. The cost incurred as a result of responding to challenges will be beyond the control of the Public Sector and as such will represent a challenge to their budgetary control and associated cost reduction initiatives.

1.4 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 CSO's taking over asset-based services?

Potentially all assets could be transferred viably to a CSO. Sifting to establish what assets are suitable should use the business case proposed for the use of the assets to decide whether the asset can be transferred.

The main barriers to CSO's taking over assets will be the up-front capital costs needed. However this can be overcome by granting a CSO a lease, or a licence, to use the asset for the duration of the project. This has already been done with land put into PFI projects in education and PFI projects in the NHS.

Ongoing maintenance and, where appropriate Facilities Management Costs, represent fixed costs that have to be funded from revenue and as such could act as a disincentive for asset transfer.

1.5 How can Government encourage more existing CSO's to team up with employee-led mutuals?

The key issue is educating commissioners, or potential commissioners, on the role of social enterprises and the issues they face in delivering social services. This understanding is important as a purely commercial based commissioning exercise will generally preclude a social enterprise as they lack the credentials and financial strength that are usually central in pre-qualification and in the subsequent tendering exercise.

When considering the development of a Mutual, the relevant commissioning body for the service, or the potential commissioner of the service, should introduce the Mutual's shadow management

team to the local social enterprise network and help them identify a social enterprise that is active in their field to assess the potential befits of working together. The Commissioning of the services should include evaluation criteria that encourage engagement with Social enterprises.

1.6 What other methods could the Government consider in order to create more opportunities for CSO's to deliver public services?

Outcome based specifications are essential in encouraging CSO's to engage innovatively in the delivery of public services. This approach should allow the CSO's to develop delivery plans that best suit its capabilities and the needs of the community to produce an effective service delivery proposal.

Where the service requires reconfiguration, or there is currently no market provision it should be made mandatory for commissioners to invite CSO's to tender as the CSO's are more likely to configure an effective services, i.e. a service that is based on outcomes for the users rather than targets for the provider.

Encourage commissioners to be radical in their thinking about service providers to ensure that Value for Money is achieved based on outcomes rather than outputs.

Commissioners should be encouraged to develop the market (capacity building) by the use of innovative enabling tactics such as pre-payment for a number of services to provide the CSO with working capital.

Commissioners should engage with service users to develop the service specification, included in the specification should be an aspirations statement that will encourage the development of sustainable organisations who are engaged to deliver the aspiration for the service over a reasonable time period.

2. How could Government make existing public service markets more accessible to CSO's?

- By simplifying the tender process for all bidders. Examples include allowing CSO's (and other organisations) to complete a single Pre-Qualification Questionnaire (PQQ) that could be given a reference allowing subsequent evaluation of the existing PQQ by any public sector organisation. Buying Solutions could be the repository for these PQQs.
- By tailoring the financial requirements to allow bidding by new organisations and Mutuals that do not have the trading history that is often a mandatory requirement in public sector PQQ's. Similar relaxations should be considered for the project and PQQ insurance requirements that are often onerous from the CSO's perspective.

2.1 What issues should commissioners take into account in order to increase CSOs' involvement in existing public service markets?

- Reducing the tender cost burden (as detailed in 2 above);
- Stipulating a social return on investment as part of the evaluation criteria;
- Setting contract terms that will allow the learning curve effect to deploy; this will encourage efficiency and effectiveness over the medium term allowing the public sector to benefit from reduced costs and to develop more efficient suppliers who can bid for subsequent contracts that will benefit from the initial project's learning curve. The suppliers would be able to grow and invest using the surpluses generated by efficient and effective delivery of the service;
- Putting into place effective client side operations using a monitoring regime that concentrates on a few key performance indicators rather than a battery of often contradictory indicators that add a cost burden on the CSO for compliance with overly detailed and intrusive monitoring requirements.

2.2 In the implementation of the measures, what issues should the Government consider in order to ensure that they are fully inclusive of CSO's?

- The tender cost burden reduction has been mentioned in 2 above. This should be accompanied by clear evaluation criteria and a short procurement cycle. Small businesses cannot wait for the three to six months it seems to take to let a contract;
- The tender process should be managed by procurement professionals who have a detailed knowledge of the service being procured and an understanding of the need to procure quickly;
- More sue of the negotiated procedure should be considered, especially where services have to be re-designed or where there is market failure, as this will encourage innovation in the bids without the danger of proprietary knowledge being passed on to other bidders;
- A free access central procurement portal should allow the tender opportunities to be located, downloaded and analysed by CSO's. CSO's often do not have the resources to pay for specialised contract monitoring, nor do they have the time to trawl through the various public sector procurement opportunities that are advertised on a plethora of public sector web sites. Buying Solutions would seem to offer the best opportunity for a central, or one stop portal;
- Major suppliers and the public sector should be mandated to pay within 30 days to avoid the extra cost of financing working capital; to deliver the service. This could be achieved by adopting the Merlin standard (see below 2.8).

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

Removing any barriers to the introduction of Participatory Budgeting in the public sector where the service directly affects the local community. This would be a major step in allowing communities, and therefore CSO's, to provide the business and local political imperatives to force commissioners to consider community based approaches to service provision.

Targets, other than Local outcomes should be discouraged, as pandering to the target culture reinforces the culture of service delivery by professionals to satisfy the requirements of other professionals rather than an outcome basis that is designed to benefit the service users rather than the provider and their regulatory framework.

2.4 How can commissioners achieve a fair balance of risk which would enable CSO's to compete for opportunities?

Commissioners need to be educated to be risk aware and not risk averse. Risk aversion works against the introduction of CSO's to public services as they generally lack the credentials and the financial strength of more established traditional private sector providers. As part of the move from risk aversion commissioners should be encouraged to use existing resources to build capacity to be able to achieve the desired outcomes from the service.

2.5 What are the key issues CSO's face when dealing with TUPE regulations and what could government do, within existing legislation, to resolve these problems?

A CSO bidding to deliver a public service contract will have to assume any liabilities that accrue from the current public sector terms and conditions of service. The financial nature of CSO's means that they would probably be unable to fund the pension liabilities of staff transferred from the public sector with the undertaking. This may also be an issue for mutuals.

This is based on the assumption that most public service contracts delivered by CSO's are likely to be deemed an undertaking according to the TUPE regulations.

2.6 What issues should Government consider in order to ensure that CSO's are assessed on their ability to achieve the best outcomes for the most competitive price?

Social Return on Investment (SROI) should be a key evaluation criterion as this takes account of all the costs and benefits associated with the price, whist maintaining the focus on the benefits for the user and the community in general. It is their taxes that help to fund public services, therefore the benefits should filter down to the community rather than contribute to, often erroneous and contradictory, public service delivery efficiency targets. The focus should therefore be shifted to more effective public service delivery rather than a spurious measure of efficiency that has little focus on the potential beneficiaries or users of the service.

2.7 What issues should Government consider in the development of the Big Society Bank, in order to enable CSO's to take advantage of public service market opportunities?

The Big Society Bank should offer Loans to the CSO's. A Social Enterprise Loan Guarantee Scheme could be developed using the Big Society Bank as a funder. The profits generated from these loans can help increase the size of the Big Society Bank thereby facilitating an increasing volume of CSO investment to be generated. The risk profile of the Social Enterprise Loan Guarantee Scheme's book should be favourable as the CSO delivering public services would be able to take advantage of the commercial certainties arising out of the public sector covenant.

2.8 What issues affecting CSO's should be considered in relation to the extension of the Merlin Standard across central government?

Extending the Merlin Standard would be seen as a positive step. However payment by results could put CSO's under financial pressure (see1.1 above) if a prime contractor has not been paid.

2.9 What barriers prevent CSO's from forming and operating consortia? How could they be removed?

There are no real barriers to CSO's forming consortia other than their potential lack of knowledge of Special Purpose Vehicles that can be deployed to develop a consortium to deliver a service. Again capacity building by the commissioners should be an effective means of removing any perceived barriers to forming consortia. The commissioners can help CSO's to evaluate a suitable vehicle for a consortium to deliver the required services.

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

SROI should be central to the ex-ante commissioning work and in ex-post evaluation. This approach will take account of the full benefit to the community rather than the current narrow focus of cost efficiency without an accompanying evaluation of factors other than cost to the public sector.

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

A predictive SROI model should be included in the tender procedures.

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

- A national and Local Authority social enterprise strategy is not necessary; it should be seen as undesirable as the development of the strategy will probably involve a focus on targets rather than outcomes. Central and local government should be encouraged to develop commissioning regimes that encourage the use of social enterprises;
- SROI should be central in both ex-ante and ex-post evaluation.

Public Sector expenditure has enormous potential to drive social outcomes; to date this potential has largely gone unrealised. The use of SROI can help to go some way to realising the potential from public expenditure.

4. How could CSO's support greater citizen and community involvement in all stages of commissioning?

The CSO's should be the conduit to the users, the community or citizen. The CSO's should, through consultation or experience, be able to articulate the required outcomes so that the commissioners can include the desired outcomes in the service specification and associated tender documents.

4.1 What role and contributions could CSO's place, through Local Healthwatch, in informing the local consumer voice about commissioning?

No Comment

4.2 What issues relating to CSO's should the Government consider when refreshing the Joint Strategic Needs Assessment Guidance?

No Comment

4.3 What forms of support will best enable statutory partners and CSO's to improve their working relationships?

Joint training on commissioning from CSO's would benefit both parties in developing an effective commissioning regime.

4.4 What issues should the Government consider in the development of the future programme of training public service commissioners?

- Training in basic market economics, the fundamentals of supply and demand;
- Training to understand what drives competition in the market they are to commission from;
- Training to understand the cost-volume profit relationship in a business so that the commissioners are aware of the need to publish their requirements in terms of volumes and the required outcomes;
- Training to focus on the needs of the service user rather than a focus on targets;
- Training to allow the commissioners to understand the importance of profits (or surpluses) in developing a sustainable enterprise that can invest for future service delivery as well as using surpluses to benefit the community.

4.5 What can CSO's contribute to the roll out of community budgets? What barriers exist to realising this contribution? How can these barriers be removed?

No Comment

4.6 What can CSO's contribute to the roll out of Local Integrated Services? What Barriers exist to realising this contribution? How can these barriers be removed?

No Comment

4.7 What can CSO's contribute to the development of Free Schools? What should government consider in order to realise this contribution?

No Comment

4.8 What contributions could CSO's make to the extension of personal budgets across a range of service areas?

No Comment

4.9 What changes do both commissioners and CSO's need to make to adapt to an environment where citizens are commissioning their own services?

The biggest change is a change in mindset. Central to any commissioning process should be the need to deliver positive outcomes rather than outputs. This will necessarily involve a qualitative assessment as well as a quantitative assessment of tenders.

If you have any queries arising out of this submission please do not hesitate to contact me.

Yours Faithfully

For and on behalf of Fusion21

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