ecdp insight

Modernising Commissioning Green Paper

Submission by **ecdp**
December 2010

Introduction

1. This is **ecdp's** response to the Cabinet Office's Green Paper "Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperates in public service delivery"[1].

2. **ecdp** an organisation run by and for disabled and older people. Established in 1995 our origins are firmly rooted in a belief that the voice of disabled and older people, both as individuals and collectively, is vital if the lives of disabled and older people are to be enhanced.

3. Our vision is to enhance the everyday lives of disabled and older people in Essex and beyond. We do this by:
   - Actively involving and engaging with disabled and older people
   - Delivering a range of high quality services, projects and programmes
   - Working in partnership with a range of stakeholders in the public, private and voluntary sectors
   - Shaping and influencing strategy, policy and practice
   - Creating a professional, effective and efficient organisation that can and does deliver.

4. We provide a wide range of support, information, advice and guidance services, primarily in the field of social care. We currently[2] provide Direct Payment / Personal Budget support services to approximately 3,800 clients in 3 services across 4 local authority areas. We are also closely involved in the design and delivery of the Right to Control Trailblazer in Essex. As an organisation we have 43 staff, approx £1.7m turnover, nearly 130 volunteers and approximately 1,700 members of all ages and impairment groups.

Structure of this response

5. We are only responding to questions, points or issues highlighted in the Green Paper that (1) we have specific views on that are "different" to the typical perspectives on the issues raised, or (2) relate to our particular areas of expertise.

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[1] Available from: http://download.cabinetoffice.gov.uk/green-paper/commissioning-green-paper.pdf

[2] As of December 2010

6. As such, our response is structured as follows:
   - General points concerning the role of Civil Society Organisations (CSOs) in the delivery of public services
   - Comments on potential different payment methods for contracts between the public sector and CSOs (broadly in response to question 1 of the consultation)
   - Comments on supporting greater citizen and community involvement in all stages of commissioning, and addressing barriers to enable CSOs to increase their involvement in existing public service markets (broadly in response to questions 2 and 4 of the consultation)
   - Other comments and questions raised by issues noted in the Green Paper.

7. We have also included a small number of annexes that reflect relevant experience we have on topics specifically mentioned in the consultation. These are suitably signposted in the main text below.

8. All page numbers refer to the Green Paper itself.

General points

9. **ecdp** strongly believes that Civil Society Organisations (CSO) can, do and should play an important part in the mix of service providers delivering high quality public services.

10. Not only does this provide often better quality services to the public than those traditionally available, but creates a sustainable base from which CSOs can build an effective offer as both service deliverers (supply side) and also representatives (demand side) of and for the public.

11. Although we understand the perspectives of those organisations who don't, as a matter of principle, deliver publicly-funded services under contract to public bodies, we don't agree with that perspective.

12. Nevertheless, we do believe that CSOs shouldn't simply be considered as outposts of public bodies to which resource is devolved through commissioning and by which services are delivered in the same way at a cheaper price. Commissioning CSOs to deliver public services represents an excellent opportunity to deliver public services in ways that provide transformative outcomes for service users. **ecdp**, amongst many other CSOs, clearly demonstrate this in the work we do.

13. Conversely, we don't believe that CSOs should simply provide public services because they always have. CSOs can equally become as entrenched a part of public service delivery as public or private sector providers. The focus must always be on the delivery of the highest quality service based on the needs and outcomes of the service user.

Potential different payment methods

Personal Budgets

14. It is encouraging to see a focus on using innovative payment methods, particularly Personal Budgets (PBs), in commissioning (p6). There is significant evidence from social care that Personal Budgets, particularly when taken as Direct Payments, gives more choice and control to service users.

15. Nevertheless the take-up of PBs and Direct Payments in social care is not as widespread as suggested by the Green Paper (p24)[3].

16. There is a reasonable amount of literature that identifies the barriers to the take up of DPs in social care[4], and we recommend this learning is used to support the roll-out of PBs to other sectors.

17. Evidence suggests that the take up of DPs is increased by the presence of a local user-led organisation or organisations supporting individuals to exercise choice and control through the use of a DP[5]. Annex 1 is a document created by our service users, members and staff on what types of support are most effective in supporting individuals to take up DPs.

18. Whilst PBs are clearly of significant benefit to the recipient, there is early evidence from social care and current evidence from the Personal Health Budgets pilots[6] that show some issues for commissioners in establishing PBs. In particular:
    - Public bodies find it difficult to identify and release the value of a service from their existing finance arrangements, which often entail block contracts with providers, and translate this value into a cash-equivalent figure of a Personal Budget

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[3] In 2008/09, 115,000 adults over 18 used a Direct Payment, including 29,000 carers – some 6.5% of all adult social care users. This represented 4% of overall gross Council spend on adult social care in England (Source: "State of health care and adult social care in England", CQC (2009).

[4] For example, "Direct Payments: What are the Barriers?", CSCI (2004)

[5] See "Schemes providing support to people using Direct Payments: a UK survey", PSSRU (2007)

[6] See "First interim personal health budgets evaluation report", PBHE (2010). Available online: http://www.personalhealthbudgets.dh.gov.uk/Topics/latest/Resource/?cid=7932

- Even where this is possible and does happen, cultural barriers within public bodies mean that PBs often aren't the default option for service users or offered equally to all client groups
- Even when PBs are available to an individual, they haven't yet typically driven the development of a market sufficiently for PBs to regularly achieve outcomes in innovative ways[7].

Payment by results

19. In principle, we are not necessarily averse to the idea of payment by results (PbR) (p9). High quality public services and good commissioning should not be about inputs, nor necessarily about outputs, but the outcomes achieved for service users. However, the transition to how this is achieved is vital and it is simply not possible to move from one payment model to another without appropriate support over a period of time to change.

20. PbR also begs the question: *who* pays for the results: commissioners or users? In an increasingly difficult financial environment in the public sector and the development of a partnership between the state and the individual to meet personal outcomes (such as that being developed in adult social care), any commissioning framework needs to encourage CSOs (as any providers) to shape their business model to face self-funding clients as much as publicly-funded clients.

21. Setting a proportion of specific services to be delivered by independent providers (p9) could be a useful measure in order to accelerate moving towards a plurality of providers, particularly CSOs. It would be useful to know on what basis this proportion is to be determined. For example, as well as or instead of just spend, it could be by population served, by service users supported or by outputs/outcomes achieved.

22. Setting a proportion measure also needs to be commensurate with payment by results, since the proportion intended at the start of the commissioning process and agreed through contract may not ultimately be the proportion of public spend achieved following delivery. Thus either the proportion measure needs to reflect commissioned-for results or reflect the actual payment received for results.

[7] See, for example, findings from the first round of results from **ecdp's** longitudinal study on Personal Budget holders, available here: http://www.ecdp.org.uk/longitudinal-study/

23. To understand the effect of PbR, it would be useful to have an impact assessment of whether CSOs benefit more or less from a payment by results system compared to other types of providers.

24. Finally, PbR risks pinching CSOs at both ends of the commissioning process. Some public sector contracts (or, worse, Service Level Agreements) - particularly in health and social care - are dependent on referrals from public bodies to CSOs. If there is an issue with the referral chain then this could affect the numbers of clients a CSO works with, which in turn could affect their ability to be paid under PbR. Any PbR framework should be flexible enough to take this into account.

Supporting greater citizen and community involvement in all stages of commissioning

25. We strongly welcome the espousal of individuals/users/the public playing a role in all parts of the commissioning cycle (p20).

26. An example of how **ecdp** has supported citizen involvement in its own work and that of commissioners with transformative effect is our support planning work in Essex, described in the box below.

Support Planning at ecdp

In 2009, **ecdp** and Essex County Council jointly identified support planning in social care (supporting an individual to translate their indicative budget into achieving their care and support outcomes) a key area for development.

As a result, **ecdp** researched all existing user-led support planning provision in the country and shared the results with the commissioner. We were then able to develop an understanding of the potential application for such a service in Essex by analysing potential service user numbers, case complexity mix and geographical coverage.

In parallel, **ecdp** undertook dedicated work with its member and client base to ensure the service user perspective was represented in the commissioning process. Through a dedicated service user reference group on the topic, plus wider service user research, **ecdp** helped develop quality measures and elements of the contract specification.

After an open and competitive procurement process, **ecdp** established its independent, user-led support planning service in 2009, which is now the biggest of its kind in England, contracting for up to 300 support plans per annum across all impairment groups and ages. As a result of the user-led process for creating the specification and the user-led nature of the service's delivery, the outcomes being achieved are

transformational: within the Local Authority, 16% of service users take a part cash payment. Within **ecdp**, 100% take a part cash payment. Furthermore, over 90% of service users are empowered to develop their own support plan, requiring an average of 1.1 visits by **ecdp's** support planners.

27. We believe this is one of many examples of how a CSO can channel the social capital of its members and clients to work closely with a commissioner (in this case Essex County Council) to transform the type of service offer available and the outcomes it achieves.

28. **ecdp** has undertaken a wide range of work on supporting other organisations like us to address the barriers they encounter in creating sustainable organisations. At Annex 2 is a table highlighting the barriers organisations traditionally face and examples of practical solutions local authorities can put in place to support organisations address these barriers. Furthermore, Annex 3 presents a series of levers under the control of commissioners (and by extension procurers) that can create a better environment for CSOs, particularly those operating in the field of equality and diversity.

Other points

29. The following relate to specific questions or points raised throughout the Green Paper:

- A standardised Pre-Qualification Questionnaire (PQQ) (p14) across both local and central government is a practical and useful idea. Any changes to typical PQQs that reduce the known barriers particularly around financial history and policy and procedure requirements would be welcome.

- We recognise the importance of TUPE Regulations (p14) from an employment law perspective. It's important to note, however, that this practically isn't just an issue of protecting employees' Terms & Conditions. TUPE Regulations can also act as a means by which existing values and ways of working are preserved, typically making transformation of a service offer much harder to achieve.

- We have concerns over the idea of the Compact as a "driver" of transparency between government and CSOs (p16). The Compact remains a voluntary agreement between public bodies and CSOs and so will always remain a "nice to have" rather than a "must have".

- It would be useful to have clarification on what types of CSOs are formally considered SMEs, and if so whether the target of 25% of government contracts going to SMEs therefore explicitly includes CSOs (p7).

- Some form of support to CSOs who have the business model want to scale it up quickly in order to deliver public services would be welcome. This doesn't simply take the form of extra funding, but quick and easy access to expert advice and support to drive Organisation Development (OD) changes. Such support should be drawn from wider than existing infrastructure organisations based only within the civil society sector.

- **ecdp** is a strong supporter of transparency and open data in all sectors. We recognise that there are rightly many different types of organisations that can provide publicly-funded services, and that many mutuals and co-operatives are profit-making businesses. We would welcome formal guidance on how Open Data and transparency as required of public bodies will flow to third

party providers of all kinds, and whether this will be formally included or required in any contracting arrangements.

For further information on any element of this response, please contact Rich Watts

*Submitted by **ecdp**, December 2010*

Annex 1: Effective support to enable individuals to exercise choice and control through Direct Payments

Personalisation in adult social care provides service users with the opportunity to have more choice and control over the way their care and support is arranged, typically through Direct Payments.

Here are the top 3 kinds of support disabled and older people should be able to access to enable them to exercise choice and control in this way.

1. Independent Information, Advice and Guidance, including advocacy

Having independent information, advice and guidance as early on as possible is a fundamental building block for good support. An experienced and friendly adviser talking at the right time can alleviate or address any worries or concerns a potential Direct Payment holder may have, and share practical information with them in a variety of different formats. Such an adviser can also be in invaluable source of consistency and support as an individual uses their Direct Payment.

Access to more formal support services is also vital: advocacy organisations can provide legal and practical help on topics such as contracts and employer's insurance, whilst ACAS is an invaluable service for managing any employment issues that arise should people use their Direct Payment to employ someone.

2. Peer support

The chance to learn from the experiences of other people who have used Direct Payments, as well as the opportunity to share their own experience, is a vital part of any effective support system. As well as picking up information or suggestions about issues and what a Direct Payment could be spent on, an effective peer support network also ensures people know they're not the only ones in their position.

Such a local peer support network also provides a collective voice to a commissioner for highlighting issues and potential solutions for them.

3. A supportive account handling service

A flexible account handling service is valued by Direct Payment for a variety of different reasons. At a fundamental level, it provides a "safety net" for employers and can reduce the "fear factor" of managing the Direct Payment.

Whilst some people may not have the inclination to process or pay invoices or manage cashflow, others may not have the knowledge or capacity to manage a Direct Payment account.

A Direct Payment account handling service therefore takes away the hassle of these calculations or the need to pay suppliers' invoices, enabling a Direct Payment holder to focus on the issues that matter.

Annex 2: Typical barriers faced by CSOs in establishing sustainability and tender readiness

The table below highlights some of the typical barriers that CSOs face in developing and strengthening themselves. For each one, some possible solutions for the ULO itself and commissioners to consider are suggested.

Issue	Possible solution(s)
Governance	
Ineffective governance arrangements	• Offer legal input to ULO to develop governance arrangements • Support a visit by the Charity Commission or infrastructure organisation (e.g. CVS, NCVO) to develop governance arrangements
Ineffective Management Board	• Support SWOT / skills audit of the Management Board • Commission support from another User-Led Organisation to develop and strengthen the Management Board
Funding and business-readiness	
Inadequate staffing levels	• Provide administrative support to the ULO to enable existing staff to focus on delivery • Provide pump-priming funding or core grant to support appropriate staffing levels in the short- to medium-term • Release public body staff on secondment to support time-bound projects or development
Poor infrastructure (e.g. IT, HR, Finance) in place	• Offer secondhand equipment / furniture etc. to the ULO for free or reduced rates • Share model policies and procedures on HR for ULO to adapt for its own purpose
Accessible premises	• Host ULO in existing public body building at peppercorn rates • Encourage existing local infrastructure

Issue	Possible solution(s)
	organisations (e.g. CVS or volunteer bureau) to host ULO
No robust business plan in place	• Provide project and business management support / expertise to support ULO • Set out clear commissioning objectives for 1-3 years to enable ULO's business plan to focus on these alongside other areas of work
ULO doesn't operate on Full Cost Recovery basis	• Commissioners recognise overheads etc. in bids and contract responses • Commissioners fund overhead elements through core grants or providing overhead support at peppercorn rates
Doesn't have sustainable and/or diverse funding streams in place (or over-reliance on LA funding)	• Act as a reference to ULO bids to other funding streams • Support ULO to attend funding conferences / events • Provide bid-writing support through public body funding team / officers • Provide clear and accessible information and timescales for commissioner decision-making process for annual funding
Lack of understanding of commissioning arrangements	• Commissioner takes time to discuss political, financial and legal environment within which commissioning takes place • Commissioner observes principles of the Compact in terms of procurement processes (e.g. due notice) • Allocate a ULO Champion within the Local Authority to act as the main point of contact for all local ULOs • Encourage umbrella Third Sector infrastructure organisations to support ULOs and ensure they have access to relevant training
ULO doesn't sufficiently understand the wider operating context of Local Authorities (e.g.	• Enable ULOs to take part in the statutory decision-making processes • Provide accessible information to ULOs on the key targets for the local area, and how

Issue	Possible solution(s)
Performance Indicators, LAAs, CAAs, Local Partnerships)	they can contribute to them
Poor performance management	• Allow ULO Managers to take part in commissioner-run management training/development programmes • Share model policies and procedures on HR for ULO to adapt for its own purpose
Poor at demonstrating impact	• Commissioner requires consistent information from ULO, instead of changing monitoring requirements each reporting period • Commissioner requests 'new' information, not that which it already holds • Commissioner provides support to ULO to demonstrate impact through its own performance monitoring arrangements • Commissioner provides shared access to monitoring systems, rather than duplicating across organisation boundaries
User engagement	
Balancing campaigning-type activities with service delivery	• The Local Authorities is clear in its relationships with ULO and vice versa so there is a shared level of understanding • Set of principles in place that both organisations can sign up to • Local Authorities respect the right of the ULO to represent its members on issues of importance to them • Lead political member with relevant portfolio aware of arrangements and accessible to ULO if needed
Doesn't work across all impairment groups	• Encourage partnership working between User-Led Organisations with different impairment specialisms • Share contact details of key individuals working in or across different impairment groups • Support training for the ULO on the

Issue	Possible solution(s)
	impairment groups in question, provided by user-led organisations who specialize in that impairment group
Working across all equality strands	• Encourage partnership working between User-Led Organisations with different equality specialisms • Share contact details of key individuals working in or across different equality strands • Support training for the ULO on the equality groups in question, provided by user-led organisations who specialize in that equality strand
Poor relationships with existing or other user-led organisations	• Encourage partnership working or mentoring arrangements between User-Led Organisations and other User-Led Organisations in the local area • Share contact details of key individuals working in or across different organisations
Poor relationships with other Third Sector organisations (e.g. carers, BME groups)?	• Encourage partnership working between User-Led Organisations and other User-Led Organisations in the local area • Share contact details of key individuals working in or across different organisations

Annex 3: Facilitators under the control of commissioners and procurers

This section outlines some of the key facilitators that are under the control of commissioners to positively shape and create an 'enabling framework' for CSOs (particularly operating in the field of equality and diversity and/or social care).

It provides both strategic-level facilitators and more practical (procurement-based) ones[8].

Commissioning strategies / approaches

Commissioning policies can be developed that:

- Stimulate the participation of service users by encouraging the development of local groups and promoting the use of third sector infrastructure resources to include and benefit service user groups
- Work in dynamic partnership with individuals, communities and their representatives – such as User-Led Organisations – to define, develop and deliver high quality services
- Foster a level playing field for user-led and carer's organisations to compete in any tendering process
- Look to commission from local providers
- Look to commission from Third Sector providers
- Recognise the added value that user-led organisations can offer in terms of:
    - Credibility and legitimacy with users
    - Raising the standard of quality assurance
    - Working towards identified independent living outcomes
- Recognise the wider role of user-led organisations when carrying out their duty to promote disabled people's equality especially in drawing up and implementing local equality plans
- Ensure support enables Independent Living and embodies the ethos of choice, control and for all people to participate as equal citizens in society
- Ensure that local contracting procedures do not discriminate unfairly against small / new / user-led organisations

[8] Please note this Annex is adapted from work **ecdp** undertook under commission for the Social Care Institute for Excellence (SCIE). It was published in 2010 here: "A commissioner's guide to developing and sustaining User-Led Organisations": http://www.scie.org.uk/publications/guides/guide36/index.asp

- Offer Contracts, not Service Level Agreements, in order to give potential ULO providers flexibility over service delivery
- Offer 3- or 5-year funding arrangements, rather than year on year, to support service improvement and provider stability
- Use the agreed principles of the Local Compact to inform commissioning arrangements
- Take account of Article 19 of the Procurement Directive 2004/18/EC
    - The Article 19 regulations form a part of European legislation that allows organisations to reserve public contracts for supported businesses. The procurement of any goods and/or services can be reserved. A supported business employs disabled people as over 50% of its workforce. This means it's ok to invite only supported businesses to bid for the work. For contracts under £144k you simply invite the supported business to bid or offer them the chance to match your best price. For larger contracts simply tick the 'reserve under Article 19' box in the EU advert.
    - Treasury guidance suggests you should have at least one contract with a support business
    - Further information on Article 19 regulations is available through the Office of Government Commerce's (OGC) Guide to Supported Factories & Businesses: http://www.ogc.gov.uk/documents/Supported_Factories__Businesses.pdf
    - Procurement Directive 2004/18/EC itself is available here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:HTML
- All commissioning-based work should follow the principles of the Compact

The following could be considered by the commissioner to inform the policy approach to commissioning:

- Commissioning training from local organisations for commissioners themselves
- Employ or engage commissioning experts from the voluntary sector or local SMEs to provide specialist advice and feedback on relevant strategies
- Mainstream equality and access issues through the commissioning cycle
- Work with user-led organisations to decide how best to commission local support services. Whatever model is developed, the involvement of service users and carers in the design and delivery of services is of vital importance and will encourage better quality support services.

Procurement processes

Alongside the broad commissioning approach encapsulated by the commissioning policy, there are a number of practical things procurement teams can do to ensure procurement processes do not adversely impact User-Led Organisations as follows:

- Ensure Third Sector organisations are given adequate time to respond to tenders
- Consider using a restricted / selective tender list or 'single source' approach to target organisations controlled by users (particularly in cases of extending existing arrangements)
- Ensure ULOs are specifically made aware of potential services particularly noted under the ULO Design Criteria (i.e. Information and advice, Advocacy and peer support, Support in using Direct Payments (e.g. Information, Advice and Guidance (IAG), payroll, brokerage, support planning, Disability equality training, Support for the implementation of the Disability Equality Duty)
- Ensure organisations who have not bid for contracts before are particularly aware of new opportunities
- Ensure procurement portals are accessible
- Ensure tender documents are accessible and proportionate to the contract in question
- Embed the following specification criteria within procurement processes for services, (particularly those relating to Direct Payments / Personal Budget Support Service): Tenderers must:
    - Work to the social model of disability and the principles of Independent Living philosophy
    - Provide peer-to-peer support
    - Ensure support provided accommodates the diversity of the community
    - Ensure support provided is equally accessible and inclusive of all
- Ensure that the value for money components of the specification take account of the added value often contributed by local organisations representing potentially eligible users. This should particularly be the case in tender marking scheme (where such components of 'added value' typically form only 5% of judging criteria)
- Recognise framework arrangements so that large and smaller organisations can submit joint tenders. Larger organisations may be able to bring economies of scale to the contract while smaller organisations may be better placed to provide specialist services.
- Observe good practice during the application process through ensuring:
    - Each tender pack contains an evaluation and a complaints form
    - That tender packs are available in a range of accessible formats

- Guidance documents are provided that cover equal opportunities, partnership working and how to complete the application form
- All materials relating to a specific tender process are in one place and easy to access
- Monitoring systems are in place to record the number of smaller organisations bidding for and securing contracts.