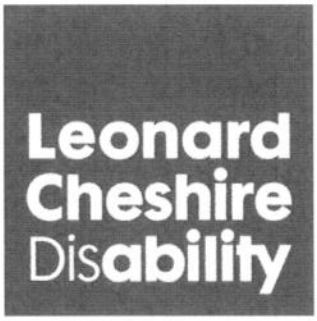
Modernising Commissioning – response from Leonard Cheshire Disability



Leonard Cheshire Disability supports over 21,000 disabled people in the UK and works in 52 countries. We campaign for change and provide innovative services that give disabled people the opportunity to live life their way.

Leonard Cheshire Disability is a leading voluntary sector provider of services – working with local government on social care service delivery, and also with central government and others on innovative projects to provide services that will benefit disabled people. This gives us a unique experience of the commissioning process, and alongside this response, which covers some of the broad issues, we would welcome further engagement with government on developing commissioning processes that work for the voluntary sector.

We have responded to key areas of questioning in the consultation, and to specific questions where relevant. We have also grouped some questions where our response relates across different areas. For more information on anything in this response please contact:

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Q1. In which public service areas could Government create new opportunities for civil society organisations to deliver?

Q1.1. What are the implications of payment by results for civil society organisations?

The voluntary sector has a proven track record of successful delivery of public services, for example consistently achieving a higher percentage of excellent ratings than the public or private sectors in CSCI / CQC assessments of social care delivery services. Civil society can often use detailed knowledge of a particular client group, or a particular local area to achieve improved results in delivering services. To this extent, therefore, the voluntary sector should be confident of achieving positive outcomes in delivery. There can though be very significant issues, particularly for smaller organisations with a 'payment by results' approach.

The principle concern will of course be cashflow. If payments are weighted to the final stages of delivery then this could present very significant issues for many voluntary sector organisations, who may not have the resources internally to keep projects running without continuing investment. It is also the case that often, at least in current public service delivery, that the voluntary sector is often involved with delivering the most complex and difficult packages. For example in return to work programmes, generally voluntary sector involvement is most likely to be around delivering support to those furthest from the labour market where the specialist knowledge and experience of particular organisations can be used. This leaves the difficult situation of voluntary sector organisations both being the least likely to be able to manage without continuing, incremental investment, and also most likely to be working on the longer-term services where payment could take longest to arrive.

To manage this issue it is clear that some recognition of the differing needs of certain organisations needs to be designed in to the system, including in looking at sub-contractual arrangements with larger 'prime providers'. Some recognition is also needed in the system that civil society can be working to different agendas to the private sector. Profit will not be the primary motive for a voluntary sector organisation. Clearly an organisation will need to cover its costs, but at a fundamental level the voluntary sector will want to serve its beneficiaries in the best way possible. Clearly civil

society organisations will need to exercise discretion in determining where they seek to deliver public services, but ideally Government's definition of 'results' should acknowledge this difference.

Q1.2. Which public services areas could be opened up to more civil society providers? What are the barriers to more civil society organisations being involved?

In theory civil society would look to work in any area where a clear positive benefit could be achieve for an organisation's client group – there is little limit to this in terms of specific areas of work.

It would be worth noting, however, that there are some issues that would create a clear barrier for civil society organisations – for example, public services that include potential sanctions for those using services. Civil society organisations would deliver services where they felt that they could actively support their beneficiaries, but most organisations would find that their charitable purpose would prevent them from managing a service where they could be compelled to administer some sort of sanction to their beneficiaries.

Q1.3. 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?

Leonard Cheshire Disability would be comfortable with extending this right – we have no particular suggestions from our experience as to where this right should be extended, but would be very supportive of any measures that moved more control of the commissioning of services direct to those who use those services.

Q1.4. 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?

The obvious issue here can be around fixed assets and fixed costs. Clearly for any organisation, particularly a smaller, local organisation, taking on a substantial fixed asset that may have continuing long-term costs attached can be a particular issue. This process can carry risks and liabilities that can make this impractical, particularly given that charities' governance procedures can mitigate against an organisation taking on large elements of risk. Charity trustees have a responsibility for maintaining the financial security of an organisation and without the same 'profit motive' as private sector providers it can be difficult for charities to take risky financial decisions. Clearly the need for charities to be offered the security that would allow them to make decisions around fixed assets must be taken into account in commissioning processes where such assets may be involved.

Q1.5. How can we encourage more existing civil society organisations to team up with new employee-led mutuals?

The voluntary sector has long been a sector that is open to partnership working, and innovative models of service delivery. It will be critical though to ensure that structures are in place that would allow the sector to continue to develop this approach. In this instance there will need to be a recognition, for example, of how different objectives and charitable purposes could be effectively combined within Charity Commission rules to ensure that activity remained focused on charitable outcomes. Combining mutuals and other forms of civil society organisation is certainly plausible, but the full legal issues would need to be clearly understood.

Q1.6. What other methods could the Government consider in order to create more opportunities for civil society organisations to deliver public services?

For disability organisations one barrier can be the traditional reliance within the public sector on a medical model of disability. Most disability organisations operate to a social model of disability, that sees disability arising from the barriers in society that can pose obstacles for people with an impairment. This in turn can mean that there is the potential for a degree of disconnection in the

ways that the public sector and the voluntary sector work. Building this social model approach into public service contracts would make it easier for disability organisations to engage in public service delivery as there would be a greater alignment of outcomes.

Q2. How could Government make existing public service markets more accessible to civil society organisations?

Q2.1. What issues should commissioners take into account in order to increase civil society organisations' involvement in existing public service markets?

Q2.2. In the implementation of the abovementioned measures, what issues should the Government consider in order to ensure that they are fully inclusive of civil society organisations?

Q2.3. What issues should the Civil Society Red Tape Taskforce consider in order to reduce the bureaucratic burden of commissioning?

Some of the key issues that need to be addressed in this area would include:

- **The timescales for contracting** – the way in which civil society organisations work can be quite different from private providers, particularly in terms of governance arrangements. This can mean, for example, that a tender may need to be approved by various different groups, including Management, Trustees and various other internal committees. Of course maintaining effective working governance arrangements is an important responsibility for any civil society organisation, but at times this can conflict with very quick turnover times for public sector contracts. Some organisations will simply be unable to tender for certain contracts if they are not given a period of time that will enable them to fulfil their governance requirements. Properly understanding the nature of civil society organisations' governance arrangements will enable better working between civil society and public authorities.
- **Better contracts** – at present the voluntary sector can be disadvantaged by the use of 'standard contracts' that place risk almost solely on to providers. Whilst it is clear why standard contracts for public service delivery have developed, those contracts can sometimes fail to reflect the particular needs and responsibilities of voluntary sector organisations. In particular the use of standard contracts can mean that there is very little scope for amendment or negotiation. This can mean, for example, that whilst a civil society organisation may well be

best placed to deliver a service, they can sometimes be held back from doing so because of a single clause that could place too great a liability back on the provider. A private sector organisation may be able to take a risk that a voluntary sector organisation cannot. A clear understanding that there should be scope for negotiation and development in contracting is needed across the public sector. At the very least it would be beneficial for voluntary sector stakeholders to be more closely involved in the development of any standard contracts, to ensure that the needs of the sector are properly reflected.

- **Timely payment** – some voluntary sector organisations simply do not have the consistent cashflow or large reserves to be able to absorb delays in payment, as such delays in payments can have a massive impact on charities. At present, however, it is far too common for payments from the public sector to be made far outside of prescribed timeframes. Even for larger organisations this can pose serious issues around cashflow, and can both drive voluntary sector organisations out of public service delivery, and even dissuade the sector from entering into contracts in the first place. Ensuring real compliance for prompt and regular payment would be critical step forward to allowing the voluntary sector to engage in delivery.
- **Recognition of the costs of volunteering** – the voluntary sector is by its nature able to take advantage of the resources that can be provided by volunteering in a way that other sectors cannot. This is clearly a great strength for the sector, but it is one that needs to be understood within public service commissioning. In the first instance there needs to be a clear understanding of the potential problems that there can be in relying on volunteers to deliver public services. Volunteers produce incredible feats every day, certainly including within Leonard Cheshire Disability, but they cannot be treated as indistinguishable from public service workers – by their very nature they have neither the same rights nor responsibilities. Secondly, volunteers are not, and have never been, a free resource. Thousands of people donate their time, money and other efforts in supporting the voluntary sector, but making effective use of volunteers, particularly in any more formal environment, like a public service, will carry considerable expense. Public sector commissioning needs to strike a clear balance of recognising the clear benefits of volunteers, and the positive social outcomes of volunteering, whilst not lapsing into viewing volunteers as a free resource to deliver public services.

- **Recognition of civil society governance** – as well as issues with contracting and tendering processes, civil society governance needs to be understood more broadly within public service commissioning. As mentioned previously in this response civil society's modus operandi can be significantly different from that of a private company. As such commissioning processes that focus excessively on cost grounds may well overlook the reason why an organisation wants to be involved in delivery – to achieve a positive outcome for beneficiaries. If an organisation's Trustees are not able to identify that providing a particular service will help that organisation to meet its charitable objectives, then the organisation will not be able to engage in delivering that service. Recognition of the motivations of civil society, and also of how processes in the voluntary sector will necessarily be different must be built in to the process of commissioning.
- **The way in which 'pay to play' conditions can impact on organisations** – increasingly in areas of public service delivery any bidding organisation can be required to meet a significant number of conditions before even being able to be considered. Whilst ensuring quality is maintained in public service delivery is clearly critically important, there can be significant issues for voluntary sector organisations in meeting the full gamut of potential qualifiers. In particular it can be impractical for smaller organisations to obtain certain standards because of the time and costs involved in doing so. Even for some larger organisations there can be issues in this area as the costs of meeting standards would most likely need to be met, at least to some extent, from voluntary income. This sort of administrative cost, that would be essential for some organisations to qualify to bid for contracts, can be exactly the sort of expense that charities would be criticised for incurring as it is not being directly channelled to beneficiaries. Improving the support available for voluntary sector organisations to achieve key quality standards would be a helpful step forward.
- **The scale of public service contracts and the importance of sub-contracting** – in some areas of commissioning, the government's Work Programme for example, it is clear that almost no charities would be large enough to become a prime contractor. Given this the way in which contracts allow for, and encourage, sub-contracting become absolutely critical. There needs to be a real recognition of the positive benefits and positive outcomes that civil society organisations can provide

built into this prime contractor model, and primes should be held to account for how they are looking to positively engage with the sector.

- **The benefits of 'competitive dialogue'** – competitive dialogue is one clear way of improving the engagement of voluntary sector organisations at the outset of a tendering process. If civil society is more deeply involved in developing and understanding the nature of the service then this will clearly lead to better outcomes, better bids from civil society and also better working relationships. In particular the voluntary sector is generally very amenable to partnership and other innovative methods of delivery – if competitive dialogue can be used to draw together partnerships that are best able to achieve the positive outcomes desired then this will benefit both providers and commissioners.
- **Use of 'The Compact'** – it is of course positive that there is a 'Compact' to help govern the relationships between civil society and the state. The Compact is an important vehicle in ensuring that civil society can flourish and work productively with government. It is important though that the Compact has the 'teeth' to actually drive this relationship forward, and that it is very much built in to commissioning processes. An effective, functioning and meaningful Compact should help improve commissioning processes.
- **Recognition of social outcomes** – this is covered in more detail in responses below, but Leonard Cheshire Disability would strongly support the idea of giving more weight to the social and community outcomes that civil society can offer. At present there is little in 'value for money' approaches that really captures the wider benefits, and the added value that is provided by the charitable sector.
- **Ordinary residence** – a particular issue in social care commissioning can be around issues of 'ordinary residence' and transfers of contracts across local authority areas. Much clearer guidance and genuinely portable services would make a significant impact in this area, both for people who use services, and for providers who need greater security in knowing that they will receive, or continue to receive funding for services that they provide when there are changes in local authority responsibility.
- **Nature of personalisation and change in commissioning** – in social care, and in public sector commissioning more widely, the impact of increasing personalisation in services must be

fully understood. This issue is addressed in more detail later on in this response.

Q3. How could commissioners use assessments of full social, environmental and economic value to inform their commissioning decisions?

Q3.1. What approaches would best support commissioning decisions that consider full social, environmental and economic value?

Q3.2 What issues should Government consider in taking forward the Public Services (Social Enterprise and Social Value) Bill?

Leonard Cheshire Disability would strongly support measures to ensure that the added social and community value that the voluntary sector can provide are factored in to commissioning decisions.

There are a number of mechanisms that could be used to more effectively include this social advantage into commissioning, which could include:

- **Build social value into commissioning** – whilst it is not always easy to make added social value a component part of commissioning processes it is essential if such value is to be a serious part of any process. Value for money considerations must be wider than simply the cheapest provider. Opportunities for greater community involvement, or volunteering opportunities, or organisations that specifically reach out to marginalised groups will almost necessarily incur additional costs from this work, and yet this work is currently all too seldom given any weight at all in commissioning decisions. Until it is formally part of commissioning processes, i.e. that added social value is actually a scored part of a commissioning decision, this will always be just a secondary consideration.
- **More practical understanding of 'social value'** – whilst it remains difficult to fully and appropriately measure 'social value', there are a number of methods currently used to try to monitor and measure social benefits that the voluntary sector can provide. Things like community cohesion, empowerment or equality can be difficult to build in to commissioning processes, but if commissioners can make an effort to quantify social value and to build it into commissioning processes then this will help. People who use services should be involved in designing commissioning processes, and the added social impact that

they value should be a formal part of the commissioning process. Some of the current methodologies used to assess social impact could also be used to quantify this in a competitive process. It is important, however, that measures are not adopted that end up ignoring certain types of social value whilst placing great weight on others, particularly as different services that reach different groups in society will necessarily have different social impacts.

- **Civil society weighting** – whilst clearly consideration would need to be given to competition regulations, extra weight could be given to civil society organisations as part of the commissioning process. For example, consideration could be given as to whether it would be reasonable, in a case where competitors were equally matched in a tendering process, for an organisation's status as a charity that provides a social impact to be considered a material factor in reaching a decision.

Q4. How could civil society organisations support greater citizen and community involvement in all stages of commissioning?

Q4.3. How could civil society organisations facilitate, encourage and support community and citizen involvement in decision making about local priorities and services commissioned?

Q4.9. 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?

It is critically important that users of public services are properly involved in the design and commissioning of those services. At present Leonard Cheshire Disability's experience is that all too often this process of engagement is limited, and there is little more than lip service paid to the idea of genuine user involvement.

Leonard Cheshire Disability recognises the fundamental opportunity that the 'Big Society' idea provides to real positive community engagement in commissioning, but it will be vital that this will be proper, meaningful engagement.

Those that use services will not only need to be given genuine control through personal budgets etc., but they will also need to be given real influence in commissioning and shaping the overall service environment. This requires a genuine devolution of power and both using the Public Sector Equality Duty to involve and work with disabled people and other groups, and going beyond that duty to support those whose voice may not be the loudest to have their say in the shape of public services.

If this can be achieved it will be a major step forward in the way in which public services meet the needs of those that use them, but it must be made fully accessible and inclusive for all, and it must be the result of a real devolving of power from public authorities to people who use services.

In social care, for example, alongside personal budgets, disabled people should be able to shape the services that are commissioned and available in their area, and they should have an active role in selecting the providers who deliver those services. This means genuinely empowering the users of services in the commissioning and selection of those services – this cannot be achieved simply through consultation, it requires a shift in power from government to the people who use services. If this sort of shift is built in to the 'Big Society' approach, and all people, not just those who shout the loudest really do have a chance to shape commissioning, then it will be a major step forward.

Personalisation - Leonard Cheshire Disability has championed the personalisation agenda in social care, and strongly supports this approach. It is clear that increasing personalisation and individual procurement will have a wide-ranging impact on the nature of commissioning, and this will need to be very clearly understood as we move forward. For example, the administration and bureaucracy involved in holding a multitude of individual contracts, rather than one or two bulk contracts will be significant for some voluntary sector organisations. Similarly, the changing role of local authorities, and indeed GPs, needs to be understood. The role that doctors and councils will play not only in procurement but also in signposting people to relevant services will be ever more important. Smaller organisations should not be disadvantaged simply because they do not have the marketing resources to reach the relevant audiences – there will need to be a clear understanding of how GPs' consortia and others will be able to reach local organisations effectively, and how they will balance competing priorities. In all of these developments it will be important for civil society, and particularly the people who use services to be properly involved in developing practices, processes, and in commissioning itself.