

Response to the *Modernising Commissioning* consultation

About VSNW

Voluntary Sector North West is the regional voluntary sector network for the North West. Its purpose is to support a connected and influential voluntary and community sector (VCS). VSNW works with over 150 members which

- either work directly, across the region, to support and deliver services for individuals, or
- are VCS infrastructure or support organisations that work with local voluntary and community groups.

By drawing on the experience of its members, VSNW contributes to national and regional policy and acts as a voice for the voluntary and community sector in the North West. Through our members we have reach to over 30,000 organisations across the region.

VSNW are one of nine regional networks which are members of Regional Voices, the Regional Voluntary Sector Network Forum. Regional Voices is one of the Department of Health's VCS Strategic Partners.

Outline of relevant VSNW experience

VSNW has long sought to appropriately influence public sector procurement processes in the North West for the benefit of voluntary, community, and faith groups including social enterprises (**VCS**). Over the last two years we have:

- Been at the forefront of NHS NW's social value work which, according to Chris White MP, was the inspiration for the Public Services Bill.
- Developed a regional special purpose consortia vehicle in order to bid for large public sector contracts and are currently in negotiation with private sector work programme providers.
- In partnership with NHS NW, held over a dozen 'meet the buyer' events aimed at PCT commissioners in order to bring them into regular contact with local VCS providers and local VCS infrastructure organisations (**LIOS**).
- Been instrumental in developing, in partnership with seven regional public sector bodies, a regional *Funding, Commissioning and Procurement Code*.
- Worked with our regional procurement hub in order to:
 - positively shape local authority PQQ and tender documents
 - encourage monitoring of VCS progress in using the regional online public sector contracts portal (The Chest)
- Through significant regional development agency funding, delivered a large-scale regional tendering and procurement training programme

- Facilitate four provider-driven support networks: PROMiSE NW (VCS and Independent providers of mental health services), a Health and Social Care network, a learning and skills network and a regional public service delivery network.
- We also facilitate a regional North West Infrastructure Partnership network which incorporates the main geographic and thematic VCS infrastructure organisations
- In addition to this, and given the short notice of the consultation, we held a roundtable event and invited specific commissioning and procurement specialists, with a mix of perspectives and backgrounds, from across the region including: procurement and commissioning training providers (for VCS groups) and VCS providers; community-level, local, city-region and national perspectives; and representatives with specialist expertise in the fields of consortia development and market assessment, as well as those with specialist knowledge of delivering in the fields of health, mental health, learning & skills, tackling worklessness and local authority public services.

Modernising Commissioning consultation response

Introduction and summary

At this point in time, the forces that drive economies of scale seem irreversible, while current government policy is focused on creating a small state. We have strong reservations about both.

Over the years we have worked in partnership with local authorities to find the best ways to engage communities. The procurement process has often created an uneven playing field which more and more supports larger and larger single providers. Reduced resources within local authorities make singular, large contracts across several local authority areas the norm and necessary; this in turn makes contract management and review less costly.

We agree with Government that a diverse market, which includes a diverse range of VCS suppliers is preferable: it is more competitive, often better for users, more innovative and means more public sector money going back into the local economy.

And yet this diversity and the growing scale of tenders are often at odds.

The main solutions for us as a sector are:

- Grow into large delivery organisations
- Grow into large delivery organisations and subcontract local VCS providers
- Sub-contract from large private sector prime contractors
- Build consortia and deliver together
- Build consortia and subcontract internally
- Dissolve

We believe that a missing piece of Government policy is an effective answer to building local economies. We believe that effective commissioning, with an integrated, radical equality-proofing process (internal and not added on to the commissioning cycle) could be the answer. Through this we believe that the public pound might be used to effectively build communities and a positive environment for thriving local enterprise. It would also, in line with HM Treasury's consultation question, through an emphasis on equality-proofing, create an effective way to "Increase ... accountability at a local level".

How to build big local economies:

- Increase the emphasis on equality-proofing within the commissioning cycle: this is in addition to social value¹

¹ In our response we suggest that a Balanced Scorecard process could (i) actively engage communities in the commissioning process (ii) develop a straightforward way to incorporate considerations of social and environmental value alongside economic value, and (iii) radically mainstream the equality-proofing process.

- Seek to outsource monitoring requirements onto consortia support leads, that don't deliver themselves, but seek to build in accountability to local communities and users - - this should be done in order to make consortia more appealing and less burdensome to public sector procurement staff
- Encourage success of consortia that incorporate VCS providers, users and community groups alongside internal support hubs delivering an effective voice and development support role.

We want there to be a distinction between the transformation of public services (i.e. where VCS involvement in service delivery and design revolutionises a service) and straight-forward transfer of public services from the public sector to VCS providers.

The importance of local infrastructure organisations (LIOs): We also believe that key to supporting effective VCS² engagement in a modernised commissioning process is the need for LIOs³ to assess their own priorities and modify some of their support services. Although funding is always an issue, **consortia support**, for example, may need to be a standard LIO service.

Our response outlines a range of activities that could easily be bundled together and delivered through existing LIOs.

It will be vital, if we are to provide services in our and our beneficiaries' best interests to develop strong relationships with local authority and other public sector partners that can support a balanced and equal approach to identifying the best way forward. We might not want to support local authorities and other public sector agencies that have a blanket policy to maximising in-house delivery, but we do need to make sure that we work with them to generate real accountability, continuity of service and effective risk management.

² By VCS we mean voluntary, community, and faith groups including social enterprises.

³ By LIO we mean local VCS infrastructure organisations.

1.0 NEW OPPORTUNITIES

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

VCS groups operate in areas right across the spectrum of public service delivery. The most pressing areas for new opportunity include the new and newly redefined areas of public service delivery:

- Work programme framework
- New local Public Health Agenda
- GP commissioned services,
- Community organisers programme and empowerment activity in general, as well as:
- Preventative services that can be upstream of current commissioning objectives
- Services that some but not all local authorities commission out, including specific children's services, community transport, or neighbourhood management (some of which may be done through local arm's length agencies)

1.1 The implications of payment by results

Payment by results is not a natural model for the vast majority of VCS groups.

There are two ways for groups to engage with a payment by results model: (i) In its purest form by self financing the upfront and ongoing costs, (ii) Through gaining upfront funding. The latter may even mean that the incentive-format of payment by results is not directly linked to VCS and other specialist service delivery.

Payment by results, therefore...

- Puts cash-flow poor groups at a particular disadvantage
- Is a high risk model that is generally not acceptable to trustees of charities:
 - The Charity Commission and the charity model are focused on avoiding financial risk; the consequences of going 'bankrupt' are very different for charities and the reputation of charities
 - Trustees are strongly discouraged from endorsing the take up of loan finance. Private sector directors are very different to trustees, and, where loans are concerned, would take two very different types of risk. Trustees can lose out financially, and damage their financial reputation, but cannot gain; trustees have signed up to support their community not to lose their home.
- Means a reliance on up-front investment. Where this comes from prime contractors this could mean added complications including much reduced bargaining power for sub-contractors. Payment by results may result in poorer contract terms.
- Financial rewards may not reflect, or vary with, the amount of work done. The strength of VCS delivery lies in its "journey travelled" capabilities: not only are we better at reaching those who are further away from mainstream, large-scale delivery mechanisms, but at supporting people through complex personal journeys. The very basic example given at our workshop related to helping people stop smoking: One delivery agent (DA1) may support an individual who has smoked for 30

years cut their smoking from 40 to 5 per day, while another (DA2) may support an individual who has smoked 5 a day for 2 years completely stop.

- In the payment by results model, the DA2 would earn and DA1 would not.
- Supposing DA1 got their service user to quit too, would the reward payment be the same for both delivery agents? This question is frequently key to issues about the division of labour and of reward in prime-contractor/sub-contractor relationships; this is where the contractual system encourages primes to deliver the easy to achieve results, and pay sub-contractors the same to deliver the hard to achieve results.

Recommendations

- 1.1.1 Encourage payment by results as part of a 'payment framework' that includes up-front funding. Payment by results need not be an all or nothing funding model but part of a mix.
- 1.1.2 Explore the implications of payment by results for the charity model
- 1.1.3 Explore ways of reducing the financial risk placed on Trustees including a recognition in the procurement process that trustees are not the same as private sector directors. We will need short and long term solutions that tackle the strong tendencies within the definition of the role of trustee that determine behaviour.
- 1.1.4 Big Society Bank measures to include:
 - Development of an internal Big Society Bank charity credit rating system that is not connected to the larger financial sector's credit rating system, linked to the organisation and not the trustees, so that risk-taking is encouraged not discouraged.
 - Use of up-front grant funding that could be (partly) repaid if payment by results were adequate: a student loan style repayment triggered at a set benchmark, which would encourage a gradual, achievable shift to more entrepreneurial activities.
- 1.1.5 Review ongoing prime / sub – contractor relationships, with particular reference to:
 - How will the risk be shared?
 - How will the reward money be shared?
 - How will responsibility for successful results be measured and rewarded?
 - How will the work be shared?
 - How will the monitoring burden be shared?
- 1.1.6 Develop contract clauses that would effectively implement key aspects of the Merlin Standard beyond the DWP work programme framework.

1.2 Which public service areas could be opened up to more civil society providers? What are the barriers to more civil society organisations being involved?

New public service areas

Besides a number of public service areas already being explored, potential areas include:

- Work programme framework
- New local Public Health Agenda
- GP commissioned services,
- Community organisers programme and empowerment activity in general
- Preventative services that can be upstream of current commissioning objectives
- Services that some but not all local authorities commission out, including specific children's services, community transport, or neighbourhood management (some of which may be done through local arm's length agencies)

Barriers

The growing scale of tenders inevitably precludes the development of a diverse supply chain.

We need to find ways to build a diverse supplier base through

1. seeking to break tender pots down
2. modernising our use of local grant pots
3. supporting effective consortia development that
 - (a) **fairly**⁴ supports a diverse supplier base and
 - (b) eases or *prevents the headaches of dealing with consortia* that are faced by public sector staff who handle the commissioning, procurement, and monitoring processes.¹
4. radically rethinking how we equality-proof procurement processes

Consortia: It is vital that we find ways for local commissioning, procurement and monitoring processes to be able to simply and effectively engage with consortia in a way that is comfortable, efficient and straight-forward for relevant public sector staff. Consortia do not thrive under the current public sector procurement and reporting systems.

Consortia are disadvantaged within the current procurement system which favours the single entity provider and are a best-avoided headache for those managing any aspect of the contract. There is no incentive to deal with consortia.

Consortia and equality: It may be that the way in which good consortia truly equality proof their activities (as an internal part of their make-up) could make them far more attractive if this were a core requirement. Is there a way in which outsourcing aspects of the procurement and monitoring process could increase equality alongside quality? A significant worry for much of our sector is that outsourced

⁴ **NB** We must find ways of equalities proofing successful consortia.

procurement and monitoring activity will increase inequality and poverty and create a system for monolithic winners which fails local communities. The concept of equality, *radically used*, would be a significant driver of change that could build up a diverse supplier chain and support grassroots economic growth. The public pound is in short supply and must be used to be *build a big local economy* driven through local, equality-proofing as well as social and environmental value.

“Conflict of interest”. This is often invoked by commissioning and procurement officers when VCS groups have been involved in the early stages of the commissioning cycle and are prevented from bidding later on. It is used inconsistently. VCS providers find that the use of “conflict of interest” is very ad hoc and greatly varies from commissioner to commissioner and from one public sector procurement process to another.

Overcoming the barriers: the role of local VCS infrastructure organisations (LIOs)

The central importance of local VCS infrastructure agencies will be paramount in bringing about change. We need to find ways to support them to:

- support local consortia development
- advocate for the better engagement of small groups in the commissioning cycle

These need to become day to day core activities of LIOs.

Recommendations

- 1.2.1 Radically use equality-proofing processes to build a big local economy.
- 1.2.2 Explore means of better helping VCS providers to engage in delivering new public health services
- 1.2.3 Explore means of better helping VCS providers to engage with GP consortia
- 1.2.4 In light of the forthcoming end of the VCS Engage programme, set up a commission to explore cost effective ways of supporting local VCS provision of Children and Youth Services that builds skills and provider markets across all local authority areas.
- 1.2.5 Explore ways of supporting local consortia development, especially through local infrastructure agencies.
- 1.2.6 Find ways of making consortia less unwieldy to commissioning, procurement and monitoring professionals.
- 1.2.7 Greater clarification of “conflict of interest”: formal guidance or a module in the national training programme for commissioners should both be seriously considered.

1.3 Extending the Right to Challenge

Work Programme: We are not convinced that the new work programme framework will be able to make the most of what small local VCS providers have previously provided in partnership with local authorities. How will local VCS delivery engage in the work programme?

At the moment, large numbers of local VCS providers that support people back to work are under threat. Research conducted by Manchester University suggests that half of previous local public sector funded providers were VCS.⁵

If the Right to Challenge were available for all local publicly funded service delivery, including the Work Programme, this would ensure maintained quality of provision for all communities.

Recommendation

1.3.1 Extend Right to Challenge to all publicly funded service provision.

1.4 Asset based services

Yes, there are types of assets whose viability will depend on a complementary contract. The model of the new 'Right to request' NHS social enterprises with their 5 year contracts may provide legal precedent.

The main barriers are:

- Lack of capital
- Uncertainty of future income
- Complex tax and trading issues
- Limited relevant skills and knowledge at taking on such assets
- Governance needs and risks again not suited to the charity model
- Buildings are often transferred under covenant which ensures agreed wishes in the early years but thwarts flexibility over the medium to long term.
- Establishing the right of groups to take over assets: how can reputations and levels of trust be appropriately and thoroughly established?

Again there is a significant potential role for local infrastructure organisations in terms of support, training, and advice. The detail of what this might mean, and how LIOs could scale up their support activities, could usefully be explored with GMCVO's Community Hubs team:

<http://www.gmcvo.org.uk/hubs>

Recommendation

1.4.1 Develop a cost effective network of appropriate development support that develops a strong, sustainable business case for taking over the asset.

⁵ The full report is available through this link: <http://www.neighbourhoods-nw.co.uk/tackling-worklessness-in-the-north-west.html>. A short briefing pulling out the key aspects from the research about VCS activity is here: [http://www.vsnw.org.uk/files/Publications/29_Tackling_Worklessness_in_the_North_West\(1\).doc](http://www.vsnw.org.uk/files/Publications/29_Tackling_Worklessness_in_the_North_West(1).doc)

1.5 Mutuals working with VCS groups

The commissioning process could be used to encourage mutuals and VCS groups to work together.

A positive model of the constitution of one such mutual is The Angel Healthy Living Centre (Salford) Ltd is an Industrial & Provident Society; their members are a third staff, third local community and a third users.

Recommendation

- 1.5.1 Positively score community engagement in the commissioning process.
- 1.5.2 Positively score accountability to the local community and to users in the commissioning process.

1.6 Other methods

Besides building consortia there is considerable need to provide relevant tender advice and training.

Tendering and Procurement Support Project: Greater Merseyside ChangeUp delivered a project which aims to meet the needs of both infrastructure and frontline VCS organisations operating throughout Greater Merseyside. The Tendering and Support Project provides a 'one-stop-shop' for advice, information and support and enables organisations interested in becoming involved in public service delivery to access specialist support services. It connects existing infrastructure support providers with a specialist referral point for advice and information on tendering and procurement for the public and voluntary sectors with the aims of increasing the levels of voluntary and community sector organisations delivering public services

Recommendation

- 1.6.1 Fund start-up costs for consortia
- 1.6.2 Fund TaPS (see above) style support through LIOs.

2.0 MORE ACCESSIBLE

How could government make existing public service markets more accessible to civil society organisations?

2.1 Issues for commissioners

Commissioners should find ways to build a diverse supplier base through

1. seeking to break tender pots down
2. investing in the use of local grant pots
3. encouraging fair, effective, and timely consortia development
4. embedding a radical rethink about how to equality-proof procurement processes

Recommendations

2.1.1 Explore with public sector staff ways of making consortia more suitable to the pressures of the commissioning, procurement and monitoring processes

2.2 Measures to improve VCS access to public sector markets

The two key measures for improving access to public sector markets, that cut across the outlined list (responses below), are:

- appropriate training to focus and gear up LIO development work;
- commissioners and chief executive departments should be encouraged to work with LIOs in order to assess local markets, including VCS capability

Procurement process: increase time lead in time for submission of tenders

Transparency: Develop transparent notification process for contracts ending in 6 or 12 months time.

Prompt payment to sub-contractors: introduce late payments legislation or enforced penalty mechanism in contract as a means to encourage prompt payment.

PQQ: make all public sector PQQ consortia-friendly

Contracts Finder: include notification of forthcoming end of current contracts

Recommendations

- 2.2.1 Introduce appropriate training to focus and gear up LIO development work;
- 2.2.2 Encourage commissioners and chief executive departments to work with LIOs in order to assess local markets, including VCS capability
- 2.2.3 Include notification of the end of forthcoming contracts within Contracts Finder
- 2.2.4 Introduce penalties for late payment of subcontractors
- 2.2.5 Issue guidance to make all public sector PQQ consortia friendly

2.3 Achieving a fair balance of risk

The procurement process should recognise that trustees have a very different role to private sector directors. See 1.1 above. Charities are not set up to handle risk and have a tendency and duty to avoid such risk.

Recommendations

2.3.1 Review the role of trustees in relation to financial risk

2.3.2 Seek appropriate ways forward for the charity model

2.4 TUPE regulations

TUPE is a valuable protection for employees that should be upheld. However, VCS providers should be aware of pension liabilities that they may face or may be concerned that they may face.

Recommendation

We fully endorse VONNE's submitted recommendation that:

2.4.1 Government must create a mechanism that protects the pensions of public sector workers without passing that existing liability to independent providers. Procurement opportunities must be transparent around TUPE so that independent providers can plan their business effectively.

2.5 Best outcomes for the best price

Recommendation

2.5.1 That additional local economic, environmental and social value outcomes are also considered.

2.5.2 That additional activities to support the development of a diverse supplier are considered in the scoring process.

2.6 Big Society Bank

Recommendations as stated in 1.1.4, Big Society Bank measures to include:

- Development of an internal Big Society Bank charity credit rating system that is not connected to the larger financial sector's credit rating system, linked to the organisation and not the trustees, so that risk-taking is encouraged not discouraged.
- Use of up-front grant funding that could be (partly) repaid if payment by results were adequate: a student loan style repayment triggered at a set benchmark, which would encourage a gradual, achievable shift to more entrepreneurial activities.

Plus the following **Recommendations**

2.6.1 Use of lower than commercial rates of interest

2.6.2 Strong remit to support consortia e.g. pump priming finance

2.6.3 Must be less risk averse than high street lenders; flexible on securities

2.6.4 Use of micro-finance

2.7 Merlin Standard

We support the extension of the standard. Its significance, however, will depend on whether it makes a difference. Will it be enforced? When will the requirement to subcontract be triggered? How will sub-contractors seek enforcement or challenge poor enforcement?

Recommendation

2.7.1 Cabinet Office to monitor use of the Standard across departments: regularity and enforcement

2.8 Barriers to consortia

Besides formal recognition by commissioners of bidding consortia, there are a number of recommendations relating to consortia throughout this response.

We welcome the Skills Funding Agencies lifting of the 51% rule which restricted delivery and effectively limited consortia development.

Recommendations

2.8.1 Up front funding to establish consortia

2.8.2 Encouragement to increase LIO's prioritisation and capacity to support consortia development

2.8.3 Identification of the issues that make consortia hard work for public sector commissioning, procurement and audit professionals

3.0 VALUE

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

3.1 Considering full social, environmental and economic value

Community involvement in assessing value and ensuring accountability is important. St Helens' Community Empowerment Network and St Helen's Borough Council are working together to ensure the Council's scrutiny process is more broadly accountable and open to direct community engagement and influence.

Recommendations

- 3.1.1 Prescribed use of formal calculation models (e.g. LM3, SROI, FSquared's Balanced Scorecard⁶, etc)
- 3.1.2 Encourage community involvement in the scrutiny process when assessing commissioned services.

3.2 Public Services Bill

Participants in our consultation workshop and our members fully support the implementation of the Bill's social value requirement. We also believe that strong consideration be given to aligning aspects of an equality proofing process. Community involvement should also take place during the review or scrutiny stages.

Recommendations

- 3.2.1 Enact the social value aspects of the Public Services Bill
- 3.2.2 Seek means to engage communities in the service design **and** review/scrutiny parts of the commissioning cycle
- 3.2.3 Build in a strong equality-proofing process (as per 1.2: Consortia and equality)
- 3.2.4 Incorporate environmental value within the Public Services Bill

⁶ This version of the Balanced Scorecard, which can be used to score tender bids, could be designed in partnership with local communities. It offers service or locality specific flexibility as well as the ability to fully consider how to measure social, environmental and economic value. It could easily be integrated with an equality-proofing process.

4.0 CITIZEN and COMMUNITY INVOLVEMENT

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

4.1 HealthWatch

Our workshop felt that the emphasis, in terms of engaging in commissioning, should be on supporting more direct engagement with GP consortia. Engagement with the local HealthWatch was felt to have the potential to block real engagement.

In terms of local voice, Local HealthWatch need to engage effectively with VCS user-led organisations and VCS groups that deliver health services at a community level.

Recommendation

4.1.1 Cabinet Office and HM Treasury should support direct VCS engagement with GP consortia's commissioning processes.

4.1.2 Cabinet Office should encourage effective Local Health Watch engagement with relevant community, local VCS providers and user-led VCS groups.

4.2 JSNA Guidance

Local Health and Wellbeing Boards should include formal representation from VCS providers, VCS infrastructure and community groups.

Recommendation

4.2.1 JSNA Guidance to recommend formal VCS representation on local Health and Wellbeing Boards.

4.3 Community involvement in decision-making

This is a key brokerage role that VCS LIOs in the North West have been engaged in, to some extent, over the last ten years.

Recommendations

4.3.1 Contract LIOs to engage communities and relevant VCS providers in commissioning and procurement processes.

4.3.2 That Cabinet Office listen to the successes of St Helens CVS and CEN in supporting providers and groups to engage with their local health commissioning and council scrutiny processes.

4.4 Local partnership

Our members firmly believe in the significant role that LIOs can offer in brokering strong local working relationships. We recognise that VCS infrastructure services need to refocus and reprioritise to suit the needs of local groups in a changed working environment, many of which are highlighted by this Green Paper.

Recommendations

4.4.1 That LIOs are a significant part of the new package of support to strengthen working relationships between local VCS groups and statutory partners.

4.4.2 Cabinet Office supports LIOs shift in direction through supporting development of new skills and services

4.5 Training commissioners

Key training for commissioners could be around social and environmental value, recognising the value of supporting consortia, what **fair** Merlin Standard consortia and prime contractors might look like, considered use of grant pots, appropriate ways of engaging communities (e.g. using a Balanced Scorecard process) and radical implementation of an equality-proofing process.

Recommendations

4.5.1 Incorporate the above suggested elements of training

4.5.2 Expand the programme to incorporate prime contractors and public sector procurement and auditing professionals (especially for social value training).

4.6 Community Budgets roll out

Where Community Empowerment Practitioners' remain in post, there may be highly expert capacity to support this activity. Unfortunately, this capacity is expected to be hit by significant and overwhelming cuts in the next few months in the North West, although we do expect some remaining development worker capacity within some LIOs.

Recommendation

4.6.1 Cabinet Office to discuss with the NW Community Empowerment Practitioners' Forum capacity for supporting the roll out of community budgets.

4.7 VCS role in Local Integrated Services

As above: 4.6 Community Budgets

4.8 Free Schools

This is not an area of activity within which we will encourage VCS groups to engage.

4.9 Personal budgets

Support for individuals and their use of personal budgets, where necessary, should be ensured. In particular, people with long term and/or mental health conditions should have access to appropriate local support agencies e.g. Local Age Concerns, local Minds, etc.

Recommendation

4.9.1 Ensure brokerage functions where necessary are appropriately funded.

4.9.2 Explore training needs of LIOs so they can support local groups to put together effective business and marketing models so that they are competitive providers under personal budgets.

For further details or clarification please contact:

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