

NCIA Inquiry into the Future of Voluntary Services

Position paper on the impact of commissioning and procurement practices – outline brief

Introduction

As part of the NCIA inquiry into the Future of Voluntary Services, we are intending to publish a series of position papers to explore key issues and stimulate the debate. This paper presents an outline brief for one such key issue – the impact of commissioning and procurement practices in the provision of local services. This paper is a draft and we will welcome comments and suggestions that would improve it.

In drawing together and presenting the material necessary for this paper, we are looking for academics, researchers and activists to help us with the task – in setting out the theoretical background, assembling evidence and case studies and in the thinking we need to move towards a coherent position and narrative on the issues involved.

More information about the Inquiry and its scope can be found here -

<http://www.independentaction.net/2013/07/01/inquiry-into-voluntary-services-full-briefing-now-uploaded/>

Background and context

Financial support to voluntary services groups (VSGs) from state bodies has long been a feature of the UK landscape. This has been in recognition of the significant contribution made by VSGs in helping the state to provide the services and support accepted as being a requirement and right of citizenship and vibrant community life. By another test, statutory funding to VSGs can also be seen as a mechanism for returning the community's money back to the community, for the resources of the state are largely derived from the contributions of taxpayers.

Historically, the principal mechanism for state funding to VSGs has been the use of grants. A grant is a gift and the concept of a gift brings certain assumptions about the respective rights and responsibilities both of the donor and the recipient, the most important of which is that the gift, once bestowed, passes to the control of the recipient. From a legal perspective, the recipient is under no legal obligation to do or to deliver anything (though there may be strong ethical obligations), the funding body receives nothing in return, and is under no legal obligation to provide the grant. However, over time, this form of 'pure' grant has become a rarity. For good reasons, funders have been keen to ensure that grants are used for the purposes intended. Thus, through the 1980's and 90's, mechanisms were developed – grant agreements, later service level agreements and finally contracts – to specify the terms and conditions agreed. All these agreements are legally

binding though each has specific characteristics. It has become a moot point as to whether non-contractual agreements actually do amount to a contract in Law.

Three further developments pushed the statutory funding of VSGs towards a heavier reliance on contracts, in preference to grants. The first was the growth of centralised control during the New Labour years, accompanied by the use of VSGs as arms-length delivery vehicles for state policies and intentions. Funding to VSGs came to be seen primarily as a mechanism for meeting state objectives, rather than a way of supporting VSGs to do what they believed necessary, based on their independent, often innovative, sometimes radical re-reading of what was needed and/or on their accumulated knowledge and experience.

The second development has been the consensus within the political establishment and the officer class that the future for public services lies in outsourcing to private or voluntary sector agencies. Historically, the bulk of grants were made by statutory bodies using *powers* that were available to them and for work that augmented rather than replaced their own directly managed services. Once the issue turns to privatisation and outsourcing of services or activities which the statutory body has a *duty* to provide, different considerations apply, as the outsourced provider will be formally acting on behalf of the funding body in the discharge of these duties. Necessarily, the framework for specification and performance management has to be clear, accountable and unambiguous.

Lastly, also in the context of outsourcing, membership of the European Union has brought with it international agreements about 'fair competition', on the back of which have been built 'rules' for the purchase of public services. Neglect of these rules can expose the funding bodies to legal challenge.

These changes over time have given rise to the regime we now know as 'commissioning and procurement'. 'Commissioning' refers to the means by which a statutory body identifies community needs, consults as appropriate, designs and specifies services to meet those needs and the process for 'buying' those services. This last stage – usually done by competitive tendering – is referred to as 'procurement'. Commissioning approaches are now ubiquitous within public sector organisations and most borrow from techniques in the private sector.

Over the last decade or so, the principal exposure of VSGs to commissioning has been in the context of 're-tendered' grant programmes. The fashion for commissioning and its apparent virtues was seen as an opportunity to move grants into contracts - an appropriate mechanism both for achieving better 'value for money' and for bringing the activities of VSGs under closer control. As the pace of public services privatisation gathers pace, VSGs are now being brought into the orbit of the outsourcing of mainstream public services where, if successful, they will be providing services as a formal and legal agent of the funding body. This development is also increasingly bringing VSGs into closer relationships with the private sector, often as sub-contractors to a 'prime' contractor. The privatisation of the Probation Service, now launched in September 2013, is explicitly built on the assumption of VSGs sub-contracting to large private sector firms.

NCIA believes that the move from grants to commissioning is the single most important factor in the progressive co-option of VSGs as servants of state plans and policy and, increasingly, as subservient to the profit-making activities of private companies. The result has been huge damage to the autonomy, independence and, sometimes, integrity of VSGs and a diminution both of their interest and capacity to speak out against injustice and to take their mandate from the needs of their users and communities.¹

The purpose of the piece of work

¹ For more information about the damaging effects of commissioning on VSGs see <http://www.independentaction.net/wp-content/uploads/2011/03/26-good-reasons-to-oppose-commissioning.pdf>

The purpose of this piece of work is to:

- Summarise a back-to-basics description of the differences between grants and contracts (using existing resources), how the pattern of funding has changed and why this matters to VSGs;
- A description of the principal features of current commissioning and procurement regimes and practices in use within statutory sector agencies in England;
- A comparison with different approaches in use in Wales and Scotland, where appropriate;
- An assessment of the impact on community interests and needs, and on the capacity, independence and viability of VSGs of these approaches (including the loss of grant programmes); and on the changed relationships between VSGs, between VSGs and their statutory sector clients and, where they are present, private sector prime contractors;
- Locate examples where grants are still in place and the impact of this, and of alternative approaches to commissioning that allow VSGs to engage with the process without losing authenticity, integrity and independence;
- Provide pointers to further follow up work that may be required within the terms of the Inquiry, such as gathering information from key respondents;
- Help to stimulate a debate amongst NCIA supporters about effective strategies that will encourage the adoption of commissioning and other funding approaches that will strengthen positive and radical voluntary action in local areas.

Possible areas for attention

- Commissioning approaches to needs assessment and service specification, especially how local communities, including VSGs, are (or are not) involved in consultation and partnership;
- How appropriately the requirements of EU procurement rules have been used; how damaging these have been; and how they might be avoided;
- Common features of procurement exercises such as single contractor requirements, use of Pre Qualification Questionnaires, performance management requirements, payment by results schemes;
- The impact on VSGs of these ways of procuring services such as lead agency and consortia arrangements, mergers, mission drift, loss of campaigning activities, or loss of non-funded activities;
- What can we learn from alternative approaches to designing and delivering services such as co-production, 'Asset Based Community Development' or personalisation;
- What do we do about it? Ideas and suggestions about appropriate radical responses to the environment described. In particular, to reproduce and update an argument for grants in place of contracts and commissioning.

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