



**The Work Programme -
Initial Concerns from Civil
Society Organisations**

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The National Council for Voluntary Organisations (NCVO) is the largest general membership body for charities and voluntary organisations in England. We cover a wide spectrum of organisations including social enterprises, charities and voluntary groups. Established in 1919, NCVO represents over 8400 organisations with members in every local authority area, from large household names to small groups operating at the local level.

The NCVO special interest group (SIG) for Work Programme sub-contractors represents voluntary and community organisations involved in the Government's new welfare-to-work initiative. The group enables sub-contractors to share their experiences; provides them with information and advice; and enables NCVO to feed their concerns to Government. The group is open to all voluntary organisations who act as sub-contractors in the Work Programme, and there are currently over 100 organisations in its membership.

This paper highlights initial concerns that SIG members have about the Work Programme. Following this paper, NCVO will gather further evidence on the most pressing concerns.

Summary

1. The prime contract 'Framework'¹

- Too much premium was placed on 'price' rather than 'quality' during tendering stage.
- The size and complexity of contracts has excluded many CSOs from bidding to enter the Framework.
- There is too much emphasis on using CSOs for service *delivery* rather than the wider commissioning, design and evaluation process.

2. Prime contractor procurement and contractual issues

- Some CSOs offered end-to-end subcontracts have turned them down because of low prices, high risk, lack of certainty around volumes and TUPE related issues.
- The overly bureaucratic procurement processes adopted by some primes has created a barrier to some sub-contractors entering the Work Programme.
- DWP has provided insufficient guidance and support regarding TUPE and its likely effect on CSO sub-contractors.

3. Payment by results, performance expectations and upfront funding

- There are concerns that primes will not pass on sufficient upfront fees to their sub-contractor partners, many of whom will be financially vulnerable 'niche' providers unable to wait for the delay in payment associated with a PbR system.

4. Support for all customer groups

- The differential payments model will not prevent 'creaming and parking' *within* customer groups or geographical areas.
- Being based on *benefits* rather than *need*, the differential payments model potentially neglects the large numbers of people claiming JSA who face multiple barriers to work.
- Those who are unemployed and not claiming benefits – approximately 178,000 in London alone – will not receive Work Programme assistance.
- There are concerns that those customers most likely to be subjected to mistreatment are also those least able to make effective use of available complaint procedures.

5. Referrals

- Many tier 2 providers are yet to receive any Work Programme referrals, or in some cases contracts from their prime, reinforcing concerns that some CSOs have been used as 'bid candy'.
- The 'lottery' nature of the referral process means that some customers are forgoing the appropriate support which may exist in a competing primes supply-chain.

6. The Merlin Standard

- The timescale of gaining Merlin accreditation within a year of contracts starting is too long with many CSO sub-contractors experiencing difficulties and non-Merlin compliant behaviour now.
- The Merlin Standard is too subjective to adequately regulate prime contractor behaviour towards their supply chain partners.
- Many see prime contracts as 'too big to fail' with successful accreditation seen as a forgone conclusion.

¹ The Framework is short for the 'Framework for the Provision of Employment Related Support Services'. This is the framework under which organisations bid to become Prime contractors.

Concerns

1. The prime contract 'Framework'

DWP chose 18 prime contractors to deliver 40 Work Programme contracts across England and Wales. Of the 18 organisations chosen only two are CSOs. Of the 40 prime contracts offered by DWP only three were awarded to the civil society sector leaving 35 - or 88% - going to private sector organisations.

According to DWP, tenders were assessed according to their 'quality' and 'price' with each component afforded equal weighting. Despite these assurances there are widespread concerns that far more premium was placed on price. There are also concerns throughout the welfare-to-work sector that much of the potential profit of Work Programme contracts was lost through the 'bidding wars' that took place during the tendering stage with some bids allegedly up to 50 per cent below the DWP maximum price. This arguably casts doubt over the ability of primes to pass sufficient funds onto sub-contractors. If both primes in an area have adopted this strategy, this leaves responsible sub-contractors in an area with no financially viable way of taking part in the Work Programme, losing their expertise.

Due to the results-based payment model of the Work Programme, primes chosen for the Framework needed to display an annual turnover of at least £20 million and the financial capacity to deliver large contracts that require significant cash-flow. This scale enables - and requires - primes to shoulder the upfront and transitional costs associated with an outcomes based model. The size and complexity of the Work Programme contracts has excluded many CSOs from bidding to be a prime due to their relatively small reserves and limited access to capital. This has potentially led to a great deal of expertise and experience being lost. Furthermore, being excluded from the Framework has prevented some CSOs from becoming primes on other welfare-to-work programmes which demand far less financial capacity, such as the ESF Families programme.

There is a concern that there is too much emphasis on using CSOs for service *delivery* rather than the wider commissioning, design and evaluation process. NCVO has long advocated that the role of CSOs should extend beyond the mere delivery of public services. Their connection with the community they serve and their capacity to engage with marginalised groups means that they have a much larger and more important role to play in shaping the overall design of services.

Recommendations

- Government should explore alternative ways to allow greater participation of CSOs in a prime contractor capacity in future programmes across government.
- Future commissioning timescales should allow more time for consortia building.
- There should be more transparency in future government commissioning processes to instil confidence that price is not afforded undue priority in tenders.
- DWP should do more to ensure prime contractors engage with their local civil society in the wider commissioning, design and evaluation processes and not just service delivery.

2. Prime contractor procurement and contractual issues

Some CSOs that have been offered end-to-end sub-contracts have turned them down because of excessively unfavourable terms offered by primes including low prices, high risk, uncertainty around volumes and TUPE related issues (see below for more on TUPE). This is all the more worrying given that the majority of revenue to be made from the Work Programme derives from the sustainment payments component associated with long-term customer engagement. This potentially impacts more heavily on CSOs as they are often unable to take the risks available to a private organisation due to a governance structure that favours caution and small reserves.

Conversely, some CSOs have seemingly 'jumped in blind' - either through naivety or through commitment to their beneficiaries, only to regret the unfavourable contractual arrangements they have committed to. The flexibility to scrutinise what contracts to accept is reduced when there are no other options available. This pressure increases when an organisation suspects there is another organisation willing to accept the price on offer and when, as some claim, the

prime adopts a 'take it or leave it' attitude. While some responsibility lies with CSOs, there is a worry this could lead to future systemic failures.

According to the London Voluntary Sector Council (LVSC) there has been a lack of certainty around whether or how TUPE would apply to staff delivering earlier welfare-to-work programmes. In some instances - around one or two weeks before Work Programme roll-out - sub-contractors have been told they will be taking on external staff from previous Flexible New Deal (FND) contracts. This has led to extra restructuring and redundancies at a time when some CSO sub-contractors are finalising their own team of staff to deliver Work Programme sub-contracts. External employees 'TUPE'd' across in this way may have higher salaries, better pensions and redundancy conditions which the sub-contractor is required by law to maintain. There are reports that some primes are adopting an inflexible attitude towards their sub-contractor partners. According to one London voluntary sector sub-contractor, the additional costs resulting from the associated restructuring, interviews, and redundancy costs are likely to total approximately £26,000 for them alone. Some CSOs have had to turn down contracts because of these extra costs. DWP has provided insufficient guidance and support regarding TUPE.

A further barrier to some sub-contractors entering the Work Programme is the overly bureaucratic procurement processes adopted by some primes. One member of NCVO's special interest group for Work Programme sub-contractors has reported signing a contract 140 pages long only to receive no referrals to date. Furthermore, an ERSA survey² conducted between 25 May and 16 June 2011 found that some prospective sub-contractors had completed over 100 Expression of Interest (EOI) forms when bidding for contracts. EOI forms - and Pre-Qualification Questionnaire (PQQ) - forms are often very complicated, placing huge administrative burdens on sub-contractors, particularly smaller ones with a reduced capacity for time-consuming administrative duties. Lastly, these forms were not designed with consortia in mind.

Recommendations

- As recommended by Lord Hodgson's Red Tape Review³, government should ensure that tender documents are proportionate to the size of the contract on offer and PQQs for smaller organisations should in most cases be dispensed with. Information that can be acquired from accounts, Companies' House or Charity Commission returns should not be requested from the CSO in question.
- Government should maintain closer oversight of the programme to ensure that sub-contracting arrangements are fair and equitable.

3. Payment by results, performance expectations and upfront funding

Payment by results (PbR) is central to the Government's public services reform agenda with plans to extend it to other sectors such as rehabilitation and health. As such, it is perhaps one of the more important components of the Work Programme.

Despite shouldering the transitional costs of sub-contractors being a requirement of the prime contractor model, concerns remain as to whether primes will pass on sufficient upfront fees to their supply chain partners, many of whom will be financially vulnerable 'niche' providers unable to wait for the delay in payment associated with a PbR system. This is particularly problematic for organisations where the programme has replaced existing funding streams that have no element of outcome-based funding.

There is a further concern that by the time a prime has taken its management fee from an already heavily discounted payment from DWP, very little remains for tier 1 sub-contractors, and even less for tier 2 sub-contractors. The following is an example of what one London-based prime is offering to its tier 1 *end-to-end* sub-contractor with JSA 25+ customers:

² ERSA (2011) 'ERSA calls for measures to increase the transparency and effectiveness of future Government procurement' p.1 http://www.ersa.org.uk/downloads/Select_Committee_response_press_release-Xb8Fr3.pdf

³ Civil Society Red Tape Task Force (2011) 'Unshackling Good Neighbours - Report on how to cut red tape for small charities, voluntary organisations and social enterprises' <http://www.cabinetoffice.gov.uk/sites/default/files/resources/unshackling-good-neighbours.pdf>

- Attachment fee: £150 (out of a DWP maximum of £400)
- Job Start: £140
- After 6 months in work: £590 (out of a DWP maximum of £1200)
- 13 monthly payments for each additional month of sustained work: £110 (out of a DWP maximum of £215)

Total awarded to the sub-contractor: £2300 out of a DWP maximum of £4395.

As the attachment fee component of the PbR model decreases as Work Programme contracts progress, this problem will increase.

Recommendations

- Government should look immediately at current funding arrangements to ensure money passed on to sub-contractors is both fair and sufficient to carry out the work.
- Government should consider underwriting a small proportion of the contract value for CSOs.

4. Support for all customer groups

While the differential PbR model is potentially an improvement on previous schemes in that it encourages providers to engage with harder to reach groups, it is not clear how effective it will be in tackling differentiation *within* customer groups. That is, financial pressures to make money could compel providers to focus on customers closer to employment at the expense of more disadvantaged groups – a practice known as ‘creaming and parking’. Being based on *benefits* rather than *need*, the differential model also potentially neglects the large numbers of people claiming JSA who face multiple barriers to work. Those who are unemployed and not claiming benefits – approximately 178,000 in London alone – will not receive Work Programme assistance at all.⁴

Geographical factors and labour market conditions might also inflict their own ‘creaming and parking’ tendencies. The temptation to concentrate on customers in areas *within* a CPA that provide greater opportunities may be at the expense of more disadvantaged or rural areas where less potential for employment exists. Indeed, in some areas hundreds of thousands of new jobs would need to be created to even be comparable to present national averages of unemployment.⁵ If there is little prospect of finding work for customers because the jobs do not actually exist, providers looking to meet DWP performance levels will likely feel compelled to focus their energies on the areas where more jobs exist.

DWP maintains that neglected customers will be able hold their respective prime to account if they contravene their own published minimum service levels.⁶ These minimum performance standards will be translated into key performance indicators within each contract and made public so observers and customers alike can monitor whether primes are delivering what they have pledged. Claimants who ‘aren’t satisfied with the service they have received can make use of a new strengthened complaints process’⁷ via an Independent Case Examiner. However, the minimum service standards are themselves vague and ambiguous documents varying in detail from a few bullet points for one prime to over a page and a half for another. It is hard to see how these diverse, self-determined declarations of intent could be translated into meaningful performance indicators which could then be used to ensure adequate levels of service are provided to all customers. Compounding the problem are concerns that those customers most likely to be subjected to mistreatment are also those least able to make effective use of complaint procedures.

Recommendations

⁴ London Skills & Employment Observatory: The Work Programme in London: Information for stakeholders as the Work Programme starts. http://seo.org.uk/sites/default/files/downloads/Work_Programme_report.pdf p.15

⁵ Centre for Public Service Partnerships and Tomorrow’s People (2011) ‘Personalisation, innovation and economic growth – the essentials for tackling long term unemployment’ p.6 https://member.lgiu.org.uk/cpsp/Documents/Policy_and_practice/Personalisation_innovation_and_economic_growth_-_the_essentials_for_tackling_longterm_unemployment.pdf

⁶ Department for Work and Pensions: Provider minimum service delivery www.dwp.gov.uk/docs/provider-minimum-service-delivery.pdf

⁷ Work and Pensions Committee - Sixth Special Report op. cit. p.7

- Government has a role in ensuring geographic, economic and labour market disparities are addressed through a more flexible approach to national performance expectations and separate specialist intervention targeting neglected groups and areas.
- DWP needs to ensure all customer groups are adequately engaged and provided for, and that providers do not 'cream' off those clients easier to help and 'park' those harder to reach.
- DWP should regularly publish performance data relating to referrals, job outcomes, job sustainment outcomes and payments across a wide range of customer groups including age, race, region, disability, lone parents, homeless and "not in employment, education or training" (NEETs). Not only would this data allow providers to be held to account, it would also help to disseminate good practice throughout the Work Programme.
- Minimum performance targets need to be flexible enough to cater for, and adapt to, changes and variation in the economic environment and labour market.

5. Referrals

Francis Maude stated that 35 to 40 per cent of the value of the contracts under the Work Programme would go to the civil society sector⁸ and there were assurances in the Invitation to Tender (ITT) that the Work Programme would build on pre-existing levels of civil society sector involvement in the welfare to work sector - then at around 30 per cent⁹. These have proved false as demonstrated by Centre for Economic and Social Inclusion (CESI) statistics that show the sector represents just 19.4 per cent of Work Programme supply chain composition.¹⁰

There have been a number of CSOs who are operating as 'specialist' or 'tier 2' providers that have not yet received any Work Programme referrals,¹¹ or in some cases, even received contracts from their prime. This reinforces the concern that VCS organisations have been used as 'bid candy' to make prime contractor supply chains look more attractive to DWP during the tendering stage.

Connected are concerns that some primes might keep the easier to process, or longer term and more valuable, referrals for themselves at the expense of their sub-contractor partners. While one of civil society's strengths lies in specialist support for harder to reach customers, confining CSOs to these smaller contracts could compromise the long-term financial resilience of some organisations and their capacity to participate in future service delivery. DWP's 'black box' approach to commissioning (whereby primes design service provision free from DWP intervention) and its inherent separation of sub-contractors from government could leave some CSOs feeling isolated and more vulnerable to mistreatment.

The 'lottery' nature of the referral process has raised concerns that some customers could potentially miss out on the most appropriate action needed to address their specific needs. Customers are referred to each prime on an alternating basis – in other words, each prime within a CPA takes turns with each customer referred. This means that a customer referred to a particular prime might actually need a specialist service only provided by a sub-contractor in a competing prime contractor's supply-chain. While all primes working within a CPA are required to have a supply chain that caters for all customer needs, some supply chains have particular expertise not available in others.

Recommendations

- Government should acknowledge that civil society involvement in the Work Programme has fallen short of assurances.
- DWP should monitor customer flows and investigate the reasons behind any potential lack of referrals to sub-contractors.

⁸ Hansard – Cabinet Office Questions, 27 April 2011

[http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110427/debtext/110427-0001.htm - 11042772000009](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110427/debtext/110427-0001.htm-11042772000009)

⁹ DWP 'The Work Programme Invitation to Tender Specification and Supporting Information' p.16-17
<http://www.dwp.gov.uk/docs/work-prog-itt.pdf>

¹⁰ Centre for Economic Social Inclusion (2011) 'Work Programme contractor summary'
http://www.cesi.org.uk/Resources/CESI/Documents/CPA_Work_Programme_Contractor_summary4.xls

¹¹ A recent joint roundtable held by NCVO and Clinks on private sector prime contractor and voluntary sector sub-contractor relationships support these findings

- The 'lottery' nature of the referral process should be addressed to ensure those customers with specific needs are not neglected by dint of their prime contractor provider.
- Government should look at the feasibility of preventing prime contractors from also being frontline providers to avoid the inevitable conflicts of interest outlined.

6. The Merlin Standard

As part of the DWP approach to commissioning, prime contractors are required to ensure that their sub-contractual relationships adhere to the DWP Code of Conduct¹² through the application of the Merlin Standard.

While the Merlin Standard safeguards against some of the concerns highlighted above, such as ensuring primes employ 'equitable risk transfer, including financial risk, for small, specialist and third sector providers' and 'funding arrangements [that] are fair, proportionate and do not cause undue financial risk for supply chain partners'¹³ the strength of the assessment process and its real-world application remains a serious cause for concern.

For example, the extent to which risk transfer is deemed 'equitable' or funding arrangements 'fair and proportionate' are subjective value judgments open to interpretation. The 'avoidance of floor standards' and uncertainty regarding the ability of a sub-contractor to obtain adequate redress means the Merlin Standard is not robust enough in its current state.¹⁴ A further concern is that Merlin assessors will use prime contractor self assessments as their main evidence for accreditation.

Prime contractors that do not attain a satisfactory score or above (55-100%) after assessment will subsequently forgo the reward of increased market share, regardless of whether they are outperforming other primes in their respective CPA. However, how this penalty will work if all primes within a CPA fail to attain a satisfactory score is unclear. If after three attempts at reassessment, the prime is still deemed 'unsatisfactory' the case is referred to the DWP account manager to consider breach action and termination of the contract.

However, it is feared the consequences of this ultimate sanction might be so disruptive as to preclude DWP from contemplating this course of action. In this respect, prime contracts are perceived as 'too big to fail' with successful accreditation largely a forgone conclusion. A further concern is that the timescale for all current prime contractors having to obtain Merlin accreditation within one year of starting their Work Programme contracts is too long with many CSO sub-contractors experiencing difficulties and non-Merlin compliant behaviours now.

Sub-contractors do have another means at their disposal should they wish to raise a complaint against a prime contractor. The Merlin Mediation Process is available if the 'Prime Contractor's complaints handling procedures have failed to achieve resolution'.¹⁵ However, it is unclear whether many sub-contractors will feel comfortable antagonising their benefactor in this way, or label themselves as troublemakers with other contractors in the welfare-to-work industry.

Recommendations

- It is essential that DWP ensures the effectiveness of the Merlin Standard, including looking again at ensuring implementation and options for redress.¹⁶

Conclusion

This paper is based on the initial concerns of the voluntary and community sector sub-contractors about the Work Programme. As such, it inevitably focuses on the negative

¹² Department for Work and Pensions (2008) 'Commissioning Strategy' p.31 www.dwp.gov.uk/docs/cs-rep-08.pdf

¹³ The Merlin Standard, p.7 www.dwp.gov.uk/docs/sub-contracting-merlin-standard.pdf

¹⁴ Work and Pensions Committee - Fourth Report: Work Programme: providers and contracting arrangements, p.40 <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/718/718i.pdf>

¹⁵ Merlin Mediation Process Guidance, p.1: <http://www.merlinstandard.co.uk/downloads/merlin-mediation-process-guidance.pdf>

¹⁶ The Merlin Standard, p.7 www.dwp.gov.uk/docs/sub-contracting-merlin-standard.pdf

aspects of the programme. This is not to detract from its many positive aspects such as differentiated tariffs, emphasis on sustained employment and scale of ambition.

Our concern rests upon the fact that the 'devil is in the detail' and that, unless all the detail is right, the programme has a large chance of systemic failure. As such we hope government takes these concerns seriously and addresses them to ensure that the full knowledge and expertise of the voluntary and community sector is used and to ensure the programme is a success.