

DIRECTORY OF SOCIAL CHANGE

INFORMATION AND TRAINING FOR THE VOLUNTARY SECTOR

DSC Response to Liverpool City Council Community Resources Unit Funding Programme 2011-2014 Consultation

June 2010

Jay Kennedy
Head of Policy
Directory of Social Change
Federation House
Hope Street
L1 9BW
0151 702 0152
jkennedy@dsc.org.uk

About the Directory of Social Change

The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come into contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers, and are struggling constantly to maintain and improve the services that they provide.

DSC is not a membership body. Our public commentary and the policy positions that we take are based on [clear principles](#), and are informed by the contact that we have with these organisations. We also undertake [campaigns](#) on issues that affect them or which evolve out of our research.

DSC views its role as that of a ‘concerned citizen’, acting as a champion for those smaller organisations whose needs may not be accounted for in public policy. We ask critical questions, often challenge the prevailing view, and try to promote debate on issues that we consider to be important.

DSC is not funded under this or any other Liverpool City Council programme, but it has had a physical presence in Liverpool and an interest in the local voluntary sector for several decades. Funding for charities and other voluntary sector organisations, particularly grant funding, is a core concern and area of expertise for DSC. As a leading UK city with a diverse and sizeable voluntary sector, what occurs in Liverpool has in our view repercussions beyond the immediate locality.

DSC’s response to this consultation

We do not feel able to comment on the specific priorities or ‘themes’ outlined in the Draft Funding Framework at this time. Other local organisations and those currently in receipt of funds will doubtless have a better understanding of what the changes might mean and whether they are sensible or not.

What DSC can offer is a perspective based on its research and analysis of thousands of charitable, statutory and corporate funders of the voluntary sector. We would therefore like to focus our response on three distinct areas:

- The consultation process itself
- The principles of the Draft Funding Framework (excluding priority themes)
- The detailed terms and conditions of funding for this programme

The Consultation Process

Effective consultation, especially where statutory bodies consult the voluntary sector, has been a priority policy issue for DSC over recent years, particularly where it affects or influences funding relationships. It is of course also a central part of the national and local Compacts between government bodies and voluntary organisations.

In our experience, too many consultations from public bodies are fundamentally flawed in design or execution, or the feedback received has little bearing on eventual decision-making by public bodies. Such consultations drain the voluntary sector's limited resources for little benefit. Worse, they can legitimise flawed decision-making – e.g. 'these organisations were consulted in developing this policy' when in fact the views of respondent organisations were not seriously considered and had little bearing on the final policy outcome.

Although the consultation under consideration has not concluded, it has been characterised by familiar problems. It is clear to DSC (and to other organisations we have spoken to) that the company contracted to carry out the consultation process, GVA Grimley, was simply not competent to carry out the task required of it. There were fundamental flaws with the original online survey conducted in February / March which mean the data derived from a number of questions simply cannot be tenable.

Further, we understand that this data was 'triangulated' (whatever that means) with responses received during consultation events. Methodologically this approach would appear unsound, as the responses were received in different contexts: online, where there was no explanation or background to the questions asked; and in-person, where background information was apparently provided.

We understand that the decision to contract an external company was done in part to provide an independent perspective to the CRU. That was perhaps a valid intention, but it needs to be viewed against the amount of public money spent and the time of those organisations which responded. Any 'data' gathered from this process must be treated with caution in making final decisions about the future of the programme.

In DSC's view a poor consultation is worse than no consultation at all. It appears that in this case outsourcing may indeed have provided an independent perspective, but an unqualified one as well. People in focus groups also felt it unnecessarily distanced them from those in the council who knew most about the programme, which inhibited constructive discussion. It is important that the council learn from what has gone wrong in this process, so it can improve future practice.

One very constructive suggestion made by a participant in one of the focus groups we attended was that the council could have 'swapped' its consultation exercise with another council running a similar programme – thereby gaining an independent but more informed perspective, and saving money and time for all concerned. We hope the council will consider this approach as a possibility for future consultations.

Consultation on the Draft Funding Framework for 2011-2014

As noted above, we are not able to provide feedback on the detailed themes of the programme. However we would like to make the following points in response to the Introduction and over-arching principles for the draft framework.

The importance of grants

The council and the CRU are to be commended for retaining this programme on a grant basis, particularly considering current pressures on public spending. Generally speaking grant funding is more easily managed by charities and is more accessible to greater numbers of smaller organisations. Too often, 'commissioning' simply

involves a crude shift from grant funding to procurement which in DSC's view is often damaging and wasteful for charities and the outcomes they achieve. Tendering processes from public bodies remain inherently difficult to navigate and prohibitively expensive in time and resources for most local voluntary groups.

Full cost recovery

The description of full cost recovery on p. 2 is odd – the language suggests that the council feels organisations are claiming disproportionately high levels of overhead costs for grants, and that this needs to be reduced. We think this is unlikely and that in fact many currently funded organisations will already be operating for less in real terms because inflationary increases have not been provided.

The phrase 'should not disproportionately fund central administrative costs' on p. 2 is vague, as is the phrase 'projects should be realistically costed' on p.3. These statements seem to indicate that the council will determine what costs are legitimate overheads and what are not on a case-by-case basis, with a view to eliminating costs wherever possible.

The whole idea of full cost recovery is to help organisations to deliver projects which maintain their own organisational viability and which do not subsidise state-funded activities with charitable funds. An approach which targets organisations' overhead costs as a place to achieve 'efficiency savings' will encourage the opposite.

Sustainability

The statement 'organisations should diversify their range of funding sources' is one that DSC would generally agree with. However, the term sustainability as used in this section appears mainly to be code for 'don't count on this money being available in future'. The overall tone of this section suggests an eventual withdrawal of funding or closure of the grants programme entirely, which would be very damaging.

It must be borne in mind that in many areas of charitable work sustainability is a holy grail. For example, it isn't realistic to charge serious drug addicts fees for their own treatment programme and hope to achieve success with those addicts most in need. You cannot provide advice to vulnerable people who have little income and expect them to pay for it. There can only be so many viable cafes and charity shops in one city.

Simplicity and Proportionality

We agree with the sentiment expressed here, but if the length and detail of the terms and conditions are any guide, it is not reflected in actual practice. We will address this issue in the final section of our response.

Promotion of collaborative and partnership approach

Forced collaboration and partnership generally gets you neither – partnerships need to be based on sound working relationships and shared objectives, not convenience or funder requirements. That is not to say that partnership working could be encouraged, promoted, or facilitated, but funders should not make it a condition of funding.

Need for clear evidence that services are not duplicated

It is not sensible or realistic to expect applicants to know whether similar services or projects exist elsewhere, and to provide evidence of that. This simply adds an extra administrative burden onto all applicants, which will be difficult to prove. The CRU, as a funder, should make that decision if it is keen to prioritise funding for limited numbers of organisations or types of activities, by selecting the best ones for each area/type.

Demonstrating outcomes

We understand that evidence of outcomes is necessary, partly to maintain support for this grant programme in difficult financial circumstances. However, many of the outcomes listed in the programme themes would appear impossible to achieve, let alone measure.

For example, one of the outcomes for Capacity Building is 'improved governance and management in small and medium sized VCS'. What is meant by 'improved'? What is the minimum benchmark with which to judge improvement? Do *all* local small and medium sized VCS organisations – a huge generalisation – need to improve their governance (clearly some may not?) What proportion of improvement is sought? Why? Does the council even have an accurate understanding of good charity governance? Governance is complicated and varies greatly between different types of organisations. Often much depends upon being able to recruit trustees of sufficient calibre.

Outcomes must be realistically achievable given the resources allocated to achieving them, and only some aspects of the outcomes achieved will be able to be measured. The outcome given above, as currently defined, is not measurable in any systematic way, and is probably not achievable either.

Funding period

Saying this programme provides three year funding subject to annual review means that in reality it provides one year funding. The reason behind a national standard for three year funding is partly to give funded organisations the necessary stability to retain staff and volunteers, so that outcomes can be more successfully delivered. As currently conceived, this programme does not do that.

The Terms and Conditions of the Funding Programme

DSC's Great Giving Campaign – An end to hidden small print

DSC's [Great Giving campaign](#) aims to improve the relationships between charities and their funders. One of the aims of the campaign is to make the detailed terms and conditions of funding more transparent and negotiable, and ultimately better for all concerned – we want to end hidden small print. Too often, terms are not available to the applicant until such point as they are offered a grant, which can put the applicant in a difficult position. This inhibits good fundraising and the independence of funded organisations.

As a rule, the terms and conditions of statutory funding, whether from central or local government, are more onerous, complicated, lengthy, unnecessary, bureaucratic and

less transparent than those of other funders such as charitable trusts and foundations or the Lottery. Often they simply could not be enforced in a court of law, and there can be unhelpful confusion between the terms of a grant agreement and what are actually contractual clauses.

Positive aspects of the council's approach to its funding terms and conditions

In promoting our campaign to hundreds of local authorities across the country, to date only a handful have been willing to engage in discussions with DSC about the terms and conditions of their funding programmes – among them Liverpool. We have been encouraged by the level of engagement from the CRU and Liverpool City Council on this issue to date.

In particular, the council deserves credit for the following, which DSC considers to be good practice:

- Making the full terms and conditions available on the council's website, together with other information such as criteria and guidance
- Drawing attention to the terms and conditions at the beginning of the document which sets out criteria, exclusions and eligibility
- Providing definitions of key terms at the start of the document
- A willingness to consult and enter dialogue about the terms and conditions of the programme.

However, transparency is only the starting point. DSC's campaign seeks greater transparency not simply for its own sake but to improve funding terms and conditions so that they are more workable and fairer to those receiving funding. By making the terms transparent the Council has opened itself up to scrutiny – a positive step in DSC's view.

In DSC's view, the terms and conditions of funding for charities are a form of de-facto regulation. We believe all regulation should be appropriate, proportionate, and enabling. On reviewing this agreement, it fails in many ways on all three counts. Too many of the terms and conditions in this agreement are either unnecessary, unduly onerous, or seek blanket coverage of theoretical situations which are clearly framed in the council's favour. This is counter-productive in that it is likely to inhibit, not facilitate, a good working relationship between the council and funded organisations. Further, from our perspective (which is not based on legal training) many of the clauses would appear to be unenforceable in a court of law, should any dispute reach that stage.

A number of clauses would also appear to create warranties or indemnities which are features of contracts and are generally out of place in a grant agreement. Confusion between contracts and grant agreements is unhelpful, but common in documents of this kind from public bodies. For example, L2 states that 'You shall be liable and shall indemnify the City Council against any expense, liability, cost, loss, claim or proceeding in respect of any injury or death of any person or damage to any property real or personal whatsoever'. Such clauses are typical of contracts, not grants.

Length and breadth of terms covered

The document under consideration here is some 17 pages long and comprises 95 distinct terms and conditions. This is for grants which may be as little as £7000 per

year. We think this is disproportionate and does not adequately reflect the programme's stated principles of 'simplicity and proportionality.'

This level of complexity makes it more likely that funded organisations will simply 'sign on the dotted line' to get the money in, without proper consideration of what is being required of them. Smaller organisations that lack staff or volunteers with the necessary expertise to advise them about this technical language will be at a loss as to what the terms actually mean for them. This benefits neither themselves nor the council. Lawyers at the council may have drafted the terms to isolate the council from every conceivable risk, but in fact the consent which has been given by the signatory organisation is probably in many cases not fully informed and therefore is unlikely to result in the genuine compliance which the council seeks.

Necessity and relevance of terms covered

The document could be considerably shortened and simplified by removing whole tranches of clauses which duplicate or restate existing regulation and legislation. One of the eligibility criteria for the programme is that organisations must be registered charities; it is therefore unnecessary to repeat in the terms numerous matters which are already well-known aspects of charity law, which any registered charity will have to comply with to obtain and retain its charitable status.

Most of the clauses in section B (Governance) and section C (Finance) are in this vein. For example, B3 states that 'you must act in accordance with your governing document at all times'. Section C2 states that 'your annual accounts must be externally examined or audited by a qualified person'.

These are absolutely requirements for running a charity. If there is evidence that organisations are not doing these things, the council should inform the Charity Commission and should avoid funding them, rather than exceeding its own powers by attempting to regulate behaviour through the terms and conditions of its funding.

If it is necessary to include clauses to protect the council's interests and public money in cases where organisations are already in receipt of funds, all that is needed is one simple clause which states that the funder reserves the right to withdraw funding if the funded organisation does not properly comply with relevant aspects of charity law.

Top five examples of onerous or unworkable terms and conditions in the document

Many if not most of the conditions in the document are onerous or simply unworkable – we could have provided many examples, but have included below the five which we think are the most problematic:

1) A7 / E8 – clause A7 says 'you will tell us in writing as soon as possible of any investigations concerning your organisation, your members of staff, Governing Body, or volunteers carried out by the Police, Charity Commission, Companies House, Her Majesty's Revenue and Customs, or other regulatory body.'

This clause is partly duplicated in E8, under 'Suspension, Variation or Termination of Grant', which reserves the right to withdraw the grant simply because an investigation is initiated. This is unfair and disproportionate – it implies that the organisation has done something wrong simply because it is being investigated, when in fact any investigation may be misguided, unfounded, or may result in the

organisation being cleared of any wrongdoing. The impression given is that the council wishes to reserve the right to withdraw funding simply based on the implication or perception of wrongdoing rather than any wrongdoing being proved.

2) B5 – ‘you will agree that a representative of Liverpool City Council may attend your Annual General Meeting or your Governing Body meetings as an observer if requested by us’

This kind of interference in the internal governance of charities is unfortunately all too common from statutory funders, especially local authorities. It is a direct threat to the independence of funded organisations – it is designed to allow the council to exert influence and control over board decision-making and management through the funding relationship. Charities are independent organisations and their trustees are bound by law to make decisions in the best interests of the charity and its beneficiaries – not based on the opinions or perceptions of local authority staff or councillors, whether they fund the organisation or not.

3) C10 – ‘The Head of Audit of the Council or his or her representative may visit your premises without prior notification and examine documentation or seek explanation considered necessary to ensure funds are properly accounted for.’

A blanket right to visit unannounced is unfair on any number of levels – not least simple practical considerations of needing to ensure an appropriate person was available at all times, and that the relevant documentation was accessible, in the event that the Head of Audit or a representative did show up.

4) K3 – ‘As part of our monitoring and audit requirements we reserve the right to independently contact a random sample of your beneficiaries from contact details supplied by you in accordance with data protection legislation to verify that they have indeed engaged with your project.’

This clause is contradictory and probably would be impossible to comply with in any number of circumstances. For many organisations, complying with data protection legislation and rules on confidentiality will mean that contact details cannot be supplied as required.

5) L11 – Additional Conditions: ‘We have the right to attach such additional conditions to this Agreement as we consider necessary to ensure the Project is delivered in accordance with the annual Project Statement, or to ensure the purpose of the Grant is upheld, or to protect public money.’

An agreement between two parties where one party reserves the right to change the agreement at any time is not an agreement at all in our view. The wording here would allow for additional conditions that could replace or amend conditions in the original agreement. What is the point of having a 17 page document comprising 95 distinct terms and conditions, and then saying that these are subject to being changed unilaterally by one party?

A few examples of unnecessary terms and conditions

In addition to the terms which replicate existing charity law and regulation (particularly discussion of sections B and C above) the following terms seem unnecessary:

A9 – You will comply with all relevant statutory and other legal requirements (including all relevant rules, regulations and orders) pertaining to the way you operate, the work you carry out, the staff you employ or the goods you buy.

This is effectively a blanket clause which says ‘you must comply with everything you need to comply with’, in which case, why is any other clause concerning legal and regulatory requirements needed?

J1 – ‘For each staff post that is to be funded or part funded by our Grant, you will provide us with the job description, salary, on cost and hours worked on request.’

Why does the council need to know the minute details of people employed by the grant recipient? Is it even interested in this information?

L6 – Project Funding: ‘You will tell us of any other offer of funding you have for the Project during the funding Term and we reserve the right to reduce Grant funding payments on this basis especially in cases where this may duplicate the Project we are funding.’

It is unlikely that any such offers will ever take place – independent funders are generally reluctant to fund projects which have received statutory money or where such money is due to be cut off, often with good reason.