

# Public Social Partnerships (PSPs)

## Frequently Asked Questions

# Public Social Partnerships (PSPs)

## 1. What is a PSP?

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Recognising that services provided by public bodies have a social purpose at their core, PSPs enable the public and third sectors to work together to enhance services for the public and our communities.

Overall responsibility for services in a social and community context will continue to be the legal responsibility of public bodies under statutory regimes, and PSPs are about matching public service commissioners and the resources, knowledge and experiences of those within the public sector with the knowledge, experience and resources of the third sector.

PSPs are about outcomes and results, by reference to – innovation in service design and delivery; better understanding of service user requirements; maximising resources and efficiency and effectiveness in delivery, amongst others.

## 2. What is a PSP not?

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PSPs are not required to have any particular legal structure. Fundamentally a PSP's form will depend on who the public sector commissioner is and what its' responsibilities for public services are, as well as what the PSP is setting out to achieve.

PSPs are not about using the third sector to finance public sector service delivery.

PSPs are not a mechanism to ensure that the third sector wins subsequent service delivery contracts or to undermine public procurement or other legal requirements.

## 3. Why might a public body be interested in establishing a PSP?

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Almost all aspects of public service delivery are mirrored, supplemented or enhanced by the activities and operations of third sector organisations. In the last few years, considerable effort has gone into putting in place mechanisms for closer cooperation and coordination between Scotland's third sector and its public sector, not least through single interfaces and community planning partnerships. PSPs are one way of taking that cooperation and coordination further, particularly with a view to innovating and developing how public sector services are delivered and the social value that flows from their delivery.

In establishing a PSP, the beneficial outcomes for a public sector organisation might include, amongst others:

- Better understanding its service users;
- Better understanding key stakeholders relevant to a particular service;
- Increased delivery of social value / wellbeing flowing from a redesigned or new delivery model or concept;
- The promotion of sustainable economic growth through improved capacity and capability within the Third Sector
- Potential cost-savings associated with service changes.
- Creation of a more dynamic market-place for services, offering greater choice and placing service users at the centre of the service focus
- Simpler, more innovative services, which

draw on the insight of the Third Sector and breakdown traditional service delivery silos

- The public sector shift focus to facilitate rather than deliver services; acting as catalysts and facilitators of change rather than sole service providers

#### 4. Why might a third sector organisation be interested in establishing a PSP?

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A PSP offers a third sector organisation:

- The opportunity to further its aims or make a substantial difference relevant to its aims or the community of interest / beneficiaries that it serves, through delivering social value;
- The opportunity to understand the public sector organisation that it engages with during a PSP, including that organisation's drivers, objectives, limitations and the areas in which the third sector and that organisation may work together on an enhanced and lasting basis;
- Potential access to grant funding or income from delivery of a service requirement to a public sector organisation (though see further below on varying possible structures and considerations relevant to – procurement, state aid, best value and public administrative law).
- Strengthened relationships with public sector organisation, built upon a partnership between organisations and sectors that can encourage the breakdown of cultural barriers between sectors and organisations

Even the work in thinking about what a PSP could achieve and engaging with stakeholders can identify potential benefits and improvements.

#### 5. What are the structures/forms available for PSPs?

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There is no mandated form for PSPs. We describe briefly here some of the different structures that have been used:

- **Grant-funded model** – the public sector grant-funds a third sector organisation to further the third sector organisations' own aims and activities through working with the Council to better deliver services key to the third sector organisations beneficiaries (see "State Aid" considerations section below, as these can be relevant to this model);
- **Contract-funded model** – the public sector engages a third sector organisation to assist in enhancing or re-designing its service requirements (see "Procurement", "State Aid" and "Public Administrative Law" considerations sections below, as these can be relevant to this model);
- **Own-partner funded model** – the public sector and third sector organisation work together, meeting their own costs in doing so;
- **External provision model (third sector funded)** – in some sectors, established Trusts have considerable resources to support delivery of social activities/value. In certain circumstances, PSPs between the public and third sectors has led to fully-third sector funded and provided services to supplement and/or 'niche in' with services being provided with public sector organisations under statutory obligations;
- **Innovations on the above** – we hope the point has been made already; structures and forms are not limited to those set out above.

## 6. If a public sector organisation enters into a PSP, is this confirmation of agreement to fund the new service, whatever the outcome?

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Public sector involvement in a PSP should not be interpreted as a guarantee that the public sector body will provide funding for the outcome of the service design and pilot process before this outcome has been fully defined.

Any public authority who will be required to fund the delivery of a public service will not commit funding to do so, nor should they be expected to, until there is a strong evidence base that newly designed services are more effective, efficient and enhance outcomes for service users over and above previous delivery approaches.

It is for the partnership, therefore, to investigate the future sustainability of service funding as early in the PSP process as possible. Engaging with key stakeholders and decision-makers who will ultimately fund the service is essential for understanding their future requirements. This will help shape the design process and promote future sustainability.

## 7. Do the procurement rules prevent a public body involved in a PSP from piloting a service prior to opening up the service to a competitive procurement process?

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This is a question which has been raised a number of times. Broadly, there are two central procurement considerations in running a pilot, namely:

- (i) Is the pilot itself subject to the procurement rules; and

- (ii) Irrespective of whether the pilot is subject to the procurement rules, does involvement in the pilot confer an unfair advantage on the organisation carrying out the pilot when the services ultimately go out to procurement?

The response to (i) will usually involve considering whether the pilot amounts to a public service contract, including considering the value of the pilot as against the value of the thresholds set out in question 8 below.

In relation to (ii), the central point is also made in response to question 8 below - namely that the public body will, ultimately, require to take steps to ensure a level playing field when a redesigned service goes out to procurement. To provide greater detail, the following may be useful to note:

- Potential unfair advantage exists in most service procurements, where economic operators not previously involved in delivering a service bid against an incumbent who has an existing relationship and access to significant information relevant to the "ins and outs" of delivering the service;
- In a PSP, a difference may be that (an) organisation(s) is/are likely to have been involved in designing the new service to be provided prior to the procurement. In such circumstances, further steps to combat any claim of "unfair advantage" to that/those organisation(s) in the subsequent procurement include –
  - Involving more than one organisation in the redesign of services under the PSP (though not all organisations involved need have the same level of engagement within the PSP). Often further involvement will fit in with the processes that a public body is following in any event (for example through involvement of community planning partnerships pursuant to local government legislation);

- Ensuring that a range of proposals for service design are considered and that the PSP is not “led” or “steered” by a partner organisation’s preferred or existing models/ideas;
- Ensuring that final decisions on service configuration and the format, content and evaluation procedures within post-pilot procurement documentation are ultimately decisions made by the public body alone (i.e. that the procurement documentation is produced independently by the public body without input from other organisations that could later be said to have been included so as to give that organisation a particular bidding advantage); and
- Being transparent with providers interested in providing the newly designed service when it is scheduled to go out to procurement and providing such providers with an opportunity to understand the re-designed service sufficiently in advance of a proposed tender submission date to ensure they are not unfairly disadvantaged through lack of time to consider the newly configured service and present their bid accordingly.

Where the above steps can be shown to have been taken, this should provide significant protection against any claim of “unfair disadvantage” arising from a pilot having been conducted.

As an alternative to or alongside the above, some public bodies go a step further and competitively advertise the initial opportunity to be involved in and establish a PSP.

## 8. I have heard that there can be, or are perceived, stumbling blocks to establishing PSPs. What are these?

### Procurement

Broadly speaking, if the PSP structure that you arrive at is to involve a public sector organisation paying a third sector organisation for the provision of services, the Public Contracts (Scotland) Regulations 2012 will more than likely require to be followed. These Regulations apply to service contracts with a threshold greater than £173,900. Below this threshold, a public sector organisation may still require to advertise contract opportunities and follow fair and non-discriminatory processes and/or its own internal procedures.

In brief, if your PSP involves:

A service contract over £173,900	Public Sector organisation to follow the Regulations and relevant national law
A service contract under £173,900 (potential cross-border interest)	Public Sector organisation to advertise and ensure a fair and non-discriminatory process and follow relevant national law.
A service contract under £173,900 (no potential cross-border interest)	Public Sector organisation to follow relevant national law.

It should also be noted that proposals for amending EU procurement regulations scheduled for implementation in 2014 will remove the distinction between Part A and Part B services, with Part B service contracts subject to a €500k threshold.

If your PSP involves input from a third sector organisation to assist in the design / redesign of a particular service commissioned by the public sector, it will be important to appreciate that if / when that service goes out to procurement, the public sector organisation will require to take steps to ensure a level playing field between all potential providers. Participation in a PSP of this nature cannot guarantee a right to deliver the service.

### State Aid

Broadly speaking, if your PSP structure involves the allocation of state resources to a third sector provider, for example this might be the case under a grant towards the achievement of a third sector organisations aims, the rules on State Aid may potentially apply and will need to be considered on a case-by-case basis where. The state aid rules are designed to prevent cross-border distortions, caused by state funds, in competition between commercial undertakings.

The key questions relevant to whether the state aid rules might apply to your proposed PSP structure are:

- Is the provision of resources to the third sector PSP organisation(s) granted by the state or through state resources?
- Does it confer an advantage to an undertaking?
- Is it selective, favouring certain undertakings?
- Does the measure distort or have the potential to distort competition?
- Is the activity tradable between member states?

State aid can be excluded as an issue through following a compliant procurement process (see above).

To exclude its application otherwise, for example in the context of grant-funding, there are a number of simple "safe harbours" that can be looked to first including:

- **Is the grant funding less than €200,000 over three years? If so, it is within a "De minimis exemption"**

[http://www.stateaidscotland.gov.uk/state\\_aid/SA\\_MainView.jsp?pContentID=349&p\\_applic=CCC&p\\_service=Content.show&](http://www.stateaidscotland.gov.uk/state_aid/SA_MainView.jsp?pContentID=349&p_applic=CCC&p_service=Content.show&)

- **Does it fall within other exempt categories;**

[http://www.stateaidscotland.gov.uk/state\\_aid/SA\\_ApprovalsView.jsp?pContentID=1128&p\\_applic=CCC&p\\_service=Content.show&](http://www.stateaidscotland.gov.uk/state_aid/SA_ApprovalsView.jsp?pContentID=1128&p_applic=CCC&p_service=Content.show&)

- **Is it being provided pursuant to a notified and approved Scheme;**

[http://www.stateaidscotland.gov.uk/state\\_aid/SA\\_ApprovalsView.jsp?pContentID=340&p\\_applic=CCC&p\\_service=Content.show&](http://www.stateaidscotland.gov.uk/state_aid/SA_ApprovalsView.jsp?pContentID=340&p_applic=CCC&p_service=Content.show&)

### Public Administrative Law

In addition to points made above, public sector bodies must act within their powers and in accordance with relevant legislation when involved in PSPs. It is important for third sector providers to appreciate this point and some of the constraints that may flow from this.

By way of brief example, public sector organisations, amongst many other considerations:

- Will require to meet best value obligations under Local Government legislation;
- Where exercising "wellbeing powers", do so in accordance with Local Government legislation;

- Act in accordance with all legislation, regulations and relevant standing orders; and
- Meet specific legislative duties and standards in relation to services provided.

### **Charity Law / Governance**

From the perspective of the third sector organisations involved in a PSP / PSPs, the primary consideration will generally be whether involvement furthers the achievement of the organisations' charitable or social aims / objectives. Depending on the structure used, thought will require to be given to the basis upon which the third sector organisation is involved, for example whether it is funding its own involvement or if its involvement will be funded by grant or contract.

### **Employment law considerations**

Depending on the structure of a proposed PSP, the organisations involved will need to consider employment law implications, particularly if it is proposed that employees of one/some organisation(s) are to be seconded or transferred to another, or a new, organisation. Similarly, if a service is being tendered, or re-tendered, thought should be given to whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the TUPE Regulations) will apply. Where TUPE applies, employees will transfer from one organisation to another on their current terms and conditions of employment including any entitlement to an enhanced redundancy payment. Employees' continuity of service will also be preserved. The new employer takes over liability for all statutory rights, claims and liabilities arising from the contracts of employment including those for unfair dismissal, discrimination, equal pay, etc whether or not those claims arose before or after the transfer. It may be possible to negotiate warranties and indemnities to minimise the financial impact

of such claims. Any dismissal for a reason connected with the transfer unless for an 'economic, technical or organisational reason entailing changes in the workforce' will be automatically unfair. It is also a statutory requirement that both the organisations consult with employees in relation to any proposed transfer. Failure to do so could result in successful claims arising.

## **9. Where can I find further information on Public Social Partnerships?**

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Further information is available on the Ready for Business website at [www.readyforbusiness.org](http://www.readyforbusiness.org)

In addition, the Scottish Government has developed 'A Practical Guide to Forming and Operating Public Social Partnerships', which is available at:

<http://www.scotland.gov.uk/Topics/People/15300/enterprising-organisation/PSPGuidance2011>

A further report on the first PSP pilots is available from [www.socialfirms.org.uk](http://www.socialfirms.org.uk):

<http://www.socialfirms.org.uk/FileLibrary/Resources/Procurement/PSP%20LessonsLearned%20-%20full.pdf>

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## 10. How can the Ready for Business programme assist?

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Ready for Business has significant experience in supporting the development of partnerships. As a result, we are able to provide guidance and support throughout the Creation, Development and Management of public social partnerships.

Contact us if you would like support with –

### Creating a PSP –

- Defining the vision for your PSP
- Defining the expected outcomes of the PSP
- Identifying the best ways in which to share resources
- Definition of clear milestones, associated timescales, and KPIs through detailed project planning

### Developing a PSP –

- Defining user needs
- Identifying key outcomes for service users
- Working through the commissioning process – developing service specifications and designing services which meet needs
- Piloting designed services and implementing change where required

### Managing and Sustaining a PSP –

- Diagnostic analysis of current position against plan at regular intervals
- Programme Management assistance
- Ongoing performance management of KPIs against target
- Ensuring knowledge is captured and shared
- A 'critical friend' to continually review progress and support improvement where necessary.



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