



# Intelligent Commissioning

## What is it?

There is no single description or definition of 'intelligent commissioning'.

However, some of the key characteristics of intelligent commissioning, that the government, public bodies and third sector organisations and others have identified, are that:

- ☑ Commissioning is not at the expense of grant aid. **Grant aid is an important part of the 'funding mix'** and is vital to all sorts of voluntary and community organisations (VCOs), especially smaller, community groups.
- ☑ Local VCOs and services users must be **involved in the planning of the service** to be commissioned, and the commissioning process.
- ☑ Service specifications are **outcome focussed**, rather than focussed only on outputs.
- ☑ Commissioners consider the **full value** being offered by providers i.e. the wider and multiple benefits not directly connected to the contract, and the value that is created across different areas such as supporting local economies, health, employment, community and social cohesion, education, housing, equality etc.
- ☑ Commissioners consider the **whole-life costs** of decisions.
- ☑ Commissioners consider the **impact of their commissioning processes on the diversity of the local voluntary and community sector**.
- ☑ Commissioning **processes and monitoring requirements are proportionate** to the value of the contract.
- ☑ Commissioners **acknowledge that there is not an 'equal playing field'** and seek to address this in their commissioning processes.
- ☑ **Measuring 'success' and 'value for money' happens in a variety of ways**, such as looking at the longer-term and social, environmental and economic benefits (this could include the promotion of women's equality), and not just unit costs.

- ☑ Intelligent commissioning is **not** about securing the lowest cost, and it **does not assume that 'bigger is better'**.

## What can it look like?

The New Economics Foundation (nef) has done a lot of work on identifying how public bodies can develop and implement intelligent commissioning models, which deliver a range of benefits for the public purse, the voluntary and community sector, communities, the environment, and, most importantly, service users.

nef have a number of case studies that show what intelligent commissioning can look like:<sup>1</sup>

- ➡ Devon county council put out a tender for **waste and recycling** and awarded the contract to a locally based charity rather than to one of the multinational companies that had put in a bid. Mid-Devon Community Recycling provides voluntary placements and employs people with disabilities. It helps people to come off benefits and find work. This way, it reduces the bills for financial support and for health and social care that would otherwise fall to central and local government.
- ➡ In London, Camden council commissioned the Holy Cross Centre Trust to provide a **mental health daycare service**. The trust works with those who use the service and with local volunteers, actively encouraging them to design and deliver their own activities and programmes, to support each other. This "co-production" model has at least two advantages. By treating people as assets rather than as problems, it taps into resources that would otherwise not be available - such as time, energy, wisdom, experience, and the wealth of human relationships - to enhance and safeguard mental wellbeing. By strengthening social networks and giving people more control over their lives, it helps to prevent problems and needs that would otherwise generate demands for services.
- ➡ The NHS trusts in Cornwall work together on **sustainable food procurement**, with a combined food budget of more than £1.5m a year. They want high-quality food for patients, staff and visitors, and they try to spend the money in Cornwall and the south-west in order to improve the wealth and the social and physical health of the local community - as well as cutting food miles. They have placed business with local suppliers for sandwiches, fruit and vegetables, cheese and ice cream. They aim to source local food and employ local labour, providing meals for all healthcare establishments in Cornwall.

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<sup>1</sup> The nef case studies are from: [www.guardian.co.uk/society/2008/oct/29/localgovernment](http://www.guardian.co.uk/society/2008/oct/29/localgovernment)

However, there are also examples where commissioning processes have not been 'intelligent' with a significant risk that outcomes may be poor and the local VCS and their service users adversely affected:

- ⇒ A private sector company (which provides 'property management' and has a range of contracts around the country providing supported housing) was awarded two large contracts for housing related support services from a south-west county council. These were the first contracts for the company in the area and they had no previous presence in the county. Previously, the services had been delivered by a variety of providers, including local VCOs. Having won the contracts by undercutting local VCOs, the company found they could not deliver all of the contracts' requirements, so they engaged some of the previous providers at lower rates to do it for them. Some providers refused to work for the lower rates. The company was not able to deliver and surrendered the contracts back to the county council. The danger here is that the loss of contracts may have forced some VCOs to close or reduce their services, leaving the council with a diminished provider base.<sup>2</sup>
- ⇒ Shaftesbury Young People in London and Bryn Melyn Ltd in Wales are two small providers offering high quality, stable, residential care for young people. Interventions like these are not the cheapest, but they create significant long-term value by, for example, reducing the likelihood of young people using drugs or living on the streets. An analysis of these types of therapeutic, preventative provision by nef, if scaled up to the residential care population as a whole, would save the exchequer £700m. Yet the current focus on market forces is pushing providers like these out of business.<sup>3</sup>

## What can I do?



**It is important to know if the public body is using a *procurement framework using European Procurement Directives (Public Contracts Regulations)* as there are strict rules about lobbying decision makers. If this is the case, you should seek legal advice before making any attempts to influence decision makers in case you inadvertently bar your organisation from tendering.**

## Making the case for intelligent commissioning

It is important to take all opportunities to advocate for intelligent commissioning, and a reasonable funding mix which includes both grants and commissioning.

- Get involved in the public bodies' consultations and try to influence the commissioning model, service specification etc. at the earliest stages.

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<sup>2</sup> Case study from the Local Grants Forum

<sup>3</sup> Case study from nef

- ☑ Illustrate the full value of your organisation using Social Return on Investment methodology.
- ☑ Use case studies to demonstrate the good practice of other commissioners.
- ☑ Visit or write to your local elected officials, such as local councillors, and make the case for intelligent commissioning.
- ☑ Make sure you raise the issue of intelligent commissioning in your networks and forums and at consultations and events about Gender Equality Schemes, violence against women strategies etc.

### **If you think a commissioning process is flawed**

1. Firstly, you should try to influence the commissioning process as early as possible. Many public bodies consult with VCOs when conducting their needs analyses, developing service specifications and deciding on commissioning models. Influencing these decisions can result in better commissioning processes and help avoid problems in the future.

If you believe a commissioning process is flawed (e.g. is discriminatory, is not transparent, ignores evidence about need, is contradictory to the Gender Equality Duty, public law etc.), **do not wait – act immediately**. You must raise a complaint with the public body commissioning the service as soon as possible. If you wait until the service has been awarded to complain, you are unlikely to be successful in your challenge (particularly if you choose to seek judicial review).

However, **seek legal advice if EU public procurement rules apply or are being used** before taking action.

2. Do some research. If you're not sure about whether your concerns are legitimate, look at how the commissioning process 'fits' with:
  - The Compact (both local and national compacts)
  - The equalities duties (such as the Gender Equality Duty). How does the commissioning model, service specification etc. fit with the public body's Gender Equality Scheme? Has a Gender Impact Assessment been conducted?
  - Public law principles (is the commissioning process/model fair, legal and rational?)
  - The public body's own commissioning/procurement strategy, and other strategies
  - Government guidance on commissioning,

3. Get support and advice (see below). There are resources and organisations available to support you to raise your concerns with, or challenge, commissioners and their decision making. If you intend to seek judicial review (i.e. take a public body to court), then you will need to engage solicitors (such as the Public Law Project).

## **Where can I get more information/support?**

**'Defending Local Grants'** lists a range of resources you can use to help you make the case to decision makers at a local level to keep grants programmes:

[www.navca.org.uk/publications/defendinggrants/](http://www.navca.org.uk/publications/defendinggrants/)

The NCVO **Compact Advocacy Programme** helps VCOs to address **breaches of national and local compacts**:

[www.ncvo-vol.org.uk/compactadvocacy/index.asp?id=1948](http://www.ncvo-vol.org.uk/compactadvocacy/index.asp?id=1948)

The **Public Law Project** (PLP) is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. Within this broad remit, PLP works to increase the accountability of public decision-makers and enhance the quality of public decision-making. PLP has a programme called Empowering the Voluntary Sector which helps VCOs to seek judicial review: [www.publiclawproject.org.uk/EmpowerVolSect.html](http://www.publiclawproject.org.uk/EmpowerVolSect.html)

NAVCA provides **training to VCOs on public law** as part of their Empowering the Voluntary Sector programme, and WRC strongly advocates that women's VCOs attend this vital training: [www.navca.org.uk/services/learningopps/evs](http://www.navca.org.uk/services/learningopps/evs). The training is free for WRC members – contact [policy@wrc.org.uk](mailto:policy@wrc.org.uk) or more details.

NAVCA's **Local Commissioning and Procurement Unit** has really good resources for VCOs on commissioning and procurement and research about the impacts of competitive tendering: [www.navca.org.uk/localvs/lcp/](http://www.navca.org.uk/localvs/lcp/)

The WRC **Policy Team** can provide advice and support to women's VCOs who want to raise concerns with decision makers: email [policy@wrc.org.uk](mailto:policy@wrc.org.uk) or visit [www.wrc.org.uk](http://www.wrc.org.uk)

**'Charities and local authority procurement'** provides information on **EU procurement rules**: [www.navca.org.uk/localvs/lcp/briefings/](http://www.navca.org.uk/localvs/lcp/briefings/)

**‘Challenging tender processes’** provides a good overview of the different options for challenging commissioning processes:

[www.navca.org.uk/localvs/lcp/briefings/tenderingremedies.htm](http://www.navca.org.uk/localvs/lcp/briefings/tenderingremedies.htm)

The new economics foundation (nef) are experts on **intelligent commissioning** and **Social Return on Investment**: [www.neweconomics.org/gen/z\\_sys\\_publications.aspx](http://www.neweconomics.org/gen/z_sys_publications.aspx)

The HM Treasury clearly states that **‘value for money’** assessments should focus on the **full value** being offered and **not just unit costs** :

[www.hm-treasury.gov.uk/d/vfm\\_assessmentguidance061006opt.pdf](http://www.hm-treasury.gov.uk/d/vfm_assessmentguidance061006opt.pdf) (p.7)

Evaluating the social returns of the outcomes you achieve is a good way of showing your full value. The Office of the Third Sector has recently released a step-by-step guide for voluntary and community organisations about how to assess their SROI. **‘A guide to Social Investment on Return’** outlines the government’s preferred methodology for doing this:

[www.cabinetoffice.gov.uk/third\\_sector/news/news\\_stories/090512\\_sroi.aspx](http://www.cabinetoffice.gov.uk/third_sector/news/news_stories/090512_sroi.aspx)

**‘Creating Strong, Safe and Prosperous Communities: Statutory Guidance’** is a comprehensive guide from central government to local authorities and their partners on how to engage citizens, lead communities, and find new and more effective ways to deliver high quality services. It has clear and helpful guidance on commissioning:

[www.communities.gov.uk/publications/localgovernment/strongsafeprosperous](http://www.communities.gov.uk/publications/localgovernment/strongsafeprosperous)

## Key terms

**‘Best Value’** is a formal requirement for local authorities. It aims to ensure that public services are responsive, efficient, of high quality and tailored to local need. It demands a shift from considerations of cheapest price towards an evaluation of ‘value for money’ based on a balance of price *and* quality. It requires a duty of continuous improvement in services and increasing emphasis on delivering outcomes that will improve community well being, without prescription of how this can be achieved.

**Commissioning** is the process of assessing the needs of people in an area, considering how best and by whom those needs can be met, and then planning the provision of services.

A **Compact** is a partnership agreement between the government and the VCS. It sets out a framework for the relationship and outlines what they can expect from each other. Local compacts operate on the same principles.

A **contract** is a legally recognised, and hence legally enforceable, promise or set of promises made between parties. The essence of a contract is an agreement setting out the arrangements whereby one party provides a service (or goods) to the other in return for payment.

**Contracting** involves generating income by providing goods or services outlined in a contractual agreement between your organisation and a service purchaser. This may also be called a service level agreement. It is particularly suitable for organisations involved in some form of service delivery work such as health, social care, education or similar provision where services could conceivably be purchased by a local authority or other public sector agency.

**Judicial review** is where a court reviews the decisions or actions of government, or branches of government (e.g. local councils), or those of lower courts.

**Outcome funding** - Funders, such as the Big Lottery Fund, are increasingly seeking more meaningful returns for their funding – funding for outcomes not outputs, i.e. not just counting the 'bums on seats', but more about long term impacts such as confidence building and developing self-esteem. As a result, the requirement for funded organisations to measure their outcomes and impact is ever more pressing.

**Procurement** is the whole process of buying goods and services, from initial advertising through to appropriate contracting arrangements.

**Public law** is the set of legal principles governing the exercise of power by public authorities. It can be distinguished from private law which governs relationships between individuals and private companies, e.g. in contracts of employment, divorce proceedings or consumer matters. If the decision made by a public body (such as a council or government department) is based on an incorrect interpretation of the law, or if the decision-making process is unfair or biased, someone who has been affected by the decision can challenge it, for example using a complaints procedure or by applying for judicial review.

**Public sector procurement** is the purchase of goods and services by a public body - e.g. a local authority or a PCT.

**Social Return on Investment (SROI)** is a powerful way of measuring and demonstrating the social value that has been created by an organisation or project. By translating the value of the social, economic and environmental outcomes for an organisation's stakeholders into monetised form, SROI presents a fuller picture of the benefits that flow from investments of time, money and other resources. Ultimately, an SROI can quantify the social value generated for each pound invested, for example, a ratio of 3:1 indicates that an investment of £1 delivers £3 in social value.

A **tender** is a written bid outlining a supplier's desire, capacity and plan of how to deliver a piece of work, service or supplies. Exact contents will be determined by the

requirements outlined in the service specification and must demonstrate how a supplier will meet these requirements.

**Tendering** is the process of bidding for, and negotiating a contract.

**Value for money** is defined by HM Treasury as “optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user’s requirement.... not the choice of goods and services based on the lowest cost bid”. Government procurement policy requires all public procurement decisions to be based on this criteria.