



Commissioning Dialogues

Adrian Harvey with Claire Mansfield and George McFarlane



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Adrian Harvey
NLGN

Claire Mansfield
NLGN

George McFarlane
CBI

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Foreword

The forces of change facing both local and central government are intense. Social and demographic changes, coupled with a step up in public expectations, are driving a significant increase in demand for services. At the same time, unprecedented financial constraints are applying pressure to provision.

So business as usual is not an option; we need to forge new partnerships that are better suited to tackling the long term, strategic challenges facing public services. Improving commissioning is key to transformation.

Dialogue between providers and commissioners of public services must be at the heart of this. It requires being transparent about the challenges services face and creating 'safe spaces', outside of formal procurement, in which partners can engage constructively.

The potential benefits of a more collaborative commissioning model are considerable:

- The outcomes that matter to service users can be identified up front;
- Commissioners can have better visibility of innovation in service configuration;
- Service market capabilities can be understood and cultivated holistically.

Realising these opportunities will be essential for councils in particular, given the scale of the fiscal challenges they face. However in many localities conversations between providers and commissioners remain transactional, when they should be transformative.

The CBI and NLGN have worked together to help address this. We brought together businesses and local authorities of all sizes to discuss how dialogue could be improved. A shared desire for change was immediately apparent, along with acceptance that neither side has a monopoly on good ideas.

Building on our research, this report challenges local authority commissioners and providers to **pursue wider engagement, cultivate more diverse skills and adopt a more outcomes-focused approach to risk.**

It is our shared view that harnessing dialogue locally holds the key to responding effectively to continuing financial and performance challenges.

Matthew Fell

Director, Competitive Markets

Confederation of British Industry

Simon Parker

Director

New Local Government Network

December 2012

Introduction

Local government has made use of the private and voluntary sectors to deliver public services for decades. While public-private-partnerships have sometimes been controversial, the evidence suggests that they have often delivered improvements to council services. As many authorities go down the route of becoming commissioning councils – turning away from traditional in-house provision in favour of some form of outcome-focused delivery – it is more important than ever that they have a fully functioning and competitive marketplace.

But that marketplace is currently in a state of deep flux and uncertainty. What local government wants from its partners is changing rapidly and dramatically. Councils have been poor at communicating this process of change and they are still developing the commissioning approaches that will allow them to build a new market. Without a clear steer from their clients, providers have often been understandably slow to respond to these changing market dynamics.

This situation must change. Our research suggests that the heart of the problem lies in a series of three ‘stuck’ conversations, where all sides recognise the challenge but none are able to manage a breakthrough alone. The whole marketplace needs to work together to broker a way forward. These conversations are:

- 1.** How can local government create the conditions for innovation through early engagement with service providers, users and citizens to set expectations about future commissioning decisions?
- 2.** How can councils and providers both develop the new skills needed to manage outcome-based commissioning and delivery processes?
- 3.** How can providers and commissioners unlock innovative new business models that take a fresh approach to sharing risk and reward?

Commissioning is neither new nor complex: every decision about the use of resources is in effect a commissioning decision. Yet there is undoubtedly a renewed and vigorous interest in applying this approach to the design

and delivery of local public services. In the context of decreasing budgets and rising demand, councils are understandably reviewing how they commission services, looking to shift the focus from outputs to outcomes; in turn, providers are grappling with the challenge of adapting to this new commissioning landscape. The focus of the process needs to move away from the adversarial procurement stage towards a partnership between commissioners and providers.

Despite its familiarity, however, there is still confusion about what exactly is meant by the term ‘commissioning’ and, in particular, how it differs from procurement.

While often confused with each other, commissioning is not simply a fancy term for procurement; procurement is merely one step in the commissioning process. A public body may begin the process of commissioning something without having yet decided to procure it.

Rather, commissioning, in the context of local government is, a “cycle of assessing the needs of people in an area, designing and then achieving appropriate outcomes” that “may be delivered by the public, private or civil society sectors”. There are many different models of commissioning but all involve the on-going process, comprising the following steps: ¹

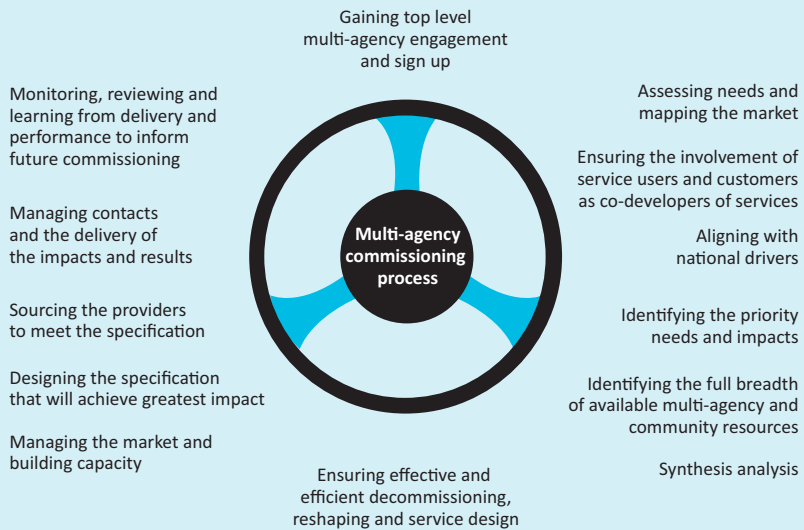
- Analyse – defining objectives
- Plan – designing services and activities
- Do – procurement and delivery
- Review – evaluating impact and learning lessons

In practice, the commissioning process should be fluid, moving back and forth between the stages, rather being a consecutive progression. Whether the commissioning process is considered to have four stages (analyse/plan/do/review) or this is broken down in more detail to include more stages, it is important that this back and forth process is acknowledged. Using a pure cyclical model could lead to a ‘tick the box’ process, where each stage is

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completed and the commissioning team never return to reassess previous stages. In reality commissioning is a holistic process and each stage will raise new questions and answers that in turn could affect previous stages.

Figure 1 The strategic commissioning process operates as a steering wheel and moves back and forth - it is not cyclical



Source: Essex County Council

It is clear, however, that now is the right time to think again about commissioning in local government. Councils have seen their budgets cut and are keen to generate savings, yet greater efficiency alone will be insufficient to address the funding gap. At the same time the desire to improve services and outcomes in the context of diminishing budgets mean that authorities need to go beyond shaving costs from existing ways of doing things to rethink not just services but also outcomes. A more sophisticated approach to commissioning is well placed to ensure that local authorities and service users alike get better value for money by focusing on the outcomes that matter.

To be successful, commissioning should be based on the outcomes that will yield the greatest benefits for local communities. Crucially, a distinction should be drawn between service outputs (for example, the number of rubbish collections per week) and the outcomes a council is striving towards (for example, households minimising the amount of waste they produce). For councils used to an approach focused more on procurement, this will often be a new way of thinking. However it is essential if the overall configuration of local services is to be viewed objectively and aligned fully with residents' priorities.

Councils realise that the savings that can be achieved with the standard approach to outsourcing have plateaued. More of the same will not be sufficient to balance the books. Indeed, in recent years, we have seen a small number of authorities that have actually 'in-sourced' services previously put out to tender, with councils using commissioning approaches to redesign services to enable them to go out to market with greater confidence and clarity in future.

Yet, despite the opportunities, commissioning is too often mired in a set of 'stuck' conversations: about procurement rules, about risk and about the skills and capacity of the two 'sides'. Where the commissioning process should be collaborative, it is too often played out in an adversarial climate; with each party quick to blame the other when things do not go to plan.

It was in order to overcome these circular and unproductive arguments that the CBI and NLGN came together. Working in partnership, the two organisations – loosely representing providers and commissioners respectively – established a research process that brought to life the idea of dialogue. In doing so, we were grateful for input from the National Council of Voluntary Organisations and its members. This further broadened the scope of our work to include third sector providers.

- Our survey was completed by both local authority commissioners and providers (in both the private and voluntary sectors), providing distinct perspectives on the common issues;
- Our roundtable discussions brought together council officers and providers to talk through those common issues in a shared language; and

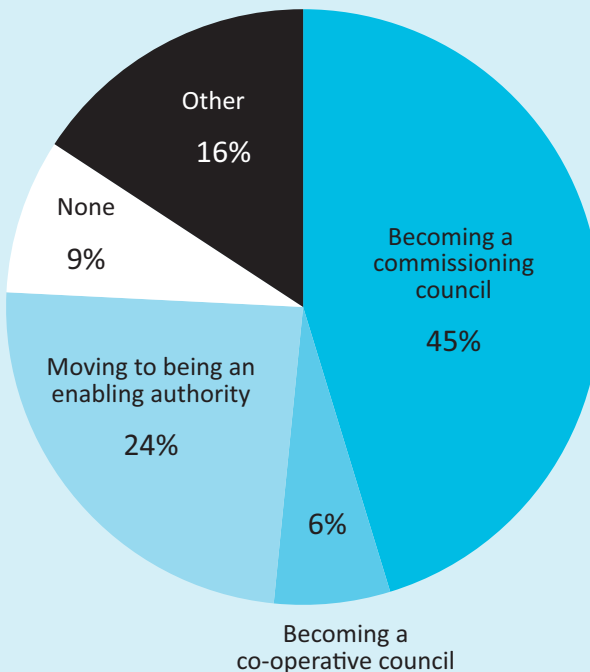
- Our case studies included the views of a range of local players, giving us a clearer picture of how the commissioning process worked for all parties.

By researching in the way we have, it has been possible to get past the stuck conversations to identify a new collaborative model for local commissioning. This report brings together the findings of the survey, the dialogue sessions and the case studies to set out a series of general conclusions and specific recommendations which we believe can make the process of commissioning work better for councils, for providers and for the people they serve together. Rooting our research in a dialogue methodology has helped to overcome the 'stuck debates' between councils and providers and has helped to find ways to improve commissioning in the future.

2 *The changing commissioning landscape*

Commissioning is clearly an idea whose time has come. Around half of all councils are moving towards becoming 'commissioning councils'. There is not always agreement about what this means in detail, but it demonstrates that the landscape is changing across local government. Other councils, whilst not thinking of themselves as a commissioning council, have adopted a similar philosophy and identify themselves as a co-operative or enabling authority. Co-operative, enabling and commissioning councils all seek to work in partnership with citizens and a mixed market of providers to design and deliver public services.

Figure 2 Which of the following best describes your authority's overall 'philosophy' to meeting the needs of local residents?



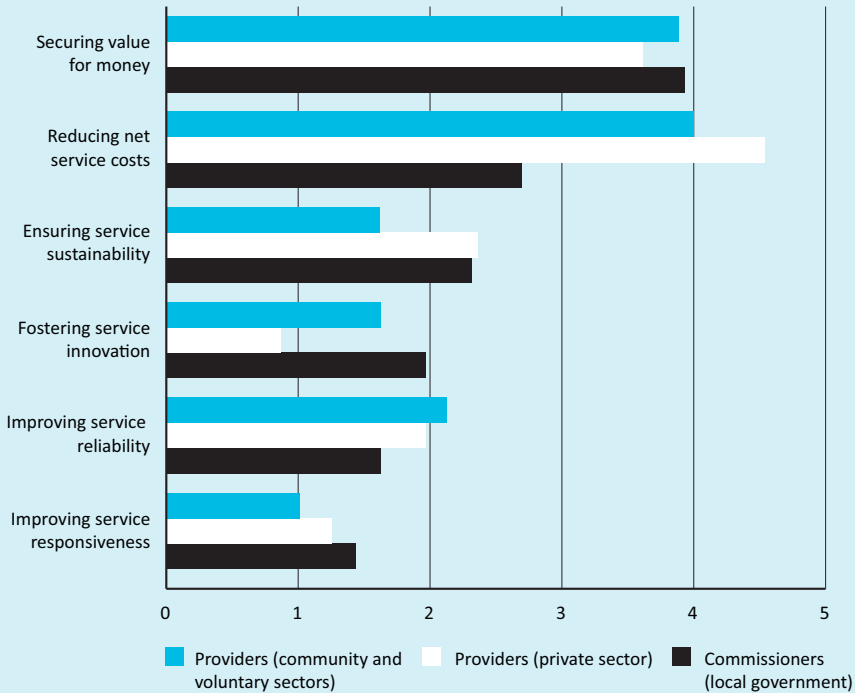
NLGN and CBI carried out a survey of commissioners and providers to establish the current commissioning landscape. It is clear from these results that there are differences in the perspectives and priorities of commissioners and providers. These will be highlighted in the following charts. We have also identified fault lines surrounding the commissioning process, particularly involving engagement, commissioner skills, provider structures and risk.

Differing perspectives on commissioners' objectives

The differences in perspective between commissioners and providers are exemplified in how they described council priorities for commissioning. Providers felt that 'reducing net service cost' was important for commissioners. Commissioners, however, preferred to view their role as 'securing value for money'. Whilst both 'reducing net service cost' and 'securing value for money' may essentially be different ways of describing 'saving money', these responses are interesting as they demonstrate a subtle difference in the perception of why money is being saved. In addition to this, commissioners felt that 'fostering service innovation' was a priority when commissioning; however, providers felt that this was the least important aspect for commissioners.

There is a clear difference in the perception of the priorities of commissioners. Providers tend to think commissioners are primarily interested in cutting costs, whereas commissioners see their role in the process as more noble, protecting the public's money and fostering ideas. *Greater engagement and dialogue between commissioners and providers, at an earlier stage, would ensure that commissioners and providers approach the commissioning process with an understanding of each other's priorities and perspectives.*

Figure 3 How important do you think each of the following objectives are to commissioners when making commissioning decisions?
(Respondents were asked to rank objectives 1 to 6, with 6 being the most important and 1 being the least)



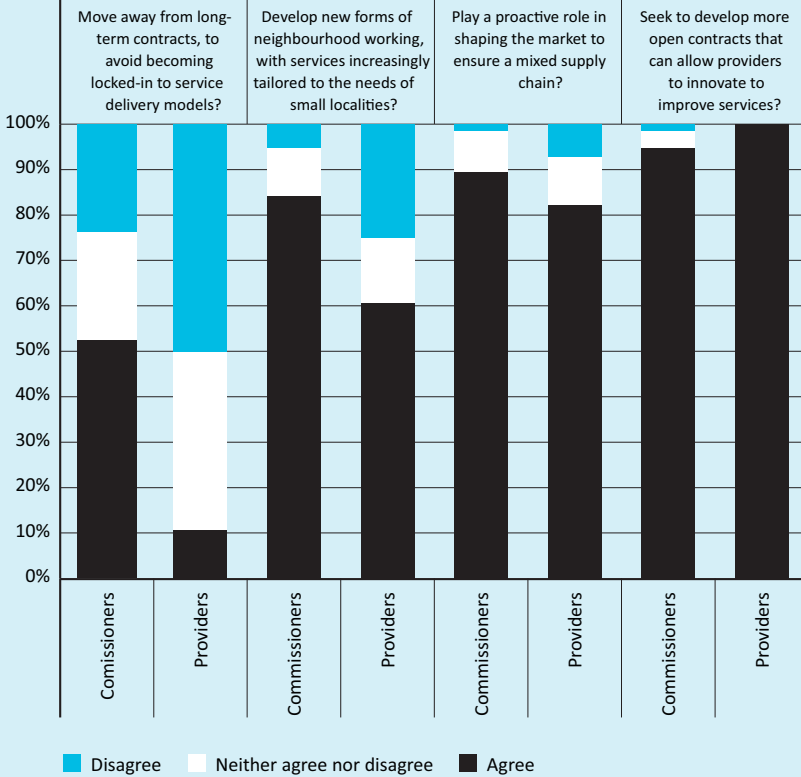
Differing views on required areas of change

Commissioner and provider opinion differed on how they would like to see the commissioning process change. Over 80 per cent of commissioners agreed that councils should 'develop new forms of neighbourhood working,

with services increasingly tailored to the needs of small localities' compared to 60 per cent of providers. Commissioners suggested that a significant number of providers are still wedded to a model of service delivery limited to a range of 'standard products', while councils are increasingly looking for locally bespoke solutions. *There are clear issues surrounding provider structure. Resolving this apparent 'fault line' will require dialogue between commissioners and providers.*

By far the greatest difference of opinion between commissioners and providers was found when both were asked if they agreed that councils should 'move away from long-term contracts, to avoid becoming locked-in to service delivery models'. Some 50 per cent of commissioners felt that the council should move away from long-term contracts whereas only 10 per cent of providers agreed. Again, it is intuitive for providers to want longer contracts, as this is more stable for business and allows providers to plan up-front investment based on longer term income. Conversely, commissioners would naturally desire more flexibility to review contracts after they see how the contract is working out.

Both positions are understandable, but it may be impossible to either develop relationships of trust or to secure the kind of capital investment that providers can bring based on short-term contracts. This suggested that there needed to be dialogues surrounding the different types of contracts available. In particular, 100 per cent of providers and over 95 per cent of commissioners were positive about a move to open contracts to try to address this. *Dialogues about risk could lead to more innovative outcome-based, open contracts.*

Figure 4 How far do you agree that councils should:

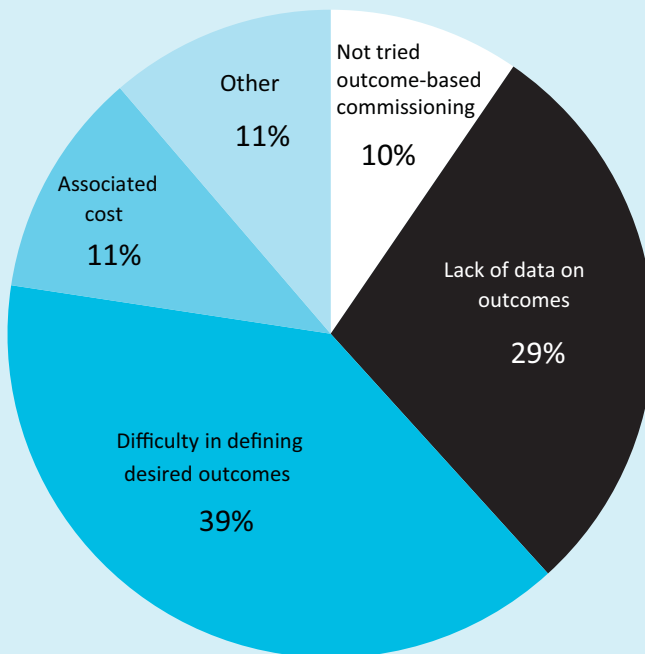
Outcome-based commissioning

Outcome-based commissioning, (that focuses not on activities and processes but on results²), offers huge advantages in terms of efficiency, effectiveness and innovation for both commissioners and providers. Many commentators and practitioners would like to move in this direction, yet there are very few

² Outcome-based commissioning (ObC) focuses not on activities and processes but on results. The point of an outcome-based approach is to shift thinking from how a service operates (what it does) to the good that it accomplishes (what it achieves). <http://www.yhsccommissioning.org.uk/index.php?pageNo=553>

examples in practice, except in a few service areas. One of the key barriers appears to be commissioners' difficulty in defining desired outcomes: 39 per cent cite it as a constraint; 29 per cent perceive the lack of data on outcomes as a limit to outcome-based commissioning. Defining outcomes is an essentially political process and evidence from elsewhere in our research suggests that the role of elected members in the commissioning process remains underdeveloped – and misunderstood by providers. *Providers' understanding of local politics is a fault line that needed to be explored. Equally, commissioners must become more effective at providing clarity on desired outcomes.*

Figure 5 What do commissioners perceive to be the limits to using outcome-based commissioning in their local authority?



Barriers to improved commissioning

We asked commissioners and providers to describe how developed, or otherwise, local authorities' approach to commissioning is. In general, commissioners view their approach to commissioning as more established than providers view the commissioners' approach. Leading on from this, providers and commissioners were asked to rank what they felt are the most and least important factors hindering effective commissioning of services by local authorities. The views of the three groups differed most when ranking the importance of 'the shape of the provider market' and 'the skills of the commissioning team'.

Figure 6 What do commissioners believe are the most and least important factors hindering the effective commissioning of services by local authorities? (*Respondents were asked to rank objectives 1 to 6, with 6 being the most important and 1 being the least*)

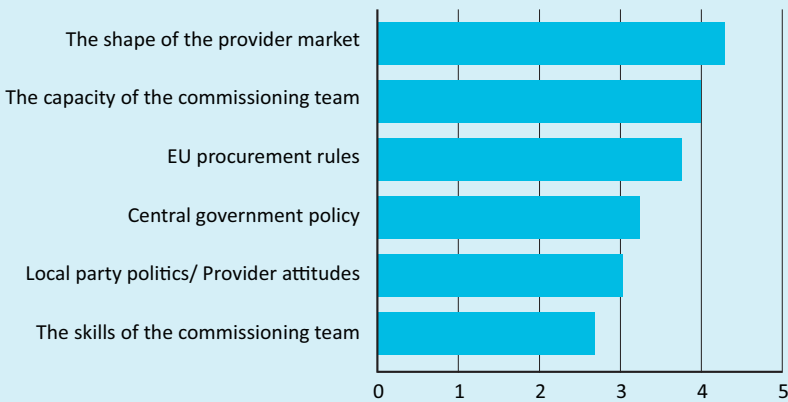


Figure 7 What do providers from the private sector believe are the most and least important factors hindering the effective commissioning of services by local authorities? (Respondents were asked to rank objectives 1 to 6, with 6 being the most important and 1 being the least)

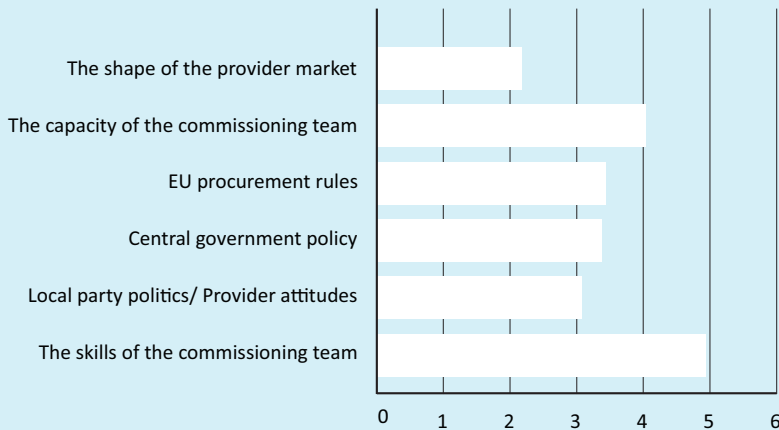
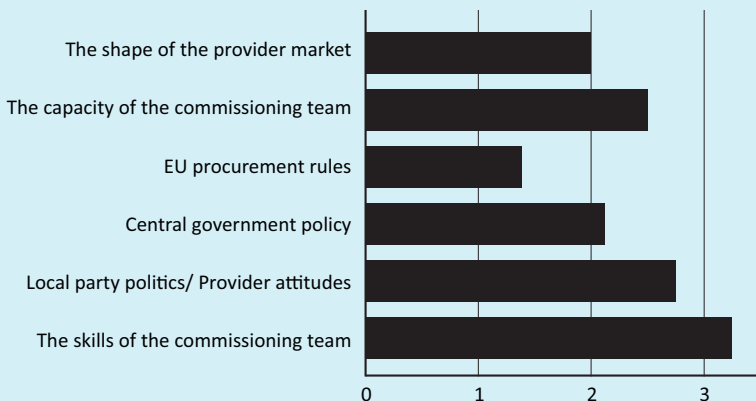


Figure 8 What do providers from the community and voluntary sectors believe are the most and least important factors hindering the effective commissioning of services by local authorities? (Respondents were asked to rank objectives 1 to 6, with 6 being the most important and 1 being the least)



The commissioners ranked the *'shape of the provider market'* as a far greater barrier to effective commissioning than the providers did. On the other hand, the providers (both businesses and third sector) ranked *'the skills of the commissioning team'* far higher than the commissioners did. *Both 'sides' in the commissioning process felt that the skills and structures of the other was hindering effective commissioning. Agreeing on the skills and structures of the commissioners and providers is a clear fault line in the commissioning process. Only by increasing skill levels and understanding on both 'sides' will it be possible to formulate a new approach to risk sharing.*

Agreement that EU rules are not a major factor

Commissioners and providers agreed that while EU procurement rules have some impact on the commissioning process, they are not a significant barrier. While providers seem to feel that EU procurement rules limit the ability of local authorities to commission services more than commissioners do, the secondary importance accorded to this barrier in our survey suggests that the commonplace emphasis it receives in conversations about commissioning is misplaced and a distraction from the real barriers which lie within the control of both parties.

Figure 9 Thinking specifically about EU procurement rules, how far do providers believe these limit the ability of local authorities to commission services?

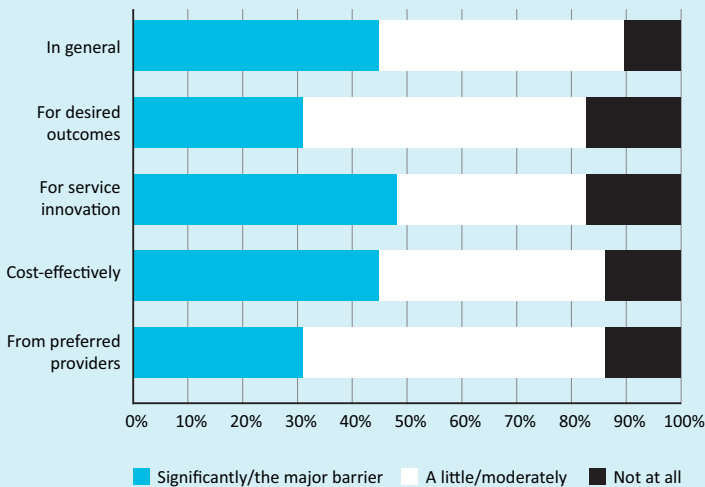
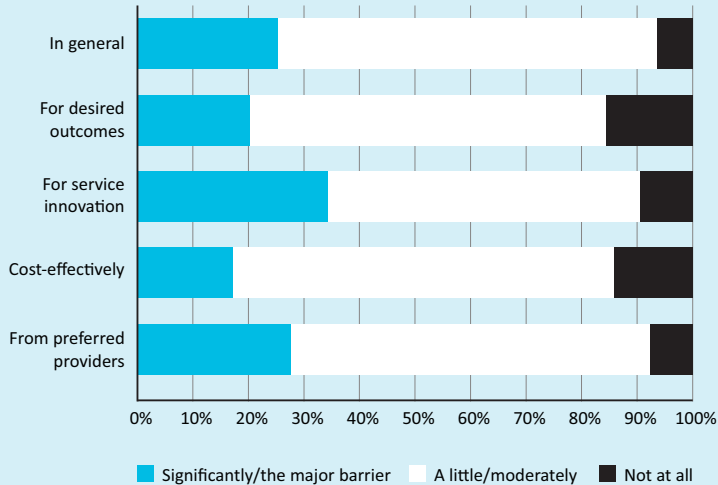


Figure 10 Thinking specifically about EU procurement rules, how far do commissioners believe these limit their own ability to commission services?



From these survey results, we identified three clear fault lines to successful commissioning that we felt needed greater understanding. These are: greater stakeholder engagement, the skills and structures required for successful commissioning and finally different ways in which providers and commissioners can share risk for innovation.

3 *Key findings and themes*

There is a huge interest in making commissioning work effectively, and our research has identified three factors that we believe are essential for success:

- *Stakeholder engagement* – The involvement of service users and providers helps ensure service capabilities align with demand, but this is less developed than it needs to be. We argue that greater transparency, earlier engagement and clarity around EU procurement law are necessary to rectify this.
- *Skills and structures* – Providers bemoan the skills of commissioning teams in specifying and contracting services; commissioners complain that providers are unable to respond adequately to their needs. In many ways these represent two sides of the same coin, both describing the way in which the key participants in the commissioning process are not yet ‘fit for purpose’. As such, any lasting solution will require action on both sides. For example, councils could do more to pull together existing skillsets into teams focused on outcomes, whereas providers could develop their understanding of localities.
- *Sharing risk for innovation* – Positive service transformation will always involve an element of risk, but if the outcome-focused partnerships that are necessary to deliver this are to flourish, objective judgements need to be made about the transfer, management and sharing of risk. This is most starkly apparent at the procurement stage of the commissioning cycle, but casts a long shadow over the whole process. In our view, sharing risk to leverage innovation will require increased trust, shared accountability and the phasing of risk transfers over time.

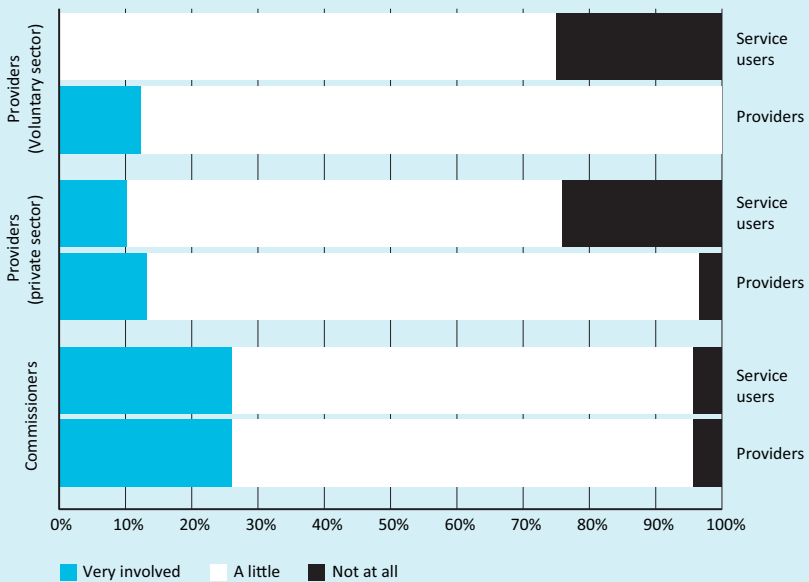
We examine each of these themes in greater detail in this section.

3.1 Stakeholder engagement

Effective commissioning cannot be a one-player game, a process wholly owned by commissioning teams. It requires the fullest engagement of all stakeholders and it is only by incorporating provider experience and service

users' priorities from an early stage that the benefits can be realised. However, our research suggests that neither providers nor commissioners feel that providers and users are significantly involved in commissioning. While our survey found that commissioners were more likely than providers to believe otherwise, only 25 per cent of commissioners surveyed felt that providers and users were very involved.

Figure 11 Extent of involvement in determining service levels and priorities?



Engaging service users

For commissioning to yield its full advantages, service users need to be involved in different ways and at all stages: defining service need, as well as designing, co-producing and reviewing services. If service users,

providers and commissioners have a dialogue on these topics early on in the commissioning process the services that are commissioned will be more suited to users' needs and more realistically deliverable by providers.

Local government has a mixed record in this regard. When users are involved, it is often too late in the commissioning process for them to input meaningfully. In one of our case study areas, the authority had devised an extensive programme of consultation, including service users; but whereas providers and other organisational stakeholders had been engaged in defining priorities and service objectives, service users themselves were not brought into the process until these issues had been resolved.

This was reflected in our survey findings, with a minority of commissioners believing that service users were very involved in determining service levels and priorities. Providers were even less confident in the degree of involvement service users, with around 10 per cent of private sector providers and 20 per cent of voluntary sector providers believing that service users had no say at all.

There is also a perception that local authorities try to keep providers from engaging with service users before contracts have been signed. There can be good reasons for this, for example, a desire to manage the politics of potentially contentious decisions. Yet by not engaging they risk missing the opportunity to engage in genuine co-design of effective service offerings.

Engaging service providers

Reaching out to providers early on helps ensure the commissioning process as a whole works towards outcomes most suited to users' needs. This is because engagement in a permissive environment, outside of formal procurement processes, can more easily address the overall goals and configuration of relevant services. This approach is better suited to topical strategic issues such as demand management and service integration. Our research suggests that, while commissioners feel providers are more involved than providers themselves believe, neither commissioners nor providers feel significant engagement takes place in advance of procurement.

One key problem in engaging providers is identifying who should be involved: commissioners must move beyond the organisations that are already familiar to them when they engage the provider market. Otherwise, the council's strategy will not benefit from the fresh perspectives that most reliably yield innovation. During the discussions that we facilitated, it became apparent that councils often struggle to understand provider markets holistically and instead call upon informal networks of existing contacts. While speaking with existing contacts should be encouraged, it is not in itself sufficient to ensure effective market engagement.

This was underpinned by agreement that failure to engage meaningfully with the market can give commissioners a skewed view of the service capabilities that are available. A number of providers in our dialogue sessions claimed to know councils which only understood a small section of the market's offering, and as such were missing out on service improvement opportunities. Councils acknowledged that in some cases the providers they are already familiar with will, by definition, already be involved in delivering services in their local area, and as such will often struggle to contribute an outside perspective to the commissioning process.

In order to overcome this, commissioners could give providers better visibility of pipelines of future commissioning intentions and expectations of how demand for services will change. Being open about the challenges the council faces and, where possible, stating how this will translate into commissioning decisions will draw in providers of all sectors, shapes and sizes who feel they can help deliver the outcomes the council is prioritising.

Moreover, commissioners need to be aware that, as long as basic transparency standards are followed (e.g. an OJEU notice), public bodies are well within their legal rights to engage with providers before formally entering procurement. Commissioners' fear of legal challenge resulting from 'pre-market engagement' was articulated by providers in our dialogue sessions as well as commissioners themselves. The UK has the lowest levels of legal challenge in the European Union and we heard from a number of authorities who had taken advantage of the opportunity to engage with local providers to design services before going to the market. In one case, a local print company spent a year with the authority rethinking its print

requirements and processes; when the contract was put out to tender the company decided not to bid for the service it had co-designed.

Finding ways to create more 'safe spaces' where providers and commissioners can engage before formal procurement processes commence is an urgent priority.

3.2 Skills and structures required for effective commissioning

For commissioning to be successful, both commissioners and providers need to be equipped to operate in this new landscape. The skills and structures appropriate to traditional, procurement-focused models are too narrow for commissioning, particularly one orientated to outcomes rather than outputs.

Our research suggests that providers do not believe that local authority staffs are sufficiently equipped to make the transition from procurement-focused models to a commissioning approach, with commissioner skills highlighted in our survey as providers' foremost area of concern. At the same time, commissioners repeatedly expressed the view that many providers seem unable or unwilling to tailor their offering to local needs or to shift to outcome-based reward structures.

Commissioner skills

The job of a commissioner can require many different skills and these can change depending on the services or outcomes that are being commissioned. In some instances a commissioner may need clear technical knowledge, in others engagement with the community is more important.

As such, a menu of the skills that could be required in a commissioning team, rather than a 'one size fits all' checklist, would be a useful way of assisting this process. A scoping exercise to determine the correct skill set for each commissioning team should be an initial phase of the commissioning process.

Structuring commissioning teams around outcomes can help marshal existing skills more effectively. A number of councils we spoke to were keen to note that they felt that the required skills were already present amongst

local authority employees, but that these skills were often ‘siloed’ and not applied at the right time. Similarly, in our case studies it was clear that local authorities do not always bring together the skills required at the outset of the commissioning process. This can introduce error and delay into the process, which can undermine confidence among council colleagues and other stakeholders.

Providers consistently highlighted what they perceive as commissioners’ lack of understanding of the pressures placed on provider organisations. This was felt to be of particular concern around the market shaping aspect of the commissioning process, with councils’ understanding of provider organisations being insufficient. For example, commissioners may not sufficiently appreciate the voluntary dynamic in the third sector, or the importance of attracting investment in the private sector.

Most commissioners have previously worked in other areas of the council. Very few people have chosen commissioning as a career path and have embarked on commissioning from very different backgrounds. They are ‘accidental commissioners’, ultimately meaning that the commissioning team often has diverse skills, but not necessarily the appropriate skills for the particular task at hand.

Provider outlook

On the provider side, our research suggests that organisations could become more responsive to the commissioning cycle in two main ways: by developing their understanding of localities and by accommodating commissioners’ demand management priorities in their service offerings.

Local politicians are the voice of the local residents and it is essential that their point of view is listened to and taken into account. The commissioners we spoke to felt that providers are often not aware of how important this is, and this is reflected in our survey findings. Engaging with local politics can lead to a more uncertain process than providers may want, yet it is essential for successful local authority commissioning.

While much can be done to engage elected members in a strategic way, rather than limiting them to operational concerns, commissioners suggested that some providers hope to 'get the politics done' before councils went to the market. Yet this is to fundamentally misunderstand how local government necessarily works: the politics is never 'done'.

Similarly, commissioners feel many providers could do more to tailor their services for a specific area. Each area has specific requirements and commissioners often felt that providers were trying to 'sell' a generic product, without first considering whether local variation would improve outcomes. This undermines commissioners' sense of partnership with a provider and cultivates doubt that the provider's solution is appropriate for a given locality.

In addition, the commissioners we spoke to did not have faith in the provider market's ability to support their ambitions to actively reduce demand for services in their localities. This is a concern providers will have to respond to with greater strategic thinking of their own, and more innovative service offerings. Grappling with a tough fiscal climate, many commissioners are looking for ways to manage demand rather than just responding to it, however they are concerned that engaging with providers will allow space for 'supplier-led demand'.

One commissioner gave an example of waste management in his authority, with the council keen to reduce the amount of waste produced by each household; but he was doubtful that their provider could engage on this issue objectively, having a vested interest in maintaining a contract at current levels.

Another issue raised by the research, relevant to both commissioners and providers is the increasingly common separation of specialist commissioning teams and bid teams. While this specialisation allows for the development of expertise, it also creates a disjuncture between the people involved in the design of the service and its delivery. This is potentially problematic, given the importance of developing relationships of trust, not least in dealing productively with risk. It will be increasingly important to find mechanisms to maintain a degree of continuity of personnel, for both providers and commissioners, from bid stage to implementation.

3.3 Sharing risk for innovation

Approaching risk as something negative, which needs to be mitigated, neglects the importance of upside risk – also known as opportunity – for creating space for innovation. The way in which commissioners and providers respond to risk is hugely important to effective commissioning. The tendency towards risk aversion is often ascribed to the public sector and, while it is undoubtedly the case that the public sector is less willing to take risks, it is simplistic to assume that any party is either risk averse or risk tolerant. In reality, all organisations manage a range of risks and seek to avoid the most harmful, transferring them to others where possible.

However, commissioning for outcomes requires well-developed mechanisms for sharing risk, rather than mechanisms for transferring risk. Full risk transfer can leave providers vulnerable to unexpected increases in demand for services because of the related increase in service outputs that this would require. This is not in the interests of the commissioner, as it could potentially impact local continuity of service.

What constitutes risk?

Risk comes in many different forms, and includes operational, reputation and political risk, as well as the financial risk. Yet it is the latter which is most often the focus, not least as it is quantifiable, and an entire industry works to price and manage it. This is particularly true of private sector providers, whereas councils are good at managing reputational risk, and specifically political risk. Public authorities are more used to sophisticated assessments in relation to operational risk in some services. In one of our case studies, the failure of an outsourced service a decade before had such deep and damaging impact locally that it still coloured community and political attitudes to commissioning.

In addition, if a commissioning authority attempts to transfer too high a proportion of uncontrollable risk to providers, it is likely to receive a poor response to its invitation to tender, or end up having to pay a high premium

to the contractor to secure their services. Finding ways to share risk is important because, while many providers want to be challenged to create innovative approaches to service delivery, they will understandably be reluctant to take on the risk of achieving outcomes over which they have little or no control.

Research suggests that one approach that can avoid problems like this, and help guard against transferring too much risk to providers too quickly, is to phase the amount of risk commissioners transfer to providers, by constructing schedules which pay some money upfront and for activities, at least to cover early start-up and running costs. Contracts can be an effective tool in apportioning and managing risk, but many local authorities offer only short-term contracts to smaller providers in order to mitigate risk, which ultimately harms the quality of service and impedes the contractor's ability to achieve outcomes.

Appetite for risk increases where there is trust, so building relationships of trust is critical to productive ways of dealing with risk. Our roundtable dialogue sessions repeatedly made the point that successful commissioning is upfront and transparent about risk and risk management (even if detailed risk registers are kept closed). Early conversations about outcomes need to comprise an early conversation about risk, not waiting until competitive dialogue – but councils remain uneasy about bringing those conversations forward. Similarly, being open about the 'pipeline' of commissioning intentions and inviting informal conversations helps to bring transparency to the process and reduce risk. These conversations are a legitimate pre-cursor to the formal procurement process, helping to address concerns about early involvement.

Sharing risk also means sharing accountability, because risk is not a zero-sum game. If risk is recognised to have both an upside as well as a downside, then mechanisms for genuinely sharing it become much more effective. We saw in one of our case studies a sophisticated approach to using risk and reward to incentivise positive behaviours on the part of both commissioners and providers: a pain/gain system, whereby both the additional value created by innovation and efficiency and the costs of mistakes or unforeseen circumstances are shared equally by both sides, was driving real service improvements and value for money.

At the commencement of a partnership, an objective judgement must be made about how this risk should be shared between commissioner and provider, and over what duration. More open contracts, which avoid prescribing in detail the specific service outputs that a provider should deliver, are one possible solution. ‘Opportunities’ registers should be established where possible, to sit alongside or even within risk registers, to highlight the potential for improved outcomes, cost savings or other service improvements that could result from taking action.

4 *An enhanced model for commissioning partnerships*

Successful commissioning requires closer partnerships than previous models that focused solely on procurement. Central to this new model of partnership is creating a greater degree of trust between providers and commissioners.

Trust can be increased with a reinvigoration of the four stage (analyse/plan/do/review) model process, by incorporating greater levels of engagement, skill and risk sharing. Up until this point, many commissioners have dwelt on the 'do', procurement, stage of the process.

However, for the process to be successful each stage needs to be fully developed and revisited at different times by all stakeholders during the commissioning process. One of the main aims of going back and forth over each of these stages is not only to ensure that each stage is fully developed, but also to increase levels of trust between commissioners and providers. This flexibility to revisit different stages of the commissioning process requires a genuine partnership between providers and commissioners. Whilst there is a partnership between provider and commissioner, the commissioning process should not end.

Analysing stage

The analysing stage of the commissioning process establishes the priorities for service users, the challenges ahead and should also scope the provider market. The skills needed for the commissioning team should be mapped out early on in the process and there should be greater engagement with service users and providers.

Skills for commissioners

Whilst a 'checklist' of skills for commissioners is not possible, as each commissioning decision will require a different set of skills, we have identified that three general skill sets are needed for effective commissioning. These can

be considered a 'menu of skills' that should be considered against the needs of each commissioning environment as teams are put together. The skills are:

1. **Technical skills** – e.g. legal, financial or IT skills. Those with specific knowledge. People with these skills can already be found in local authorities.
2. **Soft skills** – e.g. negotiation, engagement and communication. People with these skills can already be found in local authorities, however, with regards to commissioning, it is important that these engagement and communication skills are utilised from the very beginning. In particular, it is important to engage with service users and politicians from the beginning of the commissioning process so that they can feel a sense of understanding and ownership over the process. It is also important that commissioners are aware of the market within which they are commissioning.
3. **Creative commerciality skills** – e.g. market analysis, contract management and evaluation. These skills foster and enable innovation. People with these skills are adept at, not only risk management but also at identifying and capitalising on risk opportunities. Creative commerciality skills would traditionally be found at provider level, but are less common at a local authority level.

It is this creative commerciality skill set that needs the most attention at local authority level. A cultural change is needed to embrace cultural commerciality and take more risks. As one local authority representative put it there is a need for a change of 'Will' not 'Skill'.

Stakeholder engagement

Involving communities and users earlier, to define needs as well as the design services, is the best way to get community buy-in for difficult decisions, including decisions about decommissioning. It is important that service users, providers, politicians and commissioners are all consulted at the earliest opportunity. This will not only incorporate important points of view from the people who directly experience the service, but will also enable a greater 'ownership' amongst all groups over the whole process.

Greater participation and engagement will mean that people will understand all points of view and at a later stage of the process this will prevent challenges to the process. In addition to this, if changes in behaviour are required, widespread public support will be required for a permanent solution.

Constructive provider engagement should begin with preliminary conversations based on scoping desired outcomes and then progress to working with the market to determine how these outcomes could be delivered locally. It should then develop through later stages of the commissioning cycle into publication of specific purchasing intentions.

Provider structures

Providers need to be aware that the commissioning process is long, with many challenges to negotiate. In particular, whilst the commissioning process may be slow, providers need to be aware that an important part of it is engaging with service users and politicians. From our survey, providers seem to undervalue the importance of party politics. Whilst playing an essential role in local government, local politicians add an extra layer to the commissioning process that clearly would not be there in traditional business negotiations. It is essential that local politicians are included in commissioning dialogues from the outset as they provide an important voice/point of view and clearly it is best to incorporate these views at the earliest possible moment.

Commitment to the area

Commissioners and service users are clearly anchored in their locality. It is important, in light of the Social Value Act, that providers are committed to local areas, and adapt to deliver services that will specifically enhance the locality they are working in. Service users and commissioners need to be confident that in 10 years' time, if things have gone wrong, the providers will still be there. Building on the partnership perspective, commissioners and service users need to know that 'they are in it together', otherwise trust is hard to build.

Planning stage

The planning stage of the commissioning process should clearly describe the services and activities being designed, whilst also leaving enough flexibility within contracts to incorporate what has been learned by commissioners, providers and service users during the delivery of services. At this stage, commissioners need to engage with the provider market and publish contract intentions. After this has been done, and a provider selected, discussions surrounding risk sharing need to occur. These dialogues need to happen when the contract is being designed.

Contract intentions

Contract intentions need to be published at the earliest opportunity as this makes the whole process more transparent. It helps increase trust and prevents a “chicken carcass model of government” where services are being outsourced one at a time, but the overall picture is not properly considered.

Contract length

Contract length is a critical issue. Short contracts may not be long enough to demonstrate commitment, on the other hand a long contract that is not working out is a waste of public funds and residents will suffer. As noted in our survey results, providers would like longer contracts, whereas commissioners would like greater flexibility. Longer contract length gives providers a greater chance to perfect the service that they are delivering – if problems are encountered in the early days, providers, service users and commissioners can work together to improve the services without the worry on both sides of the service going out to tender again. Longer contracts also make it easier for providers to attract investment. On the other hand, shorter contracts enable commissioners to keep a closer eye on providers if services are not being delivered appropriately. When surveyed, both commissioners and providers responded positively to the idea of open contracts.

Outcome-based contracts and open contracts

When planning and writing up a contract it is important that commissioning authorities write contracts with clearly defined objectives that are realistic

for providers, commissioners and service users. Contracts should be made to reflect the outcomes desired and should not be too prescriptive about how these outcomes are achieved. A well-designed open contract could encourage a focus on outcome-based commissioning. A more open contract, which focused on desired outcomes, could provide flexibility to both providers and commissioners and enable them to refine the contracts as the partnership continues.

A register of risk and opportunities

Commissioners need to play an active role in identifying and quantifying risk, and allocating it to those most able to manage it, taking into consideration operational, financial, reputation and political risk factors. Early dialogue about outcomes needs to comprise an early conversation about risk, without waiting for a formal competitive dialogue brings those conversations forward. An ‘opportunities’ register should be established, to sit alongside or even within a risk register, to highlight the potential for improved outcomes, cost savings or other service improvements that could result from taking action. If this is shared, it would create transparency on which to base shared ‘pain/gain’ mechanisms. A shared upside and downside risk register, that is emotionally intelligent and politically savvy, could have a profound effect on how all parties approach and manage risk.

Doing stage

The ‘do’ (procurement and delivery) stage of the commissioning process is traditionally the most developed. In order to ensure that the services are being delivered effectively, providers, commissioners and service users need to continue to engage with one another, thus enabling dialogues around risk challenges and opportunities. In particular, those from the commissioning and provider teams that were involved in the analysis and planning stages should continue to be involved during the procurement and delivery stage. An effective way of achieving continuing dialogues is the co-location of staff.

Teams should be structured around outcomes and maintained throughout the process

The dialogue that leads to a contract being drawn up and signed is an important part of the trust building exercise. It is important that some of the personnel involved in the early stages of the commissioning process are the same people that are involved after the contract has been signed and the service is being delivered. If the commissioning process has been executed properly, trust should have been built up between providers and commissioners alike. It is important that this trusting relationship is not ended once the contract has been signed. Those who discussed the outcomes, and how services were to be delivered, have a greater familiarity with the partnership, above and beyond what can be described on paper or in a key performance indicator (KPI).

Co-location of council and provider employees

In some cases, council and provider employees should be co-located. Co-location of council and provider employees should be considered when feasible, as this can increase levels of cooperation and understanding of the challenges and successes of the service delivery.

Reviewing stage

The reviewing stage of the commissioning process should be continuous. If there has been greater engagement, partnership and risk sharing at earlier stages of the commissioning process, monitoring the contract and service delivery should be intuitive. Commissioners and providers need to continue to engage with each other and stakeholders for successful monitoring and service delivery.

Contract monitoring

It is important that, whilst outcomes are stated in contracts for transparency, contracts are constantly monitored, preferably by those who have been involved in the commissioning process from the beginning. It is especially important that contracts and KPIs do not become 'tick the box' exercises.

Outcomes still need to be based on the overall performance of the service. It is important, not that KPIs are filled out perfectly, but that the service being delivered is benefiting the service users and local residents as well as it can be. This is something that commissioners, providers and service users need to monitor collectively, determining together what is working and what is not working as they begin to analyse the next iteration of the service.

5 *Next steps for effective commissioning*

Dialogue is at the heart of the emerging commissioning landscape. The twin drivers of shrinking budgets and rising expectations make a more open and inclusive commissioning process essential. This can sit uncomfortably with the often adversarial culture of traditional procurement.

By taking on the ‘stuck conversations’ around risk, openness and capacity, our research points to a new commissioning landscape, characterised by partnership and a focus on outcomes. The need for such an approach is great: those councils that do not think more creatively about how and what they provide will find it increasingly difficult to meet the needs and expectations of the communities they serve.

Councils will often want to work with partners, in the private and voluntary sectors, to draw on the wealth of expertise that exists and to create the innovation to which openness often leads. For those providers, there are challenges too. Those that stick to a ‘business as usual’ model are likely to find themselves left behind, as commissioners become more sophisticated in their approach and more focused on outcomes.

Of course, in some ways innovation is easier when the resources are not under continual pressure. Yet necessity remains the mother of invention, and many across local government and their provider partners are rising to the challenge. There is much that they can learn from each other. But to help realise the benefits of this new model of commissioning, we also make a series of specific recommendations.

Recommendations

- The **four-stage commissioning model** (analyse/plan/do/review) should be adopted more widely, with improvements to how providers and commissioners understand the commissioning process.
 - Commissioning needs to be regarded as a continuing process, with each stage of the process revisited periodically.

- All relevant stakeholders should be engaged when stages are revisited, in the interests of developing trust between providers and commissioners.
- Commissioners, service users and providers all need to **engage** earlier in the commissioning process. The focus of the process needs to move away from the procurement stage towards greater dialogues between all stakeholders during the analysing, planning and reviewing stages.
 - Service users and providers should be involved earlier, beginning with scoping desired outcomes.
 - Commissioning intentions should be published, and could later develop into firm procurement intentions.
 - Contracts and service delivery should be regularly monitored and reviewed, with learning points fed back into the overall commissioning process.
 - Where possible, staff should be co-located to encourage openness and collaboration.
- Commissioners and providers both need to cultivate **more flexible and diverse skillsets**.
 - Commissioners should conduct a scoping exercise early on to determine which skills are required and structure their teams accordingly around outcomes.
 - Providers need to recognise the local dimension by considering the impact of local politics and the potential for local service offerings to improve outcomes.
- **Risk** needs to be both managed and embraced by providers and commissioners. More open contracts with a shared upside and downside risk register are needed.
 - Contracts should become more open, with services held accountable for the outcomes they deliver.
 - Opportunity registers should be published alongside, or within, risk registers, to highlight how outcomes could be improved by taking action.

Appendix *Methodology*

This report is based on original research undertaken by NLGN and the CBI, which has drawn heavily on the principle of dialogue. We have endeavoured to include the views of local authorities as commissioners, as well as companies and voluntary organisations as providers. The assistance of the NCVO has been invaluable in this.

The project was overseen by an advisory group, which met twice and comprised the following members:

- Niall Bolger, Chief Executive, London Borough of Sutton
- Manjeet Gill, Chief Executive, West Lindsey District Council
- James Allen, Head of Public Services and Partnerships, NCVO
- Sarah Reed, Assistant Chief Executive, Sunderland City Council
- Kevin Lavery, Chief Executive, Cornwall County Council
- Daniel Goodwin, Chief Executive, St Albans City and District Council
- Sophia Looney, Divisional Director, Policy, Equalities and Performance, Lambeth Council
- Robert Hunt, Executive Director, Veolia
- Neil Euesden, Managing Director, Pinnacle-PSG
- Chris Fenton, Strategy Director, Amey
- Tim Heywood, Director (Public Sector and Procurement), Burges Salmon

The advisory group was chaired by **Nick Sharman**, member of NLGN's Board and Chair of the CBI Local Government Panel.

The research was conducted through three key stages:

1. We carried out a **survey** to assess the broad issues in the commissioning landscape, and to gain an overview of the attitudes of providers and local authorities towards commissioning. The survey was sent to providers in both the private sector (through CBI members) and the voluntary sector (through NCVO members), as well as senior officers

and elected members in local government. The questions posed to each group were broadly identical, enabling us to assess different perspectives on common issues.

2. We conducted three in-depth **case studies** of innovative practice, which comprised multiple onsite interviews with key officers and members in each authority, as well as other local stakeholders, including providers. The objective was to understand the different ways that authorities are approaching commissioning in three distinct service areas:

- i. ***Culture and Leisure Services in Cheltenham***

As part of a thorough, rolling programme of service reviews, the council applied a four-stage commissioning approach to cultural and leisure activities, with a view to making the services sustainable in the long term. The review looked at the whole market (private and voluntary providers as well as in-house services) and involved extensive consultation on objective setting and service design. Key issues included getting the right skills in the right place at the right time and devising objectives and service models that did not simply replicate existing practice.

- ii. ***Waste Disposal Services in Staffordshire***

Staffordshire County has an established approach to outsourcing and commissioning, with only two services provided in-house. Some existing contracts (especially those that predate reorganisation in the county) are heavily prescribed, but the authority is moving towards more open, flexible and outcome-focused deals. The latest of these is structured around only three key conditions: all waste is disposed of; nothing is sent to landfill; and this is done at cost. How this is done and how spare capacity is used is for the provider to decide. The transfer of risk to encourage efficiency and innovation also allows the provider to take full control with few specifications from the council, and creates space for greater collaboration with neighbouring authorities.

- iii. ***Property Maintenance in Solihull***

Inspired by the Egan Review, Solihull Council has developed a partnership model, with two providers, to deliver property maintenance services. Both providers have key staff co-located

with council staff, and the introduction of open-book accounting and real-time information sharing has both reduced costs and helped develop relationships of trust. The use of data is particularly impressive and performance management is highly effective and seamless. This risk sharing is most evident in the pain/gain approach they have adopted: while the providers are guaranteed a specified level of income, everything else (surplus and loss) is shared equally between the partners.

4. We held four high-level, roundtable **dialogue sessions**, each involving around 20 participants with a balance of local authorities and providers. These dialogue sessions focussed on different issues identified through the survey and case studies and were themed as follows:
 - i. Co-production in commissioning – involving service users and providers (London)
 - ii. Skills and structures for effective commissioning (Manchester)
 - iii. Sharing risk to promote innovation (London)
 - iv. Skills and structures for effective commissioning (Taunton)





The forces of change facing both local and central government are intense. Social and demographic changes, coupled with a step up in public expectations, are driving a significant increase in demand for services. At the same time, unprecedented financial constraints are applying pressure to provision.

Dialogue between providers and commissioners of public services must be at the heart of this. It requires being transparent about the challenges services face and creating 'safe spaces', outside of formal procurement, in which partners can engage constructively.

The CBI and NLGN have worked together to help address this. We brought together businesses and local authorities of all sizes to discuss how dialogue could be improved. A shared desire for change was immediately apparent, along with acceptance that neither side has a monopoly on good ideas.

Building on our research, this report challenges local authority commissioners and providers to **pursue wider engagement, cultivate more diverse skills and adopt a more outcome-focused approach to risk.**