

# EFFECTIVE COMMISSIONING

## AN NLGN WHITE PAPER

JOHN NICHOLSON



New Local Government Network (NLGN) is an independent think tank that seeks to transform public services, revitalise local political leadership and empower local communities. NLGN is publishing this report as part of its programme of research and innovative policy projects, which we hope will be of use to policy makers and practitioners. The views expressed are however those of the authors and not necessarily those of NLGN.

© NLGN May 2014

All rights reserved

Published by NLGN

Hub Westminster, 80 Haymarket

1st Floor, New Zealand House

London, SW1Y 4TE

Tel 020 7148 4601 . Email [info@nlgn.org.uk](mailto:info@nlgn.org.uk) . [www.nlgn.org.uk](http://www.nlgn.org.uk)

# CONTENTS

<b>ACKNOWLEDGEMENTS</b>	<b>4</b>
<b>INTRODUCTION</b>	<b>5</b>
<b>BACKGROUND</b>	<b>7</b>
<b>WHAT THE POP TANK DID</b>	<b>8</b>
<b>PRINCIPAL FINDINGS</b>	<b>9</b>
<b>THE ARCHITECTURE OF EFFECTIVE COMMISSIONING</b>	<b>11</b>
<b>SOLUTION SHAPING</b>	<b>12</b>
<b>SUPPORTING ELECTED REPRESENTATIVES</b>	<b>13</b>
<b>FURTHER WORK</b>	<b>14</b>
<b>APPENDIX: COMMISSIONING USER GUIDE</b>	<b>16</b>

# ACKNOWLEDGEMENTS

**This project would not have been possible without the help of the following organisations:**

A4E, Allen Advisory Services, Atkins, Birmingham City Council, Buckinghamshire County Council, Cambridgeshire County Council, CBI, Collaborate, Devon County Council, East Sussex County Council, Essex County Council, Gloucestershire County Council, Herefordshire County Council, Kent County Council, Lancashire County Council, London Borough of Ealing, London Borough of Greenwich, London Borough of Lambeth, London Borough of Sutton Kier, Manchester City Council, Rt Hon Francis Maud MP, Microsoft, Mouchel, NCVO, Newark and Sherwood District Council, Northamptonshire County Council, Norwich City Council, OPM, Oxfordshire County Council, PA Consulting, RSPB, Shropshire County Council, Staffordshire County Council, Swindon Borough Council, Warwickshire County Council, Weightmans, West Sussex County Council and WSP.

# INTRODUCTION

**Better commissioning is a critical part of the future for local government. As councils redefine themselves for a new era of high demand and tight budgets, the quality of the processes they use to shape and source their services is becoming a critical issue. There is a very real sense in which local authorities lead the field in the quality of their commissioning practice, and recent years have seen the development of innovative new approaches in areas such as back office services and education.**

But these early signs of innovation are precisely that. Outstanding commissioning practice remains the exception rather than the norm. As this paper argues, there are particular challenges for councils in defining the outcomes they want to achieve and in disentangling the holistic practices of commissioning from the purchasing process of procurement. Until this is successfully done, councils will fail to maximise the benefits to be had from commissioning, ultimately meaning services that are poorer quality and more expensive than they need to be.

There is also a profound challenge for the private sector here. Councils are changing at breakneck speed and the old outsourced solutions are neither efficient nor innovative enough to attract the best local authorities. The better businesses have heard the message and many are starting to invest in new solutions that provide a better deal, building sophisticated new ways to share risk and guarantee big savings.

If the past few years have taught us anything, it is the importance of dialogue between the two sectors. Too many organisations on both sides of the public/private fence still take the view that councils should just put contracts out there and wait for the bids to flow in. The best commissioners are increasingly engaging the private sector in very early dialogue to shape their service solution and prepare the market for the tender process.

As this suggests, better commissioning is not just about local government, but also about the way the business community behaves. This kind of system shift will not be easy – system shifts never are – but this paper sets out some of the steps that will be necessary to create the next market for local public services.

**SIMON PARKER****NEW LOCAL GOVERNMENT NETWORK**

# BACKGROUND

**The concept of commissioning services is now well established. Whether services are provided by in-house staff; commercial providers or voluntary organisations, clients and budget holders increasingly recognise the need concisely to specify the services, outputs or outcomes they require.**

Whilst much has been written about commissioning, the Cabinet Office-backed Commissioning Academy Framework is emerging as a popular approach. The framework is non-prescriptive, suggesting a six stage approach by clients, their customers and partners setting up commissioner/provider arrangements:

- 1.** What's the Question?
- 2.** Get to know and work with your customers
- 3.** Define the outcomes and priorities
- 4.** What will it look like?
- 5.** How will we get there?
- 6.** Measuring the impact

NLGN's contribution to developing commissioning practice took the form of an Effective Commissioning Pop Tank and a joint CBI / NLGN Commissioning Dialogue Research Project. Each team was aware of the other's work, but deliberately functioned separately.

The outputs from the Commissioning Dialogues project are reported in the NLGN publication – "Commissioning Dialogues". This note summarises the outputs and outcomes of the Effective Commissioning Pop Tank's work

# WHAT THE POP TANK DID

**The Pop Tank set itself the task of exploring the theory and, particularly, practical examples of commissioning, drawing conclusions on:**

- Current examples of good practice
- Key challenges facing commissioners and providers
- What actions might be taken to address the challenges

**The techniques used were:**

- A literature search – conducted by NLGN
- Interviews with and / or self-completion of pro-formas by commissioners
- Workshops / working groups
- Participation in the NLGN Commissioning Dialogues Conference

# PRINCIPAL FINDINGS

**The common themes that emerged from the literature search and the interviews /pro-formas were that:**

- There are still relatively few examples of good commissioning practice
- Defining required outcomes remains a major challenge
- There is still a tendency to confuse commissioning with procurement

**Specific issues that emerged from the workshops / working groups and the Conference were the importance to effective commissioning of:**

- A clear architecture for commissioner / provider arrangements – crucial to turning political objectives; objectively measured demand and need, and statutory responsibilities into services, projects and programmes
- Involving customers in determining what services, projects and programmes are to be delivered. This will become increasingly critical as resources come under ever greater pressure and in areas operating Community Budgets.
- Facilitating early “dialogue” between commissioners, contracted provider partners and community providers and organisations to shape solutions – and continuing it throughout service delivery. This is recognised by the recent “Ways of Delivering Differently” pilot projects encouraging new public/private/voluntary sector delivery solutions
- Pursuing “Solution Shaping” (working with provider partners) rather than “Market Shaping” (telling providers what is required)
- Maintaining an objective-driven approach to Solution Shaping and subsequent commissioning
- Recognising that there is no single solution – contractual and delivery solutions may vary between commissioning bodies, even where the objectives are the same or similar

- Robust governance, particularly as delivery arrangements become more complex and / or fluid
- Due-diligence and performance management, particularly where community providers form part of the delivery solution
- Accommodating / taking advantage of the requirements of the Public Services (Social Value) Act 2012
- Being prepared to take some risks if solutions are going to be innovative and not unduly constrained by EU regulation or by over-cautious legal or procurement teams.
- Being flexible enough to respond to changing circumstances

**The Pop Tank also commented that:**

- Effective commissioning is as important for services delivered by another part of the commissioning body as it is for those delivered by an external provider
- Commissioning should come after solution shaping

**The Pop Tank then made progress in developing practice in three areas:**

- The Architecture of Effective Commissioning
- Solution Shaping
- Supporting elected representatives

# THE ARCHITECTURE OF EFFECTIVE COMMISSIONING

For Local Authorities and other democratically controlled organisations, there are effectively three stages of commissioning:

- **POLITICAL COMMISSIONING** – Democratically elected representatives defining the outcomes they require or desire for their community
- **STRATEGIC COMMISSIONING** – Senior officers within the commissioning body balancing the required political outcomes with statutory obligations, practical constraints and assessment of need and demand to define the outputs they require from their provider partners
- **TACTICAL/OPERATIONAL COMMISSIONING** – Senior managers within providers (whether within or contracted to the commissioning body) defining the programmes, projects and services they will deliver in order to achieve the required outputs and outcomes.

A fuller explanation of each of these levels of commissioning, and the importance of developing a dynamic interrelationship between them, can be found in the “Commissioning User Guide”. It has been developed by Northamptonshire County Council and is being trialled in the delivery of Highways and Transportation services in the County.

# SOLUTION SHAPING

In the current climate of changing demographics and reducing funding, Local Authorities are recognising that service commissioning and provision must involve:

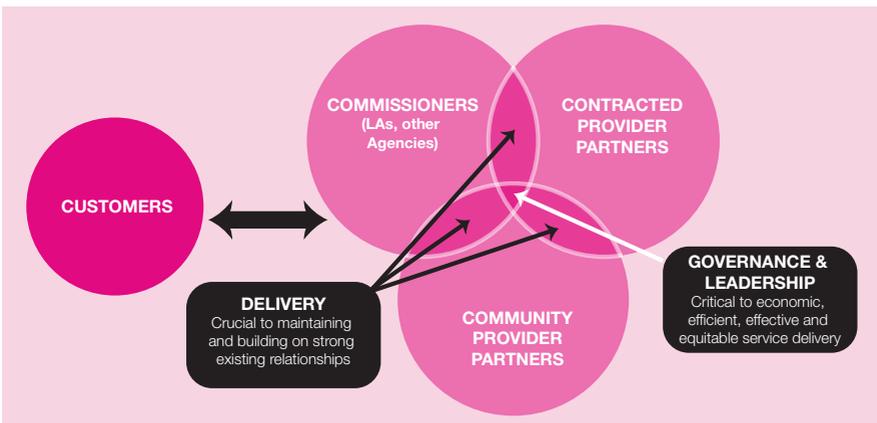
- The Authority and its partners (as the facilitators / commissioners)
- Contracted (paid) provider partners (a wide assortment of both internal and external providers)
- Community (unpaid or partly funded) provider partners (formal organisations, informal groupings and individuals)

All must be aware of the needs, expectations and aspirations of their customers (who may also be providers in one form or another).

It is essential that all parties understand what the others (are prepared to) do, and make clear what skills and resources they are able and prepared to bring to the table. They need then to engage in “trialogue” and to identify what can be delivered how and by whom. This process calls for a mature approach to Solution Shaping, with a strong emphasis on governance.

The figure below illustrates this approach – with all partners needing to agree:

- The delivery arrangements – what will be provided, how and by whom
- The leadership and governance arrangements



# SUPPORTING ELECTED REPRESENTATIVES

The findings of the Pop Tank, along with leading examples of commissioning (particularly Lambeth Council’s “Cooperative Commissioning” model), were shared at a workshop with officers and elected members on “The Governance of Commissioning”. The discussion highlighted that, whilst a commissioning approach effectively steers elected representatives towards taking a more hands-off strategic and outcome-based perspective on services, their electors still expect them actively to intervene in and influence local issues and outcomes.

Whilst the workshop did not make definitive recommendations on ways to reconcile this potential conflict, it highlighted the scope for elected representatives to play a leading role in developing community understanding of, and influence over, solution shaping and subsequent commissioning. This will be increasingly crucial as clients involve customers in determining what should be delivered, and by whom, on their behalf – for example where a Local Authority and its partners are adopting Area or Community Budgets. Developing new roles and responsibilities for elected representatives, officers and provider partners will require close working between all three, including shared training and development of processes and protocols.

# FURTHER WORK

**In addition to developing the Architecture of Commissioning; Solution Shaping and Supporting Elected Representatives, the Pop Tank considers that the most important areas for further work are:**

## **OUTCOME-BASED SPECIFICATION**

The framework set out in the Commissioning Academy Framework and the Commissioning User Guide in the appendix will help commissioners and their partners identify desired outcomes. It remains a challenge to translate these outcomes into meaningful and enforceable contractual requirements without introducing the prospect of disproportionate risk to the provider. Significantly uncertain risk will, generally, result in the provider pricing on the basis that something approaching the worst will happen. This will prejudice the chances of the commissioner securing value for money.

Further work is needed on shaping achievable outcomes that reflect a pragmatic approach to risk sharing.

## **DUE-DILIGENCE OF PROVISION BY COMMUNITY PROVIDERS**

Commissioners are increasingly making hard decisions about the services they will (not) commission and / or provide. The reality is that ever more services will no longer be provided or fully funded. One alternative is to facilitate the (partial) delivery of these services by community providers. When this happens, there must be clarity about who is answerable for guaranteeing delivery of the service and for issues such as Disclosure and Barring Service (formerly Criminal Records Bureau) checking and Health and Safety compliance.

Guidance needs to be developed on a balanced approach that protects service users from risk whilst encouraging innovative and pragmatic delivery arrangements.

## ACCOMMODATING THE REQUIREMENTS OF/OPPORTUNITIES PRESENTED BY THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

Since April 2013, hard decisions on which services (not) to deliver or commission have had to comply with the Public Services (Social Value) Act 2012. The primary requirements of the Act are that, where an authority proposes to procure public services, it must consider:

- “how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- how, in conducting the process of procurement, it might act with a view to securing that improvement.”

These requirements (especially when coupled with the provisions of the Localism Act 2012) present both challenges and opportunities to commissioners. Commissioners need to demonstrate that they have engaged communities in determining service priorities and, once they have done so, can use the findings in balancing price and quality in the evaluation of service proposals from prospective providers.

Further work is needed in developing balanced evaluation frameworks. All three of these areas of further work present the opportunity for genuine “trialogue” between potential delivery partners, and engagement of their customers.

The work has concluded, but the chair of the Pop Tank would welcome comments on its findings and further examples of good practice.

### **JOHN NICHOLSON**

**DIRECTOR, 481 SOLUTIONS**

**CHAIR, EFFECTIVE COMMISSIONING POP TANK**

**MAY 2014**

**JOHN.NICHOLSON@481SOLUTIONS**

# APPENDIX

# COMMISSIONING USER GUIDE

## INTRODUCTION

The approach to commissioning set out in this Guide is based on that developed, and being deployed, by Northamptonshire County Council. It:

- Is consistent with, but uses slightly different language and definitions from, generic commissioning theory and practice
- Could form the basis for commissioning practice across any commissioning body

The success of the model depends on several critical factors, namely the:

1. Robustness of the demand and needs assessment and associated evidence base underpinning service commissioning and delivery
2. Skills of those involved in Strategic and Tactical Commissioning (e.g. analytical, communication)
3. Attributes of those involved in Strategic and Tactical Commissioning (e.g. pragmatism, flexibility, confidence, risk taking)
4. Culture and behaviours for communication and alignment of objectives between the stages of commissioning and delivery
5. Protocols for the management of commissions within the commissioner/provider context
6. Understanding of, and buy in to, the culture and protocols by all key users, including elected Members.

This user guide addresses each of these factors, identifying the skills and attributes required of participants in commissioning processes and

procedures. For the avoidance of doubt, the guide does not:

- Make assumptions about the adequacy of existing commissioning / provider arrangements for the services under consideration
- Address the requirements for the identification and procurement of service providers (whether through formal contracts, formal service level agreements or collaboration with third sector organisations)

## WHAT ARE THE COMMISSIONING / DELIVERY STAGES?

Commissioning will operate within the framework set out in Table 1 below. The framework adopts the principle that the level of detail and specification should increase as commissioning / delivery progresses from political commissioning to service delivery. The deliverables progress from broad political outcomes (moderated by statutory obligations and needs assessments) through clear outputs and specified activities, to measurable service outcomes. Outcomes may differ between geographical areas or demographic groups.

The Example column in Table 1 below illustrates how this process might be applied to a specific aspect of public services. The example chosen is that of the built environment, and specifically the transport aspects. It starts with broad political outcomes, including that of a safe, congestion free, accessible and sustainable transport network, and develops into the delivery of specific schemes and services on the ground.

For individuals involved in the process, the “Way of operating” statements provide a clear steer on the level of detail required at each stage of commissioning and delivery. Political and Strategic Commissioners should not need to specify **how** an outcome or output is to be delivered, simply **what** that outcome or output should be. Strategic Commissioners have the specific responsibility of balancing political objectives, statutory obligations, user demand and need. Tactical Commissioners do need to identify, at a fairly high level, how the outcomes and outputs are to be achieved; and the Service Managers need to set out precisely what is going to be done, by whom, at what cost, and by when.

That said; dialogue should take place between the tiers of commissioner / provider to optimise the solutions that are developed and delivered. This dialogue can be initiated by any team with, for example, Tactical Commissioners suggesting a way ahead to the Strategic or Political Commissioners. Indeed, it is good practice for each tier of Commissioner and Service Manager to alert tiers above them to the need or opportunities for specific commissions.

Whilst this dialogue is to be positively encouraged, and can be informal and fluid, the conclusions should always be formally agreed and documented at each stage of the commissioning / delivery process.

For the avoidance of doubt, whilst the table refers to “Teams”, these may well be virtual, rather than formally constituted, commissioning and delivery teams. It is the behaviours, culture and ways of operating that are critical to the success of the commissioning process.

(Virtual) Team	Nature, function and accountabilities of team	Deliverables	Way of operating	Examples
<b>Political Commissioning</b>	Elected Members / representatives, supported by Corporate Directors, translating the needs, expectation and aspirations of their communities into desirable outcomes.	Outcome specifications	“These are the political /community objectives we need you to achieve.....”	“We want our area to have..... Jobs and growth A safe, congestion free, accessible and sustainable transport network Protection from flooding”
<b>Strategic Commissioning</b>	A small accountable group of politically attuned officers charged with advising on priorities; balancing political objectives, statutory obligations, government guidance, user demand and need, and fiscal and pragmatic constraints; and commissioning providers to meet the required outcomes.	Output specifications	“We need you to.....”	“We need you to develop an evidence-based..... Economic Development Strategy Transport Asset Management Plan Surface Water Management Plan.... Within the following specific constraints / local objectives.....”

<b>Tactical Commissioning</b>	A small, accountable empowered governing body trusted by Elected Members and Directors to accept and manage the risks transferred by the model. Advises the Strategic team on the balancing of statutory obligations, government guidance, user demand and need, and fiscal and pragmatic constraints. Determines budget priorities within expenditure levels and guidelines.	Programme / project / service specifications	“We are going to ....”	“We are going to prepare the Transport Asset Management Plan taking on board government guidance; current and additional data; political objectives; budget constraints and industry best practice. The TAMP will include programmes, projects and services to deliver a safe, congestion free, accessible and sustainable transport network. We will report progress by setting, and monitoring performance against, KPIs”
<b>Service Management</b>	Highly skilled decision makers meeting targets set by the tactical commissioners by delivering excellent services and projects. Provide inputs to the Tactical team on optimum ways to achieve the required outcomes. Obtain feedback and views from service users	Service outcomes	“This is what we’re doing when, where and how”  (and this is the impact the service / project has had)	“This is the Transport Asset Management Plan, showing the projects, programmes and services that will deliver the above objectives; when, where and how we will achieve them, and how we will measure success.”

**Table 1: Commissioning and Delivery Stages**

## WHAT ARE THE KEY RESPONSIBILITIES FOR EACH ROLE? POLITICAL COMMISSIONERS

Political commissioners will provide the culture, framework and expected behaviours for commissioning in their organisation. Using a Local Authority as the example, the context for political commissioning will be defined from time to time jointly by elected Members and the Chief Executive, and more specifically:

- By Cabinet / Portfolio Holders, where policy / strategy decisions are involved
- By the commissioning body's Corporate Management Team / Directors, where commission is within existing policy / strategy / delegated authority
- They will normally be recorded in the form of Council, Cabinet and Committee decisions and / or CMT decisions.

## **STRATEGIC COMMISSIONERS**

Strategic Commissioners will be responsible for identifying that political commissions have been initiated, and for interpreting and translating them into strategic commissions. They have the responsibility for balancing political objectives, statutory obligations, user need and demand. Strategic commissions will be shaped through dialogue with the Tactical Commissioners and articulated and captured in the form of Commission Control Documents. Strategic Commissioners are likely to take the lead in establishing the processes, procedures and protocols within which commissioning is to take place.

## **TACTICAL COMMISSIONERS**

Tactical Commissioners will work with the Service Managers to capture and articulate Tactical Commissions in the form of Commission Control Documents.

## **SERVICE MANAGERS**

Service Managers will translate the agreed Tactical Commissions into services, programmes and projects using the processes and procedures of their own organisation's Business Management System. These systems will facilitate the provision of outcomes, outputs and performance data in the form required by the Strategic/Tactical Commissioners.

## WHAT SKILLS AND ATTRIBUTES DO THE PARTICIPANTS NEED?

For staff in both the commissioner and provider organisations, there may well be a need to adopt a new approach to service delivery. This is likely to require staff to acquire new skills; modify their behaviours and develop new types of relationship. For a typical Local Authority this might mean:

Participant	Political Commissioner	Strategic Commissioner	Tactical Commissioner	Service Manager
Key skills	<ul style="list-style-type: none"> <li>Understanding the public mood</li> <li>Expressing political objectives as desired outcomes</li> <li>Providing clear objectives (required outcomes)</li> </ul>	<ul style="list-style-type: none"> <li>Political sensitivity</li> <li>Generic commissioning</li> <li>Understanding and managing user need, expectation and aspiration</li> <li>Analytical and challenge</li> <li>Knowledge of latest legislation</li> <li>Translating needs into outcomes and outcomes into outputs</li> <li>Performance monitoring</li> </ul>	<ul style="list-style-type: none"> <li>Understanding objectives</li> <li>Devising solutions</li> <li>VfM/Business Case development</li> <li>Strategic programme development</li> <li>Budget overview</li> <li>Political sensitivity</li> <li>Management of user demand</li> <li>Risk management</li> </ul>	<ul style="list-style-type: none"> <li>Technical competence</li> <li>Business planning</li> <li>Service, Budget, Programme and Project management</li> <li>Health and Safety</li> </ul>
Key attributes and behaviours	<ul style="list-style-type: none"> <li>Visionary</li> <li>Empowerment of and trust in the delivery team</li> </ul>	<ul style="list-style-type: none"> <li>User focus</li> <li>Confidence</li> <li>Willingness to take risks</li> <li>Non-blame culture</li> <li>Open to new ideas</li> </ul>	<ul style="list-style-type: none"> <li>Client focus</li> <li>Ownership of political /strategic objectives</li> <li>Creativity / lateral thinking</li> <li>Openness</li> </ul>	<ul style="list-style-type: none"> <li>User focus</li> <li>Reliability</li> <li>Focus on delivery</li> <li>Flexibility</li> </ul>
Key relationships	<ul style="list-style-type: none"> <li>Political Group members</li> <li>Ward Councillors</li> <li>Corporate Management Team</li> <li>Commissioning Teams</li> </ul>	<ul style="list-style-type: none"> <li>Corporate Management Team</li> <li>Cabinet/portfolio holder</li> <li>Tactical Commissioners</li> </ul>	<ul style="list-style-type: none"> <li>Strategic Commissioners</li> <li>Ward Councillors</li> <li>Service Managers</li> </ul>	<ul style="list-style-type: none"> <li>Tactical Commissioners</li> <li>Service/project users</li> </ul>

<b>Indicators of success</b>	Delivering manifesto commitments	Achieving outcomes	Achieving outputs / Key Performance Indicators (KPIs)	Delivering project / service objectives and KPIs
<b>Principal accountability</b>	Electorate Cabinet Scrutiny Committee	Cabinet Corporate Management Team Auditors	Management Board Strategic Commissioning Team	Delivery organisation's Management Board

**Table 2: Key skills, attributes and behaviours**

## HOW CAN COMMISSIONING BE EMBEDDED IN AN ORGANISATION?

### CONTEXT

Clear governance, management and operational arrangement are required to support the commissioning process. The detailed arrangements will be influenced by aspects such as the political architecture of the commissioning body (for example, the extent to which communities directly influence service provision and delivery); its standing orders and delegated authorities, and commissioner/provider contracts or agreements. All arrangements should, however, make every effort to facilitate and support dialogue between the tiers of commissioner/provider.

### EMBEDDING PROTOCOLS, PROCESSES AND PROCEDURES

For the above processes and procedures to be accepted and embedded in service delivery and management, they must be wholeheartedly endorsed by elected Members and owned by those responsible for service delivery. The responsibility for ensuring that this happens lies with:

- The Chief Executive and CMT (principles and protocols)
- The Business Process Management team for each service (processes and procedures)
- All staff involved in commissioning and delivery (practice)

There will be a period of learning and adjustment to the new way of working, and the governance bodies for each service should take joint-and-several responsibility for:

- Briefing elected / board members
- Training staff
- Monitoring compliance
- Establishing unambiguous and user-friendly arrangements for service users to access and influence services at the appropriate level

Success will depend on all elected Members accepting and adopting the arrangements. Portfolio Holders and Group Leaders, with the assistance of the Chief Executive and CMT, will play a key role in securing this support from their colleagues.

**Better commissioning is a critical part of the future for local government. As councils redefine themselves for a new era of high demand and tight budgets, the quality of the processes they use to shape and source their services is becoming a critical issue. There is a very real sense in which local authorities lead the field in the quality of their commissioning practice, and recent years have seen the development of innovative new approaches in areas such as back office services and education.**

Better commissioning is not just about local government, but also about the way the business community behaves. This kind of system shift will not be easy – system shifts never are – but this paper sets out some of the steps that will be necessary to create the next market for local public services.