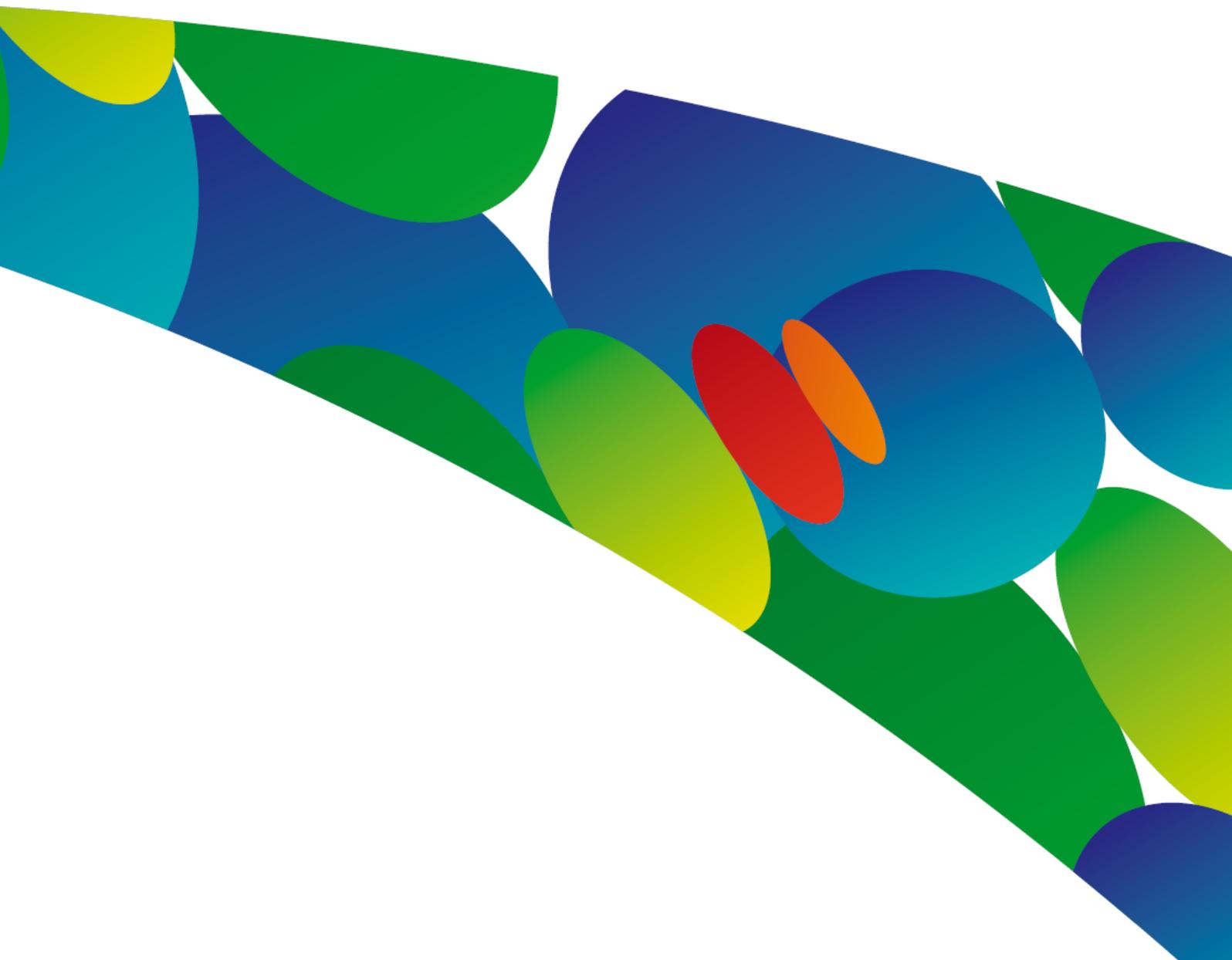


# **Health Inequalities National Support Team**

**How to Develop Voluntary Organisations,  
Community Groups, Charities and Social  
Enterprises as Strategic Partners**



**DH INFORMATION READER BOX**

Policy	Estates
HR / Workforce Management	Commissioning
<b>Planning /</b>	IM & T
Clinical	Finance
	Social Care / Partnership Working
<b>Document Purpose</b>	For Information
<b>Gateway Reference</b>	15882
<b>Title</b>	How to Develop Voluntary Organisations, Community Groups, Charities and Social Enterprises as Strategic Partners
<b>Author</b>	Jan Smithies - DH Health Inequalities National Support Team
<b>Publication Date</b>	01 Apr 2011
<b>Target Audience</b>	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Medical Directors, Directors of PH, Directors of Nursing, Local Authority CEs, Directors of Adult SSs, PCT Chairs, Directors of Finance, Allied Health Professionals, GPs, Communications Leads, Directors of Children's SSs, Local Authority Health and Wellbeing Board Members, LiNks and HealthWatch Chief Executives
<b>Circulation List</b>	
<b>Description</b>	This Voluntary and Community Services how to guide was developed by the Health Inequalities National Support Teams (HINST) with 70 local authorities covering populations in England. Local areas could use this approach when analysing whether a population level improvements could be achieved from a set of best-practice and established interventions. This is offered as useful resource for commissioners: use is NOT mandatory.
<b>Cross Ref</b>	The series of Health Inequalities National Support Team Workbooks
<b>Superseded Docs</b>	N/A
<b>Action Required</b>	N/A
<b>Timing</b>	N/A
<b>Contact Details</b>	Health Inequalities National Support Team National Support Teams Wellington House 133 - 155 Waterloo Road London SE1 8UG <a href="http://www.dh.gov.uk/HINST">www.dh.gov.uk/HINST</a>
<b>For Recipient's Use</b>	

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## Foreword

National Support Teams (NSTs) were established by the Department of Health from 2006 to support local areas – including Local Authorities, Primary Care Trusts (PCTs) and their partners – to tackle complex public health issues more effectively, using the best available evidence. By undertaking intensive, ‘diagnostic’ visits to local areas, spending time with key leaders (commissioners and providers) including clinicians and front-line staff, the ten NSTs provided intelligence, support and challenge to local areas to assist in their achieving better public health outcomes. The programme finished in March 2011.

The ten subject specific teams (Sexual Health, Tobacco Control, Health Inequalities, Teenage Pregnancy, Childhood Obesity, Alcohol Harm Reduction, Infant Mortality, Response to Sexual Violence, Vaccination and Immunisation and Children and Young People’s Emotional Wellbeing and Mental Health) were commissioned and established with a focus on improving health and reducing health inequalities.

The ten teams undertook more than 450 visits to local partnerships during the course of the programme and their findings and successes have been documented in Knowledge Management and Evaluation reports. Each team also produced reports setting out and consolidating the learning from their work. A further report that captures best practice identified by each team is planned to enable local areas to continue using the expertise and lessons learnt from the NST model.

The NST process involved a desk review of key documentation and data-based intelligence, and interviews with key informants, often in combination with a series of workshops or focus groups. Collation and analysis of findings was immediate, and the findings, including strengths and recommendations, were fed back straight away and on site to the key local players and leadership. Recommendations were accompanied by offers of support, either at the time of reporting, or as part of follow-up activity.

The Department is publishing a number of reports which distil the learning from the programme, and exemplify the methodology employed.

## Introduction

This how-to guide is a summary of local views on good practice. The suggested approaches are not mandatory, and reflect learnings from a snapshot in time. Where there is clear established evidence to support interventions, this has been signposted in the footnote. This is offered as useful resource for commissioners: use is NOT mandatory.

The Health Inequalities National Support Team (HINST) has chosen to prioritise this topic as one of its 'How to Guides' for the following reasons:

- Ideally, systematic and scaled up delivery of effective services is complemented by community engagement that is both systematic and strategic. Often, however, HINST has observed poor linkages between services and the most deprived and vulnerable communities. There are a number of ways of fostering improvements to this situation, the most important of which is capitalising on the work of what is sometimes referred to as the voluntary and community sector, the '3rd sector' (alongside public and private) and as 'civil society' – the relevant arm of government is now the Office for Civil Society within the Cabinet Office. In this guide, for simplicities sake, this sector – which encompasses voluntary organisations, community groups, faith bodies, cooperatives, charities, social enterprises, sports societies, tenants and residents associations and mutual societies - will be called the 'Voluntary and Community Sector' (VCS). This is also the term that is most commonly used by the sector itself. Often, however, the 'sector' does not function as such and can be a rather ad-hoc collection of agencies, not necessarily driven in response to current prioritised need. How then can the sector be supported to develop as a strategic partner, supporting the commissioning process, and delivery of tailored services?
- At the core of the HINST's work is a diagnostic framework – Commissioning Services to Achieve Best Population Outcomes, also called the 'Christmas Tree' diagnostic. It addresses the following components that focus on issues particularly relevant to the VCS sector, including:
  - Accessibility
  - Engaging the public
  - Expressed demand
  - Responsive services
  - Supported self-management
- Successful action in this area of work will help contribute to the Quality, Innovation, Productivity and Prevention challenge, by facilitating engagement of 'seldom seen, seldom heard' individuals, families and groups who are often overlooked or excluded by mainstream organisations. This action will enable these individuals and groups to benefit more systematically from community level interventions, and from primary and secondary prevention activities. This approach can facilitate people presenting earlier with health problems to reduce impact and reduce downstream burden on services.

Current policy in relation to public services highlights the centrality of engaging people – as individual service users and patients, and as whole communities, in their own health and wellbeing and that of the wider community. A strong, cohesive and fully engaged VCS can add greatly to a strategic and coherent cross partnership approach to work towards reaching out to

engage with all service users, patients, and communities not just the most articulate and best organised.<sup>1</sup>

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<sup>1</sup> See for example NHS Constitution: <http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx> and Localism Bill: <http://services.parliament.uk/bills/2010-11/localism.html> And NHS and Social Care Bill: <http://services.parliament.uk/bills/2010-11/healthandsocialcare.html>

## Context

### **NHS commissioning and competition: national policy and guidance**

This document should be read alongside the Department of Health's Procurement Guide for Commissioners of NHS-Funded Services<sup>2</sup> and Principles and Rules for Cooperation and Competition<sup>3</sup>

The Procurement Guide sets out the principles that commissioner's are expected to demonstrate in relation to procurement. These are:

- Transparency
- Proportionality
- Non-discrimination
- Equality of Treatment

In addition, this guidance recommends that commissioners also undertake the following as part of the procurement decision-making process

- Undertake Service reviews to identify areas for improvement and aim for alignment with commissioning strategy (eg QIPP)
- Apply benchmarking to existing services
- Use healthcare market analysis
- Specify relevant service specification, outcomes, KPIs and expected prices
- Engage early with providers, staff and representatives / Trades Unions to assess the potential impact / deliverability of the service (see Annex B).
- Engage with service users local communities and other key stakeholders eg Health Overview Scrutiny Committees and successor arrangements
- Aim for the process to be transparent, proportionate, and non-discriminatory
- Give all providers fair and equal opportunity to bid
- Have regard to Equality considerations in the procurement process
- Have regard to any sustainable development aspects of the procurement<sup>4</sup>

These two documents would make useful reading for VCS organisations in order to familiarise themselves with what to expect from NHS procurement and commissioning processes, and also opportunities for working collaboratively with NHS commissioners. The potentially unique contribution of the VCS is recognised in the procurement guide:

*Voluntary or charitable sector providers may have particular expertise in reaching out to 'at risk' groups and communities and in developing responsive services and co-production with users<sup>5</sup>*

*The possible need to 'market develop' the VCS in order to aim for it to be in a position to respond to tenders and procurement and contractual arrangements is also recognised:*

<sup>2</sup>

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/@ps/documents/digitalasset/dh\\_118219.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_118219.pdf)

<sup>3</sup>

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/@ps/documents/digitalasset/dh\\_118220.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_118220.pdf)

<sup>4</sup> Department of Health (2010) *Procurement Guide for Commissioners of NHS-Funded Services*: p.4-6

<sup>5</sup> As above: p.6

*Commissioners should also consider the use of appropriate funding models, (including Grant funding to strengthen partnership working between commissioners and the voluntary and community sector).<sup>6</sup>*

**However the guide also makes clear than the basic principles of commissioning mean that a VCS organisation should not be treated favourably just because it is part of the VCS alone:**

*The procurement process should not give an advantage to any market sector (public, private, voluntary, charitable and social enterprise). This includes making decisions that are taken, not with regard to the type of organisation specifically, but rather to how well that organisation meets the evaluation criteria.<sup>7</sup>*

### **Assumptions**

It is assumed that the commissioning body using this guide has an established commissioning process in place or, in the case of GP Commissioning Consortia or Health and Wellbeing Boards, that discussions are taking place regarding the approach to commissioning and commissioning priorities. Thinking about the engagement of the VCS in commissioning as part of transition will pay dividends once full responsibilities for commissioning have passed over.

### **What is this ‘How To Guide’?**

This guide aims to support the development of a commissioning process that does not exclude local VCS organisations and to ‘market develop<sup>8</sup>’ the capacity of those organisations to function effectively in a commissioning environment.

### **Who is the guide aimed at?**

The guide is aimed at organisations with responsibility for commissioning, including PCTs and local authorities, as well as GP Commissioning Consortia (GPCC). Included in the guide are reasons why health and healthcare organisations in particular should develop their commissioning processes by use of the guide’s suggestions and evidence-based practice.

However the guide will also be useful to VCS groups, organisations and networks as an aid to understanding commissioning processes and how to be proactively involved in ‘market development’ and key processes that should significantly influence local commissioning priorities such as the development of Joint Strategic Needs Assessment and Health and Wellbeing Strategies.

### **When can the guide be used?**

The guide can be used from the initial decision to commission services and throughout the commissioning process.

### **Where could the guide be used?**

The guide is aimed primarily at ‘local’ geographical areas, such as local authority areas, or areas covered by a single PCT or GP Commissioning Consortium (GPCC).

### **Why has the guide been produced?**

<sup>6</sup> As above p.18

<sup>7</sup> As above p.5

<sup>8</sup> To ‘market develop’: to increase the capacity and capability of the sector

There is an underlying understanding that local VCS organisations are more likely than organisations in the statutory or private sectors to be in contact with, or able to contact, potentially disadvantaged, 'seldom heard', often excluded communities. The guide is also based on the understanding that these communities are likely to suffer the poorest health, so contact with these communities is essential when commissioning to reduce inequalities in health (or other inequalities).

Please also see *Reasons to 'market develop' the VCS sector*, below.

### **How can the guide be used?**

There is a glossary of terms at the end of the guide to help readers from different sectors understand the guide. The Guide seeks to take a step-by-step approach, with each step in the process of developing a 'VCS-friendly' approach to commissioning identified as Step 1, Step 2, etc.

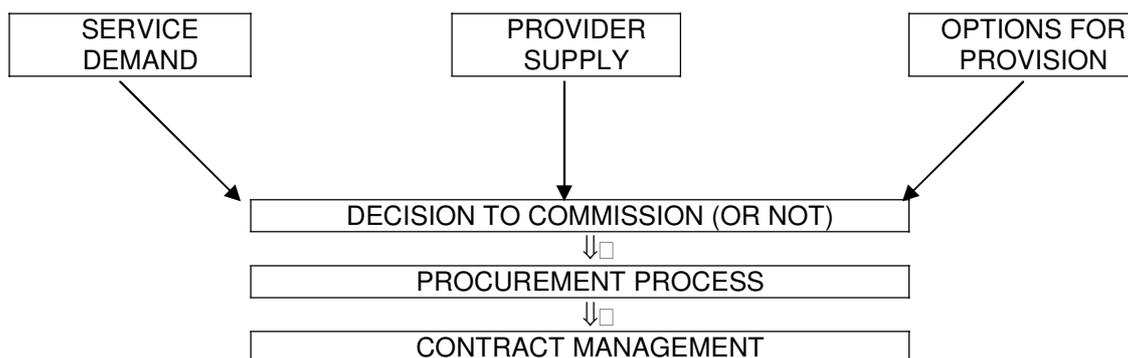
### **Reasons to 'market develop' the local VCS**

There are several good reasons to 'market develop' - that is, to increase the capacity and capability of - the local VCS sector:

- To aim for 'any willing provider' to include the VCS as well as the public and private sectors
- To capitalise on the sector's potential to reach into 'seldom heard', often excluded communities and contribute to wider equalities and health equalities agendas
- To allow the sector to be innovative where conventional service solutions have not succeeded – contributing to a process of service re-design
- To maximise retention of the money used to fund the VCS sector within the local economy and so contribute in a secondary way to improved wellbeing of disadvantaged communities
- To wider civic engagement
- To support the achievement of the equalities and health inequalities objectives of public organisations.

A strong local VCS will also attract in a great deal of external funding to a local area (e.g. via the Lottery; charitable trusts; national grants to the VCS) and generate significant 'contributions in kind' via the numbers of volunteers who regularly contribute free time and expertise. It is important to use a collaborative approach based on mutual understanding between public sector bodies and the VCS, and a flexible funding regime based on grants (to facilitate and support the development of innovative approaches) and commissioning to meet established needs.

There are processes that precede the decision to commission a service regardless of who from – information gathering, stakeholder engagement and policy development on options for service provision. The decision to commission a service will be accompanied by a well thought-out approach to commissioning in terms of principles, the commissioning process, contract management, and evaluation both during service delivery and after completion of the contract.



### Understanding commissioning

There are often differences in understanding what is meant by commissioning within a local partnership. For the purposes of this guide, the description below will apply<sup>9</sup>:

Public bodies achieve their goals in a number of ways, working through other bodies and by carrying out activities directly, themselves. This process, described as 'commissioning', covers the cycle of:

- Assessing the needs of local people or service users
- Setting a range of desirable outcomes for change
- Designing services to meet these outcomes
- Securing those services
- Monitoring and reviewing them.
- Keeping progress towards outcomes under review

There are a number of ways of commissioning services including:

- The commissioner delivering the activity itself, by employing people and providing the necessary resources
- Giving a grant or subsidy to an organisation to carry out the activity
- Giving an organisation the right to provide the service (a concession or licence)
- Providing capital funding to the organisation, which is then able to carry out the activity on a self-financing basis
- Setting up a joint venture
- Giving financial support to service users to meet fees charged by the service provider organisation or so that they can purchase their own service (personalisation)
- Providing in-kind support (such as seconding staff or providing services, equipment or assets) to the organisation delivering the activity
- Undergoing 'procurement', which covers everything from advertising through to the final contract arrangements. This is likely to involve the following steps:
  - Publishing contract opportunities
  - Writing the contract specification
  - Setting pre-qualification criteria
  - Invitation to tender
  - Setting contract and payment terms
  - Evaluation and clarification of tenders
  - Award of contract

<sup>9</sup> Office of Government Commerce, Home Office (2004) *Think smart...think voluntary sector! Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector.*  
[www.ogc.gov.uk/documents/Think\\_smart\\_think\\_voluntary.pdf](http://www.ogc.gov.uk/documents/Think_smart_think_voluntary.pdf)

- The contract management process
- The service evaluation and feedback process

Understanding commissioning is important for public bodies and the VCS organisations that work with them because:

- VCS organisations need to understand the constraints of the powers and policy framework within which commissioners must work
- VCS organisations can take steps to influence what services a commissioner sources, and how, by developing good relationships early in the process and by playing a proactive role in needs assessment (e.g. by contributing to a local Joint Strategic Needs Assessment (JSNA) and being active partners in the development of the local Health and Wellbeing Strategy.

## LINKS TO STRATEGIC PARTNERSHIPS

### Understanding the local structure within which the VCS sector operates

Before commissioning the VCS sector, it is important to understand how the local VCS is structured, and how this structure links in to partnership structures. For example, there may be no local infrastructure organisations, there may be one (often a Council for Voluntary Service – CVS or Rural Community Council (RCC)), or there may be several including specific ‘umbrella’ bodies that bring together a range of VCS bodies with common agendas – such as race, faith, age, disability. There may or may not be a Community Empowerment Network (which usually coordinates the voices of the VCS – and often those of unpaid activists.) Local VCS organisations are likely to be represented on the Local Strategic Partnership, but the extent of representation, and at what level, will vary.

The following questions may be useful to consider before embarking on the market development process.

**Configuration:** Does the local VCS sector include:

- A Council for Voluntary Services (CVS)?
- A Community Empowerment Network (CEN)?
- Are there specific infrastructure organisations/networks that coordinate and ‘represent’ specific interests within the wider VCS (e.g. race). Are these also fully integrated into the local umbrella bodies above, or do they operate in parallel?
- An engagement infrastructure (such as one that mirrors the local strategic partnership [LSP] structure)? If so, is there a single or 2-tier LSP structure (i.e. at District and County level)?

**Coordination:** Does the CVS:

- Actively represent the VCS sector?
- Create networks to link the voluntary sector together and to link the sector to public sector organisations and partnerships (for example, by theme such as mental health, young people, etc)?
- Actively link the VCS sector to LSP structures with the individual involvement of VCS sector organisations disseminated across the sector?

## Compacts

A Compact is an agreement between the VCS and one or more public sector body/partnership regarding agreed principles and protocols for partnership working. Local Compacts operate within a wider framework which is the Compact between government and civil society.<sup>10</sup>

- Is there a VCS sector Compact with the PCT, with the local authority, with GPCC and/or LSP-wide ?
- Is effective implementation of the Compact actively supported, and adherence to its agreements monitored, and if so, by whom?
- How is deviation from Compact agreements and principles addressed?
- Does the Compact include a framework for commissioning?

## GOOD PRACTICE GUIDANCE

### The Principles of Intelligent Commissioning<sup>11</sup>

The Office for Civil Society<sup>12</sup> through the National Programme for VCS Commissioning has identified eight 'Intelligent Commissioning Principles':

1. Develop an understanding of the needs of users and communities, by, alongside other consultees, engaging with VCS organisations as advocates, to access their specialist knowledge.
2. Consult potential provider organisations, including those from the VCS and local experts, well in advance of commissioning new services, working with them to set priority outcomes for that service.
3. Put outcomes for users at the heart of the strategic planning process.
4. Map the fullest practicable range of providers with a view to understanding the contribution they could make to delivering those outcomes.
5. Consider investing in the capacity of the provider base, particularly those working with hard-to-reach groups.
6. Work towards contracting processes being transparent and fair, facilitating the involvement of the broadest range of suppliers, including considering sub-contracting and consortia building where appropriate.
7. Seek to aim for long-term contracts and risk sharing wherever appropriate as ways of achieving efficiency and effectiveness.
8. Seek feedback from service users, communities and providers in order to review the effectiveness of the commissioning process in meeting local needs.

<sup>10</sup> <http://www.cabinetoffice.gov.uk/news/government-and-voluntary-sector-agree-new-compact>

<sup>11</sup> Information in this section is drawn mainly from :

National Council for Voluntary Organisations (NCVO) website; *Commissioning from the VCS: step by step* [http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent\\_Commissioning](http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent_Commissioning)

Office of Government Commerce, Home Office (2004) *Think smart...think voluntary sector! Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector.*

[www.ogc.gov.uk/documents/Think\\_smart\\_think\\_voluntary.pdf](http://www.ogc.gov.uk/documents/Think_smart_think_voluntary.pdf) and

Voluntary Norfolk *Third Sector Guide to Public Sector Commissioning in Norfolk*

<http://www.voluntarynorfolk.org.uk/commissioning>

Local Government Improvement and Development; The Office for Civil Society (2008) *National Programme for Third Sector Commissioning* [www.thirdsector.co.uk/news/Article/871825/Commissioning-programme-bids-invited](http://www.thirdsector.co.uk/news/Article/871825/Commissioning-programme-bids-invited),entireweb,1

<sup>12</sup> <http://www.civilsociety.co.uk/>

These are not particular to the voluntary sector, and apply whether services are commissioned from the public, private, or voluntary sectors. If local public bodies implement intelligent commissioning well, this will provide more opportunities for voluntary organisations to engage in public service delivery. It should also consider that they do so where their particular contribution offers the most value.

The rest of this 'How to Guide' seeks to ask questions and highlight opportunities for using the commissioning process proactively to expand reach and effectiveness of services, strengthen a local VCS, and aim for existing approaches to commissioning and procurement to not inadvertently exclude VCS groups and organisations.

## The Market Development Process

### HOW TO IDENTIFY 'LATENT' SERVICE DEMAND

#### Step 1: Identifying potentially disadvantaged communities

Under current equalities legislation there are a number of identified protected population groups. These are:

- race
- gender
- disability
- gender reassignment
- pregnancy and maternity
- sexual orientation
- age
- religion and or belief
- marriage and civil partnership

Socio economic inequalities are not specifically included in the Equality Act. However, there are a range of duties in relation to tackling such inequalities included in the 2010 health and social care legislation. In order to carry out these duties effectively an emphasis on socio economic disadvantage will be essential as it is recognised as a major driver in relation to inequalities of access to, and outcomes of, health and wellbeing services.<sup>13</sup>

It is people in these 'seldom heard', often excluded communities who are likely to suffer a range of inequalities, including health inequalities. 'Reach' into those communities may differ depending on the type of community:

- Community members may be based in deprived neighbourhoods – these can be identified with Index of Multiple Deprivation information – accessible via the internet<sup>14</sup>, which is usually held by the local authority and other public sector bodies.
- People may be members of communities of identity and interest, which are more likely to suffer deprivation. These may be communities identifiable through the equalities strands outlined above:
  - Organisations serving ethnic minority communities. These communities may in some cases be located in specific neighbourhoods and for some communities faith groups may a useful link also.
  - Women's organisations
  - Disabled people's organisations (including physical, sensory, learning and mental illness disabilities): The interests of disabled people may also be formally represented in joint commissioning structures
  - Lesbian, gay, bisexual, transgendered (LGBT) communities. In some cases some LGBT individuals may be contactable via social and other services in a specific neighbourhood (e.g. a 'gay village'). In some cases 'T' communities organise and network separately to LGB communities (and visa versa) as transgender equalities issues legally relate to gender not sexual orientation.
  - Organisations representing the interests of older or younger people. Their interests may be represented by the LSP's thematic partnerships, such as an Older People's Partnership or Children's Partnership/Trust

<sup>13</sup> Marmot, M. (2010) Fair Society, Health Lives: Strategic Review of Health Inequalities in England Post-2110 The Marmot Review

<sup>14</sup> Office for National Statistics. Neighbourhood Statistics.

<http://www.neighbourhood.statistics.gov.uk/dissemination/Info.do?page=analysisandguidance/analysisarticles/indices-of-deprivation.htm>

- Faith organisations

None of the above groups are mutually exclusive, so it will be important to consider people who are members of more than one community – for example, older women or members of Black and other ethnic communities who are disabled. A single group may not consider or take into account the needs of all members of their community – for example gay members of a religious group – and these people may be particularly marginalised. It will be important to identify VCS groups that represent diverse community views.

There are other, often smaller, communities or groups that are even more likely to be marginalised, such as street homeless people, 'sofa surfers'<sup>15</sup>, residents of hostels and B&B (including hostels for the homeless, women's refuges, bail hostels, Foyers), refugees and asylum seekers, newly arrived ethnic communities, prisoners, offenders serving on community programmes and ex-offenders, gipsy/traveller communities, carers, care leavers, drug and alcohol misusers, NEETs (young people not in education, employment or training schemes), Employment and Support Allowance (ESA) 'non-optants' (i.e. self-excluded from the Pathways to Work Programme), etc.

*A good JSNA process will include data and qualitative information drawn from a range of sources including the VCS to build up a shared local partnership understanding of 'seldom heard', often excluded communities, and which professionals, groups or networks good links into those communities.*

## **Step 2: Identifying VCS 'reach' into potentially disadvantaged communities**

For local VCS organisations accessing 'seldom heard', often excluded communities, it is important to know:

- How they access those communities?
- Whom they access? Are they covering the diversity of their community? For example, do they work towards both men and women, boys and girls being accessed from among Black and ethnic communities or disabled groups? Are LGBT members considered within community groups, or will separate engagement be needed?
- What are the salient characteristics of their service users? For example, people with a history of drug abuse or domestic violence
- What barriers do their service users face (e.g. chronic lack of confidence, exclusion in terms of life-skills and understanding statutory service provision)?

What are their methods of approach (e.g. a 'small steps' approach to moving people forward?)

## **HOW TO DEVELOP YOUR UNDERSTANDING OF PROVIDER SUPPLY**

### **Step 3: Identifying sources of information on VCS organisations**

There may be more than one source of information on local VCS groups and organisations, networks and community perspectives.

These might include:

<sup>15</sup> A term used for people with no home of their own who stay with friend, family, and sometimes relative strangers, but often only for short periods with each, and often without a bed to sleep in.

- Information held by local authorities or available on their websites, such as
  - Local authority survey information (e.g. 'Place' surveys)
  - Many local authority departments may maintain a database of local VCS groups and organisations, such as departments dealing with community engagement and community cohesion, leisure and recreation, arts, adult social care, corporate services
- Lists held by other public sector providers, such as the PCT, other NHS bodies, the police, housing associations
- The Council for Voluntary Service (CVS) will probably maintain:
  - A register/database of local VCS organisations with key information – contacts, purpose, membership, constitution, incorporation.
  - A record of voluntary sector organisations' involvement in local partnerships.

Knowledge of smaller community groups can often only be gleaned from drawing on the local intelligence knowledge of on the ground staff and organisations such as neighbourhood police officers, local elected members, tenants and residents groups, schools and community workers/centres. Some local newspapers do feature regular columns with neighbourhood reporters highlighting local community events, meetings and groups (such as luncheon clubs and parent and toddler sessions).

#### **Step 4: Knowing the market**

- What are the number, size, capabilities and existing funding sources of VCS sector providers and potential providers in the market?
- What is the local area current spend with the VCS sector by each commissioning body/organisation and across partners ?
- What is the proportion of spend between in-house providers, other public sector providers, private providers and VCS sector providers?
- Are there separate figures for different specialisms or service areas?
- Is there useful information about VCS sector providers held by the local infrastructure organisation that could be accessed?

#### **Step 5: Developing an understanding of the types of local VCS organisations**

When seeking out information on the local VCS organisations, existing lists or databases may group local VCS organisations by:

- Subject, such as those dealing with health and social care, training and employment, welfare rights and debt, community safety, environment, etc
- Geographical area
- Organisational type (in terms of legal status) – voluntary, registered or unregistered charities, companies, social enterprises in the form of Industrial and Provident Societies (IPs) or Community Interest Companies (CICs), etc
- Organisational type (in terms of purpose), such as:
  - Small-scale service providers, often charitable
  - Membership organisations/self-help groups – established to serve the needs of their own members
  - Special Interest groups – including sports and leisure organisations

- Faith groups/organisations
- Representative organisations (e.g. a residents group, community action group, parish council)
- Host organisations (for example with a building that hosts others [may be a *part* of an organisation's function, such as a church hosting a variety of organisations in its buildings])
- Social /community enterprise
- Events organisations – it might be an organisation that focuses on an event, such as a festival or an adjunct to a service (e.g. 'Friends of...')
- Campaign organisations
- Equalities organisations

## Step 6: Developing the supplier base

- Has there been a systematic review of the local VCS to establish a base-line in terms of capacity and capability?<sup>16</sup>
- Is there an agreed partnership strategy/action plan for supporting the development of the local VCS or is it just left to the sector to do this itself?
- Does a local VCS infrastructure organisation (e.g. a CVS) provide development support to help local VCS organisations to develop their capacity to take on contracts? Is it locally commissioned specifically to do this or has it undertaken this work through external financial support?
- If not, has there been investment in other VCS sector infrastructure organisations to undertake capacity-building work to support capacity and capability development and the establishment of VCS provider networks?
- Is there regular dialogue with the local infrastructure organisation(s) in terms of:
  - the development support they currently provide
  - scoping the breadth of support needed
  - assessing the resources needed
  - identifying what resources may be available from elsewhere (materials; possibly financial budgets as part of national initiatives to promote the development of social enterprises, and VCS capacity building)
  - developing a cross-partnership approach to meeting gaps in the support needed.

## HOW TO DEVELOP A RANGE OF OPTIONS FOR SERVICE PROVISION

*This next section seeks to highlight, in a market that seeks to reach out to and invite engagement and tenders from 'any willing provider', what specific steps local commissioners can build in that aim for local VCS organisations to be pro-actively encouraged to consider bidding (within procurement and contracting legalities). They should not be inadvertently disadvantaged or excluded (e.g. by tenders only being posted in 'trade' publications/website which may not be read by VCS organisations).*

<sup>16</sup> For a good example see Bradford's *Third Sector Review*:  
[http://www.bradford.gov.uk/bmdc/BDP/The+Voluntary+and+Community+Sector+\(Third+Sector\)/Third+Sector+Review](http://www.bradford.gov.uk/bmdc/BDP/The+Voluntary+and+Community+Sector+(Third+Sector)/Third+Sector+Review)

## Step 7: Choosing what to commission

Every commissioning process should start with the public body deciding *what* it wants to commission, before considering *how*. A good starting point is to clarify the public body's high level objectives, that is, what has it been set up to do and what legal powers does it have to help it to achieve those objectives? This decision should then be translated into the desired outcomes.

As part of involving possible providers and key stakeholders, it can be extremely valuable to involve relevant VCS organisations in deciding what to commission. Their direct link with service users and communities will often give a useful insight into users' needs and how they can best be met. Encouraging VCS organisation involvement in the process will also help to clarify what potential providers have to offer. By considering its options at an early stage, the commissioning body can level the playing field without discriminating against (or in favour of) any particular group. Involving the VCS in contributing to the JSNA and the Health and Wellbeing Strategy alongside other partners are two tangible ways of doing this.

### TOP TIPS

- VCS organisations should get involved with the public bodies they would like to be working with as soon as possible – there can be a lot of room for discussion with commissioners before they decide what to do. It is important for commissioners to make themselves accessible to VCS organisations.
- Good commissioning involves deciding what is being commissioned before deciding how it is going to be commissioned. Commissioners can and should engage with all potential providers, including VCS organisations, when shaping exactly what can be provided and working towards the provision of the best possible service, taking into account the desired outcomes
- VCS organisations and commissioners should be encouraged to engage with each other to learn what VCS organisations can offer in shaping service requirements. VCS organisations should demonstrate that they are interested in commissioners' policies and strategies and in helping them to meet desired outcomes
- Has the potential of a VCS sector organisation to undertake research or advocacy work been considered - especially to access socially excluded groups?

## Step 8: The decision to commission outputs or outcomes<sup>17</sup>?

It is up to the commissioner to decide what services to commission, and whether to procure them (rather than choosing another commissioning route). The commissioner also chooses the specifications and ways of measuring performance.

Many commissioners still focus on the outputs of their commissioning, such as the number of hours spent providing home care under a home care contract. However, focusing on the desired outcomes (for example, the effect of the home care service on the beneficiary, such as increased independence and health benefits), can lead to innovative ways of satisfying the commissioner's and beneficiaries' needs and open up thinking about which types of organisations/sectors might

<sup>17</sup> Anthony Collins Solicitors, National Association for Voluntary and Community Action (NAVCA), National Council for Voluntary Organisations (NCVO) (2009) *Pathways Through the Maze: A Guide to Procurement Law* [www.ncvo-vol.org.uk/pathways](http://www.ncvo-vol.org.uk/pathways)

be est placed to deliver on such outcomes. It is now generally agreed that – wherever possible - commissioning that focuses on the impact of the service and seeks input from providers (as well as service users and wider community) on the activities needed to achieve such impact is likely to produce innovative and more effective services.

Outcome-based commissioning gives providers the opportunity to suggest solutions to the commissioners' and service users' needs that they may otherwise not have considered. In particular, VCS organisations can often be ideally placed to put in place innovative and cost effective ways of delivering services closer to the final 'customer'. An outcomes-based approach can also increase the opportunities to consider the social, economic and environmental aspects of a contract. For example, building into commissioning tenders, and subsequent contracts:

- the requirement to take on certain numbers of staff who live within the locality where the service will be delivered,
- to create a certain number of posts that are taken up by people who are currently unemployed or
- indicating how equalities communities will be reached by the bidding service providers

These are all ways of using the commissioning/procuring and contracting processes effectively to gain 'added value' from the final contract.

Commissioners can integrate the principles of sustainable development in the procurement process by taking into account the social, economic and environmental impact of the activities they purchase, at the start of the procurement.

## **Step 9: Engaging with the VCS sector when defining outcomes**

Engaging with the VCS sector at the point of defining outcomes (as well as earlier points as described above) rather than when a fully formed project plan has been developed will optimise the contribution of experience and creativity from the VCS sector.

If outcomes take into account equalities legislation duties the specific groups/ communities /networks/organisations within the VCS can be especially helpful:

- in assisting commissioner to consult patients/service users and communities regarding how those outcome might be best structured to meet minority needs and
- in shaping how those outcomes might be built into a service specification (See Step 13 below).

## **Step 10: The decision to include local VCS organisations in the procurement process**

- Have the benefits of working with the local VCS been considered?
- Are local consultation and decision-making processes open and easily accessible to the active involvement of relevant VCS sector organisations and networks? Informal consultation is to be encouraged provided nothing is done to give a supplier an advantage in later competition.
- Has there been consideration of using a VCS sector organisation with specialist knowledge and expertise to act as a consultant in undertaking initial needs assessment and/or designing service solutions?

- Has there been consideration of commissioning a specialist VCS sector organisation to deliver complementary resources or services, such as good practice materials or staff training/induction?
- Is early notice of forthcoming procurement opportunities provided to all potential providers, including the VCS?
- Are 'Meet the Buyer' events held?
- Is a 'how-to-do-business-with' guide produced and disseminated including to the VCS?
- Is a named contact publicised for enquiries from potential suppliers?

## Step 11: Developing a procurement strategy

- Are there processes and assurance mechanisms in place to work towards local procurement processes encouraging the involvement of VCS sector providers?
- Has careful attention been given to the optimum length of contract? Eg minimum 3 year contract to support sustainability in VCS organisations?
- Have the benefits been considered of dividing the contract into smaller lots, or encouraging larger bodies to bring in small more specialised VCS organisations as part of their bidding teams, and to who they would sub-contract specific stated aspects of the overall contract? Emphasising these two approaches may make contracts more accessible to local VCS providers.
- Has the value been taken into account of having a mix of providers to deliver the contract rather than one main provider?
- Do local organisations/departments have a clear policy on the use of different types of funding - grants, service level agreements, contracts and is there a mechanism that enables choice of the most appropriate funding approach for meeting outcomes?
- Are there innovative approaches or pilot schemes for which grant funding would be more appropriate?
- Has the impact that the proposed procurement approach might have on smaller and local providers been taken into account?
- If only a small number of VCS sector organisations provide the service to be commissioned, could a 'preferred provider' approach be operated rather than going through a full tendering process (thus reducing the administrative burden on potential providers)?

If 'Part B services' are being commissioned, has the impact on the VCS sector of going through a full European Union tendering process been taken into account if this is not mandatory? For further information, see Appendix 1 'Part B' Services.

## Step 12: Strategic-level engagement between statutory service provider and VCS

Has there been strategic level dialogue between the statutory and VCS sector on the role of the VCS sector in:

- Helping the statutory sector to achieve its objectives?
- Helping the statutory sector to access seldom seen/seldom heard groups in particular?

Has the statutory sector, in dialogue with the VCS sector, assessed how it can assist in VCS sector sustainability in order that it can maintain a long-term partnership with the statutory sector?

- Has a review been undertaken into the capacity of the VCS by LSP partners?
- Did a jointly agreed development strategy emerge from this?
- Is there a VCS sector Compact with the PCT, with the local authority, LSP-wide or with the GP commissioning consortium?
- Is it actively supported, and by whom?

### Step 13: Service design to achieve identified outcomes

Has there been collaboration between public sector commissioners and the VCS on service design – to achieve a design of service most likely to achieve public sector objectives?

One north of England PCT commissioned its community services arm to deliver an end of life support group. The decision was taken to hold this group in a hospice early on a Friday afternoon. This was the only free slot available for use of the hospice meeting room. Although the decision was well intended (and based on introducing and familiarising group participants with the hospice) it excluded Muslim patients for who Friday prayers at this time are important, especially when one is nearer to death. Prior consultation might have indicated a) an separate small commission from a relevant VCS organisation to provide a complementary group specifically for Muslim patients and/or b) all patients but on a different day and at a different venue.

### Step 14: Identifying the start of the procurement process<sup>18</sup>

Procurement of contracts for services must follow EU procurement rules (see Appendix 1) and general EU Treaty principles. It is therefore important for both the commissioner and the VCS organisation to be clear when a formal procurement process, as distinct from the wider commissioning process, has begun. This will help to avoid acting unlawfully and discriminating against or in favour of potential providers. If a commissioning process is not clear and well defined (for example, if the public body has begun more informal commissioning that resulted in a contract being tendered without entering into a formal procurement), it can make it difficult to be fair and transparent.

The EU procurement rules only apply once a contracting authority has decided to procure services. A commissioner can therefore consult with the potential marketplace for the services it needs before entering into a formal procurement, whether or not the EU procurement rules will apply.

<sup>18</sup> National Council for Voluntary Organisations (NCVO) website; *Commissioning from the VCS: step by step* [http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent\\_Commissioning](http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent_Commissioning);

Office of Government Commerce, Home Office (2004) *Think smart...think voluntary sector! Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector*.

Voluntary Norfolk *Third Sector Guide to Public Sector Commissioning in Norfolk*

<http://www.voluntarynorfolk.org.uk/commissioning>

Local Government Improvement and Development; The Office for Civil Society (2008) *National Programme for Third Sector Commissioning* [www.thirdsector.co.uk/news/Article/871825/Commissioning-programme-bids-invited](http://www.thirdsector.co.uk/news/Article/871825/Commissioning-programme-bids-invited), entireweb,1

Anthony Collins Solicitors, National Association for Voluntary and Community Action (NAVCA), National Council for Voluntary Organisations (NCVO) (2009) *Pathways Through the Maze: A Guide to Procurement Law*; [www.ncvo-vol.org.uk/pathways](http://www.ncvo-vol.org.uk/pathways)

However, when commissioning a 'Part B service', it is not mandatory to go through a full European Union tendering process. Simpler rules apply. For further information, see Appendix 1 'Part B' Services.

At the time of writing, the threshold for Part 'A' services is just over £90,000 for contracts awarded by central government bodies and just under £140,000 for most other public sector bodies. (For most purposes this threshold does not apply to Part B services, which need not follow the full EU procurement rules, whatever their value.) The figures above should be checked as they can change on a regular basis.

#### **BEFORE COMMISSIONING, THINK ABOUT THE FOLLOWING:**

- Is there a desire to maximise retention of the money used to fund the VCS sector within the local economy?
- Has the added value of maintaining and developing a strong local VCS sector been taken into account?
- Have the benefits of dividing the contract into smaller lots been considered? This may make the contract accessible to local VCS providers.
- Does the local commissioning organisation/department have a clear policy on the use of different types of funding - grants, service level agreements, contracts and commissions.
- Is there a mechanism that enables choice of the most appropriate funding approach for meeting outcomes?
- Has the value of having a mix of providers to deliver the contract rather than one main provider been thought through?
- If commissioning a 'Part B service', has the impact on the VCS sector of going through a full European Union tendering process if this is not mandatory been taken into account? Consider this in relation to the financial thresholds above which EU tendering procedures apply. For further information, see Appendix 1 'Part B' Services.
- Has there been collaboration between the statutory and VCS sector on service design to achieve a design of services most likely to achieve public sector objectives?
- Where contracting with a larger scale national voluntary sector provider, has there been consideration of negotiating or forming a contract requirement for sub-contracting to local VCS organisation/s?
- If appropriate, are opportunities for sub-contracting and consortia bids from VCS sector providers identified and encouraged?
- Are payment terms sufficiently flexible to make early or advance payments (e.g. for start-up costs)?
- Is there a system for making frequent milestone payments?
- Are payments made promptly?
- Have social considerations detailed in the specification also been reflected in the evaluation criteria and given appropriate weighting so that they can be properly assessed?

## **HOW TO UNDERTAKE 'VCS-FRIENDLY' PROCUREMENT**

### **Step 15: Publishing contract opportunities**

The following steps suggest an approach to effective, and VCS-inclusive, procurement process:

- Is there early notice of forthcoming procurements?
- How widely are opportunities publicised?
- Do local distribution lists include VCS sector organisations and provider forums?
- Are key suppliers encouraged to publicise opportunities for sub-contracts?
- Where contracting with a larger scale national voluntary sector provider, has there been consideration of negotiating or forming a contract requirement for sub-contracting to local VCS organisation/s?
- Is the local procurement timetable long enough to encourage bids from smaller providers, partnerships or provider consortia?

#### **EXAMPLE – PROVIDER CONSORTIA**

Commissioning that includes a capacity building element (for example, Wakefield's Healthier Communities Fund<sup>19</sup>), and particularly by supporting the start-up costs and overheads of local provider consortia (e.g. Wakefield's Well-being Consortium), is a way of developing local VCS sector markets. Funding for evaluation of results needs to be built into budgets.

***The Wakefield District Wellbeing Consortium, a collection of voluntary and community groups delivering health and wellbeing activities, is looking for new members. The consortium aims to bid for contracts from agencies such as the Council or Primary Care Trust, and then work together with its members to deliver those contracts.***

*As more public services go out to contract, this creates opportunities for local groups to tender for work. However, there is a risk that large bodies – private sector companies or national charities – get the work because of their bidding expertise and economies of scale. The Wakefield District Wellbeing Consortium will provide the skill to make competitive bids which can benefit local groups, and being part of it should give your group a stronger voice.<sup>20</sup>*

### **Step 16: Writing the specification**

- Is the specification clear, exhaustive and free from jargon?
- Have service specifications been informed by meaningful consultation with stakeholders and have comments been sought on draft specifications from providers?
- Is there a system for regularly inviting comment on draft specifications from the voluntary sector?
- Is the added value that the voluntary sector could offer taken into account when delivering a contract and reflected in the service specification?
- Where appropriate, does the specification ask providers to demonstrate a detailed local knowledge and understanding of local context and local needs?
- Does the specification take into account the whole life costs of the contract and how value for money can be achieved by including wider social, economic and environmental objectives? (See 'social accounting' below)

<sup>19</sup> <http://www.vawd.org.uk/?idno=5138>

<sup>20</sup> <http://www.wakefieldvcs.org/newsitem/392>

- Are specification requirements focused on the outcomes to be achieved, (rather than simply on outputs or activities)?
- Could specifications include the concept of social value as a method for achieving wider outcomes? (See 'social accounting' below)
- If appropriate, are opportunities for sub-contracting and consortia bids from VCS sector providers identified and encouraged?

### **Social value and social accounting: an analytic tool for use**

There are many things that societies and individuals value that cannot be easily captured in economic terms. Yet most decision making in the private, public and VCS sectors is based solely on costs and price. Social Return on Investment<sup>21</sup> (SROI) is an analytic tool for measuring and accounting for a much broader concept of value. It incorporates social, environmental and economic costs and benefits into decision-making, providing a fuller picture of how value is created or destroyed.

SROI is able to assign a monetary figure to social and environmental value that is created. For example, the New Economics Foundation (nef) research on the value created by a training programme for ex-offenders revealed that for every £1 invested, £10.50 of social value was created. By bringing social and environmental value into decision making, SROI seeks to:

- Reduce inequality
- Prevent environmental degradation
- Improve wellbeing

**Social Return on Investment:** SROI is a framework for measuring and accounting for a much broader concept of value. It seeks to reduce inequality and environmental degradation and improve wellbeing by incorporating social, environmental and economic costs and benefits.

SROI measures change in ways that are relevant to the people or organisations that experience or contribute to it. It tells the story of how change is being created by measuring social, environmental and economic outcomes and uses monetary values to represent them. This enables a ratio of benefits to costs to be calculated. For example, a ratio of 3:1 indicates that an investment of £1 delivers £3 of social value. SROI is about value, rather than money.

#### **There are two types of SROI:**

- Evaluative, which is conducted retrospectively and based on actual outcomes that have already been achieved
- Forecast, which predicts how much social value will be created if the activities meet their intended outcomes.

Forecast SROIs are especially useful in the planning stages of an activity. They can help show how investment can maximise impact and are also useful for identifying what should be measured once the project is up and running.

**The stages in SROI:** Carrying out an SROI analysis involves six stages:

<sup>21</sup> New Economics Foundation (nef) (2009) *A Guide to Social Return on Investment*  
[www.neweconomics.org%2Fabout.,msn,1](http://www.neweconomics.org%2Fabout.,msn,1)

1. *Establishing scope and identifying key stakeholders*: It is important to have clear boundaries about what the SROI analysis will cover, who will be involved in the process and how
2. *Mapping outcomes*: An impact map, or theory of change, which shows the relationship between inputs, outputs and outcomes is developed with engagement of stakeholders.
3. *Evidencing outcomes and giving them a value*: This stage involves finding data to show whether outcomes have happened and then valuing them.
4. *Establishing impact*: Having collected evidence on outcomes and monetised them, those aspects of change (that would have happened anyway or are a result of other factors) are eliminated from consideration.
5. *Calculating the SROI*: This stage involves adding up all the benefits, subtracting any negatives and comparing the result to the investment. This is also where the sensitivity of the results can be tested.
6. *Reporting, using and embedding*: Easily forgotten, this vital last step involves sharing findings with stakeholders and responding to them, embedding good outcomes processes and verification of the report.

**How SROI can help:** An SROI analysis can fulfil a range of purposes. It can be used as a tool for strategic planning and improving, for communicating impact and attracting investment, or for making investment decisions. It can help guide choices that managers face when deciding where they should spend time and money.

#### **SROI can help improve services by:**

- Facilitating strategic discussions and helping you understand and maximise the social value an activity creates
- Helping you target appropriate resources at managing unexpected outcomes, both positive and negative
- Demonstrating the importance of working with other organisations and people that have a contribution to make in creating change
- Identifying common ground between what an organisation wants to achieve and what its stakeholders want to achieve, helping to maximise social value
- Creating a formal dialogue with stakeholders that enables them to hold the service to account and involves them meaningfully in service design.

#### **SROI can help make local organisations more sustainable by:**

- Raising the organisation's profile
- Improving the case for further funding
- Making tenders more persuasive.

#### **Who can use SROI?**

**Types of organisations:** SROI has been used by a range of organisations across the VCS, public and private sectors, including those that are small, large, new and established.

- *VCS sector organisations and private businesses*: VCS sector organisations and private businesses that create social value can use SROI as a management tool to improve performance, inform expenditure and highlight added value. These may be start-up organisations developing business plans or established organisations. It can be used for analysing the value arising from trading activities whether the organisation is selling to the general public, to the public sector or to other businesses.
- *Commissioners and funders*: Bodies that commission social value or invest in the creation of social value can use SROI initially as a way to help them decide where to invest, and

later to assess performance and measure progress over time.

Both social investors and public service commissioners are in the business of securing social value that is delivered by VCS parties. The mechanisms by which that value is secured may differ but, by measuring that value, better decisions can be made.

SROI can be used at three points in the commissioning or investment process:

- *Programme/Pre-procurement*: forecast SROI analyses can be used at the strategic planning stage to decide how to set up a programme for market testing and to determine scope and specification of contracts.
- *Application/Bidding*: forecast SROI analyses can be used to assess which applicant or bidder is likely to create the most value. Where applicants or bidders are already delivering the intervention that is being invested in, evaluative SROI can be used at the application/bidding stage.
- *Monitoring and evaluation/Contract management*: evaluative SROI analyses can be used to monitor the performance of a successful applicant or contractor.

Using SROI to inform public sector commissioning decisions is in line with HM Treasury guidance on value for money appraisals. HM Treasury states that value for money assessments should be based on the “optimum combination of whole-of-life costs and quality (or fitness for purpose) of the goods or service to meet the user’s requirement”. These costs and benefits must include “wider social and environmental costs and benefits for which there is no market price”.

For more information, see the nef’s *A Guide to Social Return on Investment*.

**Please note:** Social Return on Investment (SROI) is only one of a range of approaches to Social Accounting and Social Audit.

## Step 17: Setting pre-qualification criteria

- Are pre-qualification criteria carefully chosen to avoid unnecessarily ruling out potentially competent suppliers who may not have an extensive track record?
- Are pre-qualification criteria proportionate to the value of the contract and the level of risk?
- Is the financial information required by the specification proportionate? Have the quality standards relevant to VCS sector organisations been taken into account, including considering the use of passporting or proxy quality standards?

## Step 18: Invitation to tender

- Is the tender documentation clear, concise and jargon-free?
- Have prospective providers been given information setting out the background to the project, the organisation’s objectives and an outline procurement process and timetable, with roles and responsibilities made clear?
- Has training been offered to potential providers to enable them to improve their tender submissions?
- Have provider briefing events been held to explain the tendering timescales and the criteria for the tender?

- Has guidance on TUPE been given to prospective providers? Has there been consideration of supporting preferred providers to undertake assessments of TUPE obligations and any due diligence required for collaborative working?

### **Step 19: Setting contract and payment terms**

- Are the contract terms and conditions proportionate to the scale and complexity of the contract?
- Has there been consideration of the impact the payment terms might have on the cash flow of a VCS sector organisation and whether this might deter them from bidding?
- Are payment terms sufficiently flexible to make early or advance payments (e.g. for start-up costs)?
- Is there a system for making frequent milestone payments?
- Are payments made promptly?
- Is there a clearly identified liaison person for payment problems?

### **Step 20: Evaluation and clarification of tenders**

- Has the evaluation process been clearly explained to tenderers at the outset, including the criteria to be used and their relative importance?
- Have social considerations detailed in the specification been reflected in the evaluation criteria and given appropriate weighting so that they can be properly assessed? (See above)
- Do the tender evaluation panels have the right skills to assess compliance with social impact criteria?
- Are VCS sector organisations treated the same as other bidders in relation to how they set the price (inclusive of overheads and management costs) of delivering a contract?

### **Step 21: Award of contract<sup>22</sup>**

- Are all bidders informed that feedback is available? On unsuccessful bids, is feedback offered that is as helpful as possible and designed to promote future improvements?
- If relevant, have transition arrangements been agreed in advance with providers?
- Has the transition period been factored into project timescales?

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<sup>22</sup> National Council for Voluntary Organisations (NCVO) *Commissioning from the VCS: step by step* [http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent\\_Commissioning](http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent_Commissioning)

Office of Government Commerce, Home Office (2004) *Think smart...think voluntary sector! Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector.*

Voluntary Norfolk *Third Sector Guide to Public Sector Commissioning in Norfolk*

<http://www.voluntarynorfolk.org.uk/commissioning>

## HOW TO UNDERTAKE 'VCS-FRIENDLY' CONTRACT MANAGEMENT

### Step 22: The contract management process

- Are contract management arrangements made clear in the tender documentation (so that tenderers can allow for the resources and costs involved in their tender price)?
- Is early supplier involvement sought in the design of contract management procedures?
- Is reporting proportionate to the size and complexity of the contract?
- Where providers are jointly commissioned, is there a standardised reporting procedure?
- Are reporting requirements focused on measuring the key outcomes?
- Is there a simple and pre-agreed change control process?
- Are VCS sector providers encouraged and incentivised to come forward with ideas for better ways of working (that can lead to benefits for both parties)?
- Do plans include the establishment of a Project Improvement and Review panel?
- Does the contract documentation provide an opportunity to resolve disputes in a way that is accessible to smaller VCS sector providers?

### Step 23: The service evaluation and feedback process<sup>23</sup>

- Do you have mechanisms that fully involve service providers in service evaluation?
- How do you take into account service user feedback?
- Do you have VCS sector engagement in service review panels?
- Do your plans include the establishment of a Project improvement and Review panel?

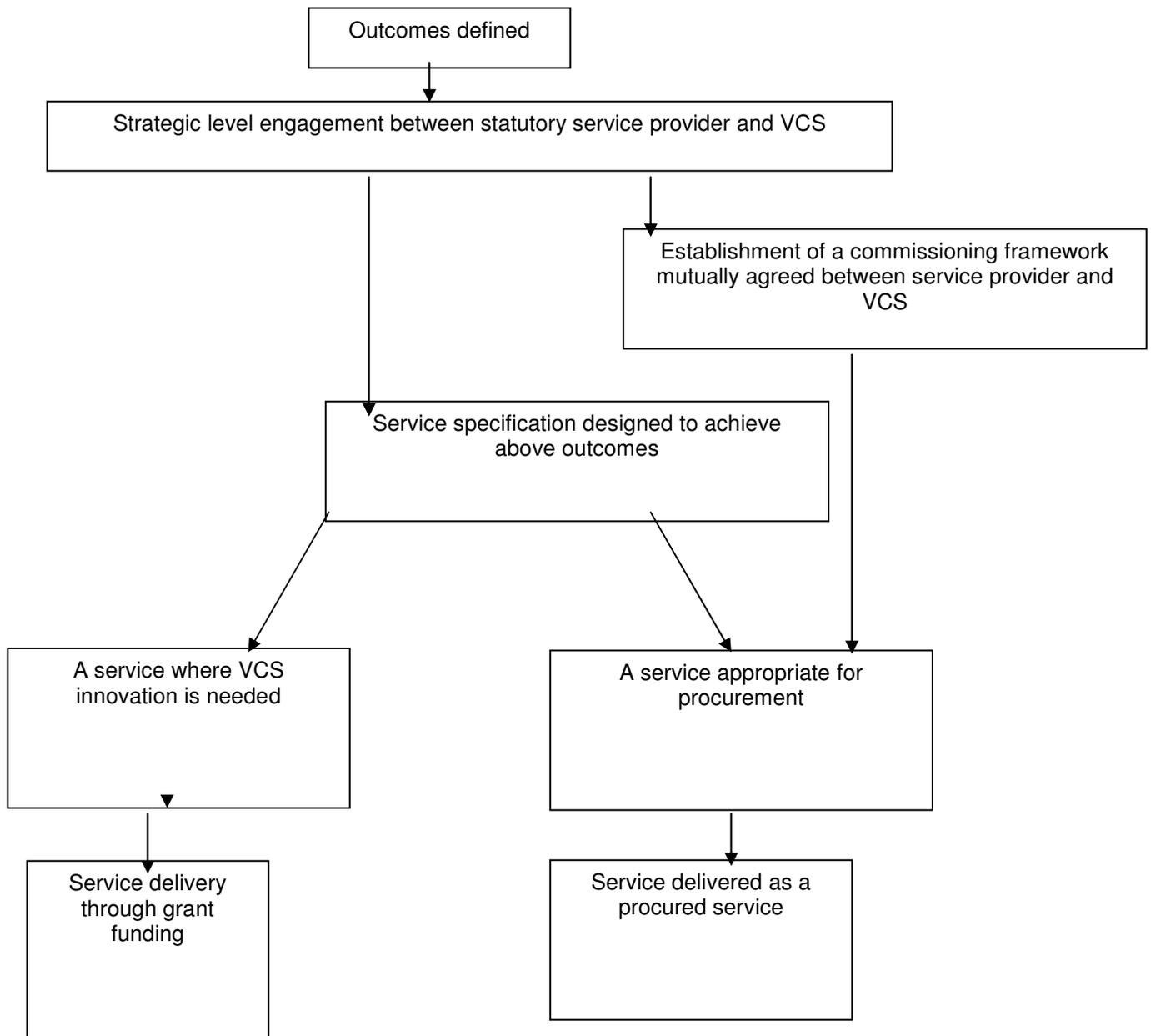
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<sup>23</sup> National Council for Voluntary Organisations (NCVO) *Commissioning from the VCS: step by step* [http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent\\_Commissioning](http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-from-the-vcs-step-by-step#Intelligent_Commissioning)

Office of Government Commerce, Home Office (2004) *Think smart...think voluntary sector! Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector.*  
[www.ogc.gov.uk/documents/Think\\_smart\\_think\\_voluntary.pdf](http://www.ogc.gov.uk/documents/Think_smart_think_voluntary.pdf)

## Summary 'Process Diagram'

In very broad terms, this diagram covers Step 7 to Step 23 (above).



## Appendix 1: 'Part B' Services<sup>24</sup>

### What are 'Part A' and 'Part B' services, and why do they matter?

The EU procurement rules divide all services into two categories: 'Part A' and 'Part B'. Contracts for Part 'A' services, where they are above the financial threshold (see below), will be subject to the full EU procurement rules.

Examples of Part 'A' services relevant to VCS organisations include:

- Maintenance and repair of vehicles and equipment
- Computer and related services
- Research and development services where the benefits are received exclusively by the contracting authority
- Management consultancy services
- Publishing and printing services
- Sewerage and refuse disposal.

### Contracts for Part B services are not subject to the full EU procurement rules.

VCS organisations often provide services that fall into Part B, which include:

- Supporting and auxiliary transport services
- Legal services
- Personnel placement and supply
- Education and vocational education
- Health and social services
- Recreational, cultural and sporting services
- 'Other' services (i.e. services that do not fit within the categories specified elsewhere, especially in Part A).

**The full EU procurement rules only apply if the total value of a services contract is over the relevant threshold.** At the time of writing the threshold for Part 'A' services is just over £90,000 for contracts awarded by central government bodies and just under £140,000 for most other public sector bodies. For most purposes this threshold does not apply to Part B services, which need not follow the full EU procurement rules, whatever their value. These figures should be checked rather than the sums above relied on as they are subject to change.

**For contracts where the full EU procurement rules do not apply**, the contracting authority may opt for a process that looks very similar to one under the full EU procurement rules. Alternatively, it may simply require quotes to be obtained from a specified number of bidders (for example for very low value contracts).

**Whether or not the full EU procurement rules apply, the EU Treaty principles of openness and transparency apply to all contracts.** This means that contracting authorities should make sure that all interested parties know about opportunities. Though there is no explicit obligation to advertise for contracts that are not subject to EU procurement rules, advertising remains the clearest way to show openness and transparency.

<sup>24</sup> Anthony Collins Solicitors, National Association for Voluntary and Community Action (NAVCA), National Council for Voluntary Organisations (NCVO) (2009) *Pathways Through the Maze: A Guide to Procurement Law* [www.ncvo-vol.org.uk/pathways](http://www.ncvo-vol.org.uk/pathways)

Case law has extended the obligation to be transparent and objective into a need for contracting authorities to make a judgment about whether the contract is “likely to be of interest” to potential suppliers based in other parts of the EU and, if so, to advertise accordingly.

The advertisement must contain sufficient information to enable a contractor to decide whether to bid. Contracting authorities can advertise on their own website or on a ‘portal’ website. Many contracting authorities’ websites include a section dedicated to contracting opportunities. There are also national and regional portal websites listing opportunities, such as [supply2.gov.uk](http://supply2.gov.uk).

Contracting authorities can choose to publish a formal notice in the OJEU voluntarily, even where the full EU procurement rules do not apply. However, if they do so they are bound by the full rules.

**Even though pre-qualification is not a required stage** in all procedures under the full EU procurement rules, contracting authorities may still choose to use a pre-qualification process in their tendering.

**The invitation to tender (ITT)** is a collection of documents that contracting authorities send to potential bidders with information about service requirements, terms and conditions. It includes forms for bidders to complete, setting out details of the service they want to provide.

### **All contracts**

The ITT may include the service specifications setting out details of the services being procured, information on pricing models, evaluation criteria, requirements on technical standards and a copy of the contract.

**Where contracts are not being tendered under the full EU procurement rules there is no set process for evaluating tenders.** However, in compliance with the EU Treaty principles, which apply to all contracts, evaluation criteria and weightings should be set clearly and used consistently throughout tender evaluation.

**For all contracts, whether or not the EU procurement rules are being applied in full, unsuccessful bidders are entitled to know why their bid was unsuccessful** and ask that the contracting authority review its decision to award a contract. In appropriate cases, this can mean that the decision can be set aside.

### **The NHS**

VCS organisations concerned about the process followed by an NHS PCT or GPCC can consider what help may be available from the Cooperation and Competition Panel for NHS-funded services<sup>25</sup>. The panel exists to help the work towards “the principles and rules of cooperation and competition for the provision of NHS-funded services supporting the delivery of high quality care for patients and value for money for taxpayers”. It investigates potential breaches of the principles and rules on cooperation and competition, and makes independent recommendations to the Department of Health on how such breaches should be resolved. In particular, the panel will consider procurement disputes referred to it by strategic health authorities (SHAs). Complaints about procurement should first be addressed through the dispute resolution procedures put in place by SHAs and the relevant PCT.

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<sup>25</sup> <http://www.ccpanel.org.uk/>

### **The Compact**

Many VCS organisations may feel that litigation is too confrontational and expensive, and will not want to challenge a decision through the courts for fear of causing longer-term problems in their relationships with public bodies. The Compact can be a useful resource for VCS organisations in challenging public decisions without taking an aggressive position. VCS organisations should consider taking the advice of supporting bodies such as the National Council for Voluntary Organisations (NCVO) and the National Association for Voluntary and Community Action (NAVCA) – an national membership body for many local infrastructure support VCS organisations such as CVSs and RCCs. Challenging public decisions based on non-compliance with the Compact can be very effective.

**The EU procurement rules: challenging contracts for Part B services.** When the full EU procurement rules apply, contracting authorities must allow at least 10 days between the decision to award a contract and signing the contract. Although this does not apply to contracts for Part B services, contracting authorities cannot deprive unsuccessful bidders of the opportunity to apply to have an award decision set aside, even where the full EU procurement rules are not being followed.

**Although Part B services are not subject to the full EU procurement rules, it has been shown that contracts for Part B services are, in certain circumstances, open to legal challenge.** A recent case suggests that, where a contract for Part B services is of interest across Europe and the process has not been transparent, the award of that contract to a bidder within the Member State can amount to a difference of treatment to the detriment of bidders or potential bidders elsewhere. This means that, where a Part B services contract is awarded within the same country, and the contract has not been awarded in a transparent manner, this could be deemed to be contrary to the principles of equal treatment across the nations in the European Union. However, it cannot be presumed that a contract for Part B services is or was of cross-border interest. It is for the Commission (on a case-by-case basis) to establish that the contract was of interest to a potential bidder that had not been able to express its interest because the contract was not advertised appropriately.

In cases where the procurement of the contract was not subject to the full EU procurement rules and was not advertised, VCS organisations may also wish to consider approaching the European Commission on the basis that there has been a breach of the EU Treaty principles.

NB. The above guidance on 'Part B' services is **not** a definitive statement of the law. Commissioners should seek appropriate legal guidance.

## Appendix 2: Glossary of Terms

VCS	Cooperatives, Charities, Social Enterprises and Voluntary Organisations sector – also known as the ‘voluntary, community and faith’ sector or ‘voluntary and community sector’ (VCS)
CIC	Community Interest Companies (CICs) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", aiming for the CIC to be established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator, who also has a continuing monitoring and enforcement role
Compact	The Compact is an agreement between statutory organisations and the voluntary and community sector. It recognises shared values, principles and commitments and sets out guidelines for how both parties should work together.
Community Empowerment Network (CEN)	A Community Empowerment Network is a 'network of networks', bringing together voluntary, community and faith organisations. It may be a route through which the local voluntary, community and faith sector gains direct access (via the Local Strategic Partnership) to local public service providers and policy makers. It aims to benefit the lives of local residents by influencing decisions made about services in the district. The Community Empowerment Network can be a vehicle for linking the community and voluntary sectors with the Local Strategic Partnership, supporting people from the voluntary and community sector to sit on this partnership.
CVS	Council for Voluntary Service
ESA 'non-optants'	People claiming Employment and Support Allowance (ESA) (the replacement for Incapacity Benefit) who are eligible for the Pathways to Work programme, but who opt not to join the programme.
EU	European Union
GPCC	General Practitioner Commissioning Consortia/ Consortium
Hard-to-reach groups	A term often used to describe community groups least likely to have contact with or be sought out by statutory organisations
IPS	An industrial and provident society (IPS) is an organisation set up to carry out a trade or business for community benefit. It is incorporated, which means that it has gone through the registration process that converts a new or existing business into a corporate body, making it a legal entity in its own right. This type of organisation is generally not considered to be charitable, although it is possible to be a charity if HM Revenue and Customs approves its objects and activities.
ITT	Invitation to Tender
JSNA	Joint Strategic Needs Assessment
LGBT	Lesbian, Gay, Bisexual, Transgender
LSP	Local Strategic Partnership
Part A services	The EU procurement rules divide all services into two categories: ‘Part A’ and ‘Part B’. Contracts for Part ‘A’ services, where they are above the financial threshold, will be subject to the full EU procurement rules. (See
Part B services	

	appendix 1)
NAVCA	National Association for Voluntary and Community Action
NCVO	National Council for Voluntary Organisations
NEETs	Not in employment, education or training
OJEU	The Official Journal of the European Union
PCT	Primary Care Trust
RCC	Rural Community Council
'Seldom heard', often excluded communities	Communities least likely to have contact with or be contacted by statutory organisations
Protected Population Groups	<p>"protected" population groups/characteristics where specific elements of the Equality Act 2010 apply are:</p> <p><i>age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.</i></p>
Social accounting	Social accounting is the process of communicating the social and environmental effects of organisations' economic actions to particular interest groups within society and to society at large.
Social value	Social value delivering on the shared aspirations of communities, particularly in terms of how additional benefits can be levered from investment - particularly in ways that increase social justice, embed social protection and strengthen community cohesion.
SROI	Social Return on Investment
TUPE	The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations protects employees' terms and conditions of employment when a business is transferred from one owner to another. Employees of the previous owner when the business changes hands automatically become employees of the new employer on the same terms and conditions. It's as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved. Both old and new employers are required to inform and consult employees affected directly or indirectly by the transfer.
VFM	Value for money