

# Understanding Commissioning and Procurement: A Guide for Local Compacts

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# Preface

The Compact is the agreement between government and the voluntary and community sector (VCS) which sets out key principles and establishes a way of working that improves their relationship for mutual advantage. The Compact has become particularly important against a background of reduced public sector financing, and the Government's aim of getting civil society more involved in the design and delivery of public services. This potentially seismic change in the purpose, funding and identity of the VCS - and to their relationships with government bodies - also extends to local level, where local Compacts play an increasingly vital role in helping to navigate these choppy waters.

This guide is aimed squarely at local VCS organisations who are involved in (or who want to be involved in) commissioning decisions made at local level by the public sector.

We have tried to make the guide practical and easy to read so that it can be used as a reference tool for anybody needing support, regardless of their experience.

The central theme of this guide is that partnership working is central to effective commissioning. For the VCS, this means:

- Participating at every stage of the commissioning process.
- Forming consortia<sup>1</sup> to deliver new forms of service design.
- Acting as trusted and collaborative providers of services.

The VCS is key to ensuring the success of commissioning, but only if it can influence all the central players in commissioning at the key points of the commissioning process. This guide helps to identify those central players and key points, providing hints and tips and drawing on the experience of those who have learned some hard lessons.

Each chapter has a common structure that begins with a short summary of key concepts and ends with some thinking points and suggested reading if you want to look at anything in more depth. There are also case studies peppered throughout showing practical applications of some of the key concepts.

We have included a section on 'Commissioning Essentials' for a quick reference guide to some of the main concepts and finally, we have produced an 'action list' for local Compact groups outlining some of the key actions to enhance relationships and improve commissioning practice.

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<sup>1</sup> Collaborations between VCS organisations in order to access public service procurement opportunities.

# 1. Introduction

## Key concepts

In this section we will:

1. Consider the different things people mean by the term commissioning
2. Look at the classic commissioning cycle
3. Recognise where and how commissioning happens
4. Look at legislative and funding trends
5. See how Compact working can help with commissioning

## Myths around Commissioning

One of the challenges for anyone trying to make a positive impact on the commissioning process is separating the myths from the reality - and this could mean getting past your own misconceptions. Some common myths and legends that have stuck to commissioning include:

Myth	Reality
'Commissioning is procurement by another name.'	Commissioning is much more than procurement and might not involve procurement at all. Commissioning is about researching and setting policies and deciding on the best way of achieving those policies.
'Commissioning is about contracting.'	Commissioning need not automatically lead to the procurement of a contract - that's just one choice. A service could sensibly stay in-house or it could be funded through a grant.
'Grants bad; contracts good.'	Contracts are appropriate for some types of work, grants for others. Grant regimes can be more responsive and allow greater flexibility in meeting complex outcomes and grant-giving is a legitimate commissioning technique.
'Commissioning is all about cuts.'	A particular commissioning exercise might have saving money as one objective (or the primary objective), but good commissioning will also explore how other outcomes could best be achieved.
'Commissioners are experts.'	No single professional could have all the knowledge and skills needed to undertake a sophisticated commissioning exercise. Any commissioner with any sense will look for help wherever they can get it, and be eager to harness the insights and expertise of the VCS.

'Commissioners can only talk to VCS providers after they have won a contract.'	Of course, no organisation should have unfair access during a competitive bidding process, but bidding is just one small part of a much longer commissioning process - which the VCS can and should be involved with at every stage.
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## Definition

Commissioning is a term guaranteed to mean different things to different people. The wealth of material written on the subject hints at how much ambiguity there has been in its use.

Organisations tend to invent their own versions of commissioning and there is still no definitive cross-sector standard. All too often, 'commissioning' is conflated with procurement – which focuses on ensuring delivery of a service rather than its design - or a central assumption that commissioning has to involve a market-based approach to service provision.

Public bodies often refer to their 'commissioning strategies' when they mean a procurement strategy. To add to the confusion, some people within organisations with the title of commissioner are actually procurement specialists, while others operate almost independently from procurement specialists. Commissioning doesn't have to involve any procurement activity at all. Continuing with in-house provision of a service may be a legitimate decision of a commissioning body, as is grant-funding a VCS organisation.

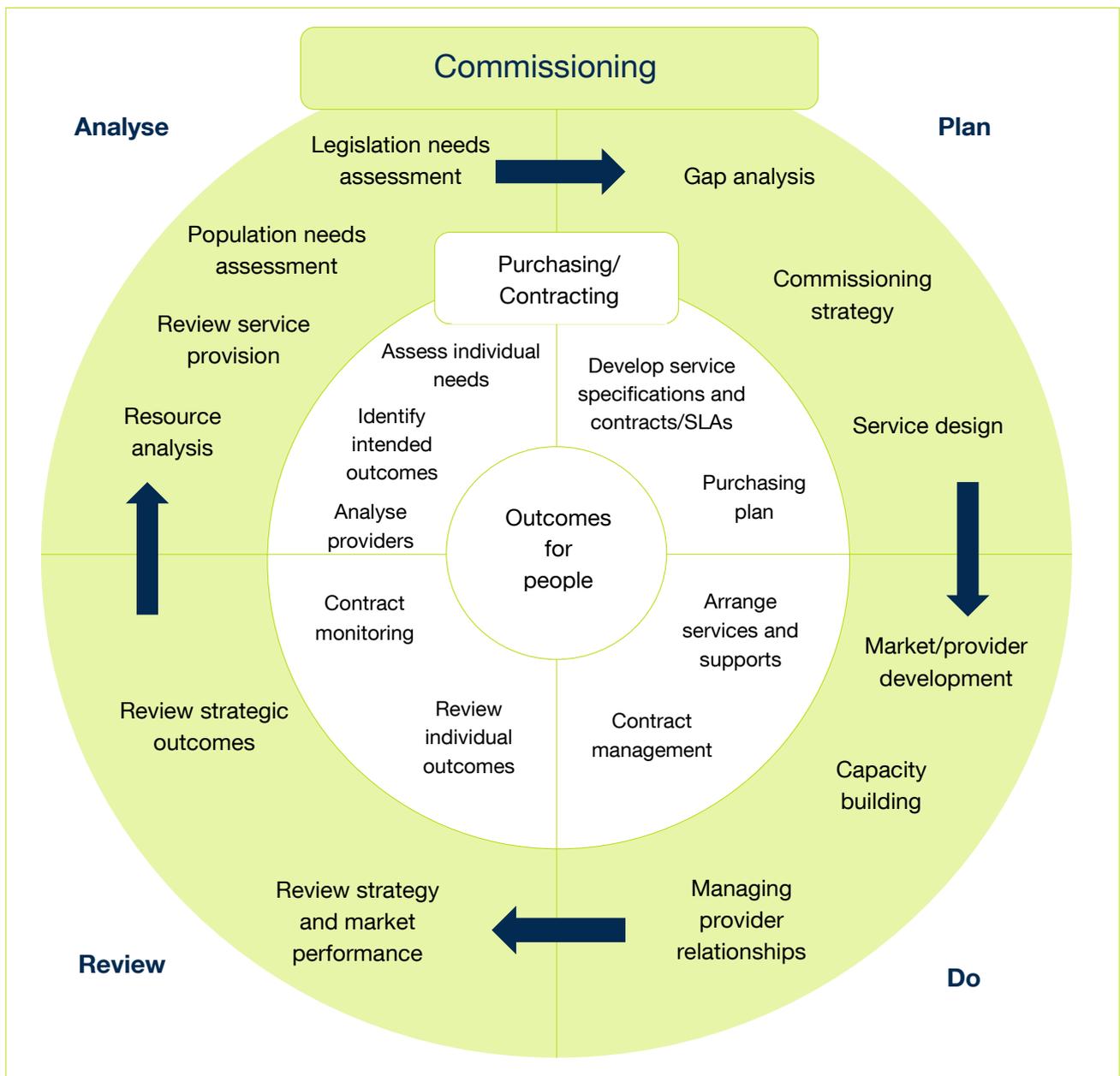
The definition currently used by the Cabinet Office and the National Audit Office refers to the eight principles of good commissioning. A simpler definition was coined by the Department for Communities and Local Government (DCLG) in 2011. It stated that commissioning is:

“Making the best use of all available resources to produce the best outcomes for our locality”.

The simplicity of this statement belies the complexity behind making it happen, but as a maxim to apply in any commissioning activity or discussion it isn't a bad one.

## 2. The Commissioning Cycle

Despite the number of models and approaches used in commissioning, there is general agreement that it is a cyclical process consisting of four phases. The exact terminology may differ across different models but the four phases are: analyse, plan, do and review. The graph below is based on one developed by the Yorkshire and Humber Joint Improvement Partnership<sup>2</sup>.



Within each phase, there are key activities but in reality the cycle is not a discrete entity with a beginning and an end. For example, consultation will need to be undertaken during

<sup>2</sup> Available at <http://www.yhsccommissioning.org.uk/index.php?pageNo=594>

each of the four phases of the cycle, but the nature and focus on that consultation will change to reflect the stage reached in the cycle.

Phase	Key Activities
Analyse	The analysis of need, of capacity, assets and resources and of the capability of the market. Agreeing priority needs with partners. Defining the outcomes to meet those needs.
Plan	Gap analysis, stakeholder engagement, the design of services and service pathways, developing a joint commissioning strategy.
Do	Implementing the commissioning plan, facilitating the market, building capacity, sourcing the providers capable of meeting a specification and contracting for the new services. Delivering to users.
Review	Contract monitoring and reviewing the effectiveness of the strategy. Reviewing and learning from delivery and feedback from users.

This guide is structured around these phases so that activities, concepts and issues of relevance can be found within a context, but there is no intention to imply that they are limited to that phase in the cycle, or indeed that in practice, they happen consistently at all. Commissioners often struggle to work out in which order to undertake the different tasks in the cycle, and will miss out steps because they are running out of time.

## Where commissioning happens

There is one element of commissioning that needs to be understood before we look at the more theoretical and technical aspects of the process.

The idealised commissioning cycle is not a reality. Commissioning is highly politicised – both with a capital ‘p’ and without, although you may find that politicians have not been asked to engage fully in the process or are choosing not to. Any partnership body or VCS representative wanting to engage in the process at any level needs to understand their local political context and be prepared to get to grips with the language, culture and drivers of the commissioning body. This will be a theme throughout this guide. Commissioners have their own pressures and constraints that are determining their behaviours and decisions. If partnership bodies and VCS organisations understand the dynamics and are solution-orientated, they can help to make commissioning work better.

### National Level

Public sector commissioning happens wherever public money is used to pay for services - but central government’s main focus to date has been on contracting with the private sector. Commissioning arrangements involving bureaucratic, complex and costly procurement practices have tended to favour the big providers, resulting in small and medium enterprises (SMEs) and VCS organisations being shut out. However, this is

changing with the Cabinet Office's championing of diversity of provision, formalised in its Procurement Pledge<sup>3</sup>, and in changes in requirements for prime contractors to work with the VCS, leading to opportunities in the supply chain for the VCS to work at a local level on central government contracts. The most well-known of these was the Work Programme, where the Department for Work and Pensions has attempted to address the problems that emerged for the VCS. We'll look at supply chain issues in section 4.

## Local Level

As this guide is **about locality-based commissioning**, it is useful to think about the three levels of commissioning that could be happening in any locality and the partnership opportunities for VCS involvement:

- **Place-based projects** – commissioning at regional or sub-regional level affecting broader issues of economic regeneration and broader strategic planning. This can involve partnership working at the level of bodies such as Local Enterprise Partnerships.
- **People-based projects** – broader social issues or complex interlocking problems requiring engagement with partners and the public. Key partnerships include Health and Wellbeing Boards (HWBs) and Community Safety Partnerships.
- **Service-based projects** – focussed on specific services or localities but still requiring engagement with partners and users.

This guide does not address commissioning within the NHS – this is covered in 'Informing and influencing the new local health landscape: A guide for local Compacts'<sup>4</sup> but the public health role that local authorities have taken on through Health and Wellbeing Boards will inevitably lead to cross sector commissioning.

Wherever and at whatever level your organisation is operating at, the principles of good commissioning enshrined in the Compact should apply. The relationships you can build with the commissioners are key to making those principles a reality.

## Legislative Context

The Coalition Government, in its commitment to opening up public services to the market and encouraging civil society organisations to bid to run some of them, have passed certain key pieces of legislation to further this intent. The Public Services (Social Value) Act 2012, The Community Right to Challenge<sup>5</sup> and DCLG's Best Value Guidance<sup>6</sup> are the most significant.

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<sup>3</sup> Cabinet Office Procurement Pledge: [www.gov.uk/government/publications/our-procurement-pledge](http://www.gov.uk/government/publications/our-procurement-pledge)

<sup>4</sup> Compact Voice: 'Informing and influencing the new local health landscape: A guide for local Compacts' [www.compactvoice.org.uk/resources/publications/health-guide](http://www.compactvoice.org.uk/resources/publications/health-guide)

<sup>5</sup> DCLG: '2011 Localism Act: Community Right to Challenge': [www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-challenge](http://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-challenge)

Changes are also being made to how contracts are packaged and procured to make it easier for the VCS to bid and compete. We will be considering these in more depth in section 3.

## **Trends in Funding Arrangements for the VCS**

Even prior to the public spending review of 2010 onwards, a major shift from grant funding to contracting by local public bodies was taking place.

Contracts to deliver public services are now often the only significant source of funding for voluntary organisations that do not have access to significant amounts of non-state income, including many of those working with the most disadvantaged in society. Although for some VCS organisations this is not a problem, for others it raises issues around service design, accountability and independence. Understanding and engaging in the commissioning process is tending to be a matter of survival rather than choice.

## **How the Compact can help**

The national Compact is the agreement between central government in England and voluntary and community organisations, defined as including charities, social enterprises and voluntary and community sector organisations. A local Compact is a mutually agreed document and approach to partnership working between voluntary and community sector organisations and local public sector bodies who work together for the benefit of local communities. You can find out more about local Compacts on the Compact Voice website at [www.compactvoice.org.uk](http://www.compactvoice.org.uk).

If we think about our earlier definition of commissioning, “Making the best use of all available resources to produce the best outcomes for our locality”, this can only happen if sectors work together in partnership. A local Compact, supported by a mutually agreed action plan may link to other local policies and strategies and which everyone signs up to. This offers reassurance throughout the commissioning process that the views and needs of the VCS are represented and understood. Even more importantly, it is the relationships built up and the behaviours modelled in the process of drawing the local Compact up that can be of lasting value. Being a trusted, assertive and solution-focussed friend to the commissioner is more likely to lead to productive conversations concerning what matters to you and your beneficiaries than withdrawing from the arena to nurse hurt feelings.

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<sup>6</sup> DCLG: ‘Best Value Guidance’:  
[www.gov.uk/government/publications/best-value-statutory-guidance--4](http://www.gov.uk/government/publications/best-value-statutory-guidance--4)

## 3. Stage 1: Analyse

### Key concepts

In this section we will look at how the VCS can approach the 'analyse' phase of the commissioning cycle with a view to influencing local decision making:

1. Needs analysis – opportunities for shaping commissioners understanding of the local population.
2. Capacity and assets – what can be included.
3. Understanding the scope of a project and identifying the key players.
4. Influencing decisions about grant funding.

### Needs analysis

Good commissioning starts with a thorough understanding of local needs. The statutory duties to carry out a needs analysis (e.g. Joint Strategic Needs Assessments (JSNA), Child Poverty Needs Assessments, etc.) yield a wealth of data. However, data is subject to interpretation, depending on your standpoint. Even at this earliest stage of commissioning, the need to understand the key drivers behind commissioning is vital. The political and economic pressures that local authorities and other public bodies are under will partly determine the way that data is interpreted and used to determine policy. VSC organisations working in partnership need to understand these key drivers and come to the table informed.

Data about needs can be both quantitative and qualitative and can be gathered from a number of sources including VCS organisations. One approach, which has been used successfully, is to be proactive. Rather than providing data to feed into a JSNA as requested, prepare a report outlining the issues you are working with, backed up by data and include a proposal for the services you could deliver. This proactive approach is shamelessly self-promoting but as a strategy it can work. You are solving a problem for the local authority right at the beginning of the commissioning cycle.

VCS organisations survive and thrive when they do what they know best and work to fit this into the commissioning authority's strategy – not the other way round.

There is no reason for the VCS not to be involved in the needs assessment process, both as potential suppliers and as key sources of specialist knowledge. But for the dialogue to be meaningful the sector needs to be politically astute, well informed about the issues and proactive in taking ownership of the offer they can take to the table. The value of mature relationships rather than ones of dependency can't be underestimated in commissioning dialogues. Commissioners are only human – meet them, make relationships with them and help them to solve their problems.

Local Compact working is one way of ensuring that this dialogue happens. An example of this in action is The Lewisham Compact:

“For commissioning in Lewisham to be effective, third sector organisations need to be involved at all stages in the cycle. Some organisations will be able to bid for contracts to deliver services. Others will be able to represent and advocate the views of specific groups or neighbourhoods. Others still will have specialist knowledge about how best a service can deliver to the most vulnerable sections of our society. Indeed, in many situations the expertise and knowledge of the sector will be crucial in helping to develop the initial needs analysis, in advising how best to invite tenders or in providing monitoring and outcome analysis.”

- Lewisham Commissioning Guidance ([http://www.compactvoice.org.uk/sites/default/files/lewisham\\_commissioning\\_guidelines\\_2010.pdf](http://www.compactvoice.org.uk/sites/default/files/lewisham_commissioning_guidelines_2010.pdf)).

## Capacity and assets

Most needs analyses tend to emphasise ‘deficits’ by identifying needs that only the state could meet or, if financial savings could be made, by contracting out. More recently there has been an increased emphasis on the ‘assets’ in an area which can be harnessed to meet identified need in a more creative way.

These assets should include not only the services currently provided ‘in-house’ but could include physical assets and should certainly include the voluntary and community sector. The idea of a supply and demand equation is deceptively simple but the process is riddled with complexity. Often authorities suffer from a deluge of data which needs time and resources to analyse and synthesize. Even then, the use to which that data is put is open to interpretation. Is it any wonder that there is often: “a strong degree of status quo pervading discussions on needs analysis”?<sup>7</sup>

There is of course the risk that you could find yourself defending your own organisation’s self-interest and the status quo. A genuine commissioning process should create ‘space for innovation’ and challenge everyone’s thinking and assumptions about what matters and what works.

True partnership working might mean that you need to be ready for change and upheaval – and even embrace them – if new and innovative thinking emerges.

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<sup>7</sup> Chief executive of a local authority quoted in ‘When the Salami’s Gone: Solace guide to commissioning and resourcing’ by Eric Bohl: [www.solace.org.uk/library\\_documents/CommissioningReport-salami-Oct2012.pdf](http://www.solace.org.uk/library_documents/CommissioningReport-salami-Oct2012.pdf)

## Scoping

The decisions made at the outset of a commissioning project about its scope will have profound consequences so the need to be involved at this stage of the process is vital. If the scope is too narrowly drawn, it might miss the opportunity to tackle deep-seated, social issues that partnerships can contribute to, and end up being, little more than a 'service review' of an in-house service.

At the strategic level of commissioning, the VCS may have a place on key strategic boards although there is still no statutory requirement for them to participate. To make things worse, many local strategic partnerships (LSPs) have decreased in importance, particularly after the abolition of local area agreements, so in some areas the coordination of strategic commissioning of services at local level has been weakened and the role of the VCS has decreased.

The Coalition Government's 'community budgeting' or 'place-based budgeting' pilots and work between local partners for participatory budgeting, could have the effect of giving the VCS more weight in local decision making – although there is still no statutory requirement for them to be represented and, as yet, little evidence on the extent to which their contributions are having an influence on final decisions relating to service commissioning and delivery.<sup>8</sup>

If the VCS does have a voice at this level and has good relationships with key commissioners, does this filter down to local authority directorates? Who are the key people to get to know? Commissioning teams at directorate or district level may have better understanding of local needs and issues but may not have the resources of commissioners at a more strategic level.

Don't underestimate the difficulties that people have in working cooperatively. They are likely to be overworked and under financial scrutiny. In addition, many will have their own insecurities and possible survival anxiety in a climate of cuts and job losses. Your offer of help may even be interpreted as a threat, but if you don't succeed at first, try and try again.

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<sup>8</sup> A report produced by Ernst and Young for the Local Government Association - on the potential of community budgets to make financial savings and deliver better outcomes - did not make a single reference to the role of the voluntary sector:

[http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=29b7253f-3132-4617-be79-88ada11cf5e0&groupId=10180](http://www.local.gov.uk/c/document_library/get_file?uuid=29b7253f-3132-4617-be79-88ada11cf5e0&groupId=10180)

Jozi Brown, facilitator of the Compact Steering Group for Cumbria, emphasises the need for persistence, describing their work as being “constantly on the edge”. The strategic commitment to Compact work does not always translate to local commissioner level where skills can vary. Jozi describes how some commissioners exclude VCS providers from conversations from fear of being “swamped” by organisations seeking funds.

Although she firmly believes that the VCS shouldn't be pushed to be too business-like – “I think they should do what they want (run random jumble sales, rescue dogs from trees, save people's lives, etc.) - that's what our sector is about” – however IF they want to apply for public sector funds they need to demonstrate a cost benefit or commissioners may overlook them regardless of how good their service actually is.

If the scope of the project is more narrowly focussed – either neighbourhood or service-based, the commissioners may be more responsive to your suggestions particularly when cost reduction is one of the main drivers of so much commissioning activity.

“Merton Council has improved the way in which it manages its grants programmes. ‘Lessons learned’ sessions take place following funding rounds bringing together the views of the voluntary sector groups that applied with the officers who managed the processes. This enables officers to hear views on what works well and where improvements could be made, and for the sector to hear about the officers' experience.

Learning from these sessions has been reflected in new standardised grant application forms, assessment and allocation processes and monitoring arrangements. This kind of evaluation is now built into the annual review of the processes.”

- Merton Council website:

<http://www.merton.gov.uk/council/partnerships/compact.htm>

## **Decline in the Use of Grant Funding**

There is no reason why the commissioning authority's priorities and outcomes and the allocation of grant funding to the VCS can't be part of their approach to commissioning. Sometimes grant funding the development of innovative solutions by local community groups can be a better solution for the commissioner than contracting, but they don't always recognise it.

Building that relationship of trust, and being a solution-focussed partner in discussions, may lead to some commissioners reassessing their views. If commissioners believe they will have more control if they contract rather than grant fund, healthy partnership working at the scoping phase of the commissioning cycle is particularly important. It means that VCS

organisations have an opportunity to help commissioners to understand that grants are often a better way to get the kind of civic engagement they want, and that small community organisations should not be viewed as just another type of contractor, expected to compete with big private firms.

### **Key Thinking Points for Stage 1: Analyse**

1. Make sure you understand the scope and initial objectives of the commissioning project and don't be afraid to challenge them.
2. Be ready to contribute evidence and insights and assemble your own data to help strengthen the needs analysis.
3. Make sure that the asset that your organisation represents is clearly understood and recognised within the needs analysis.
4. Get to know the various players involved in the commissioning process and make sure they understand that you want to help them.
5. Be prepared to engage fully in the commissioning process and be ready to challenge and revise your own assumptions as new ideas emerge.
6. If any tired preconceptions are already starting to take hold, e.g. presumptions against the use of grant funding, make sure you challenge them early.

## 4. Stage 2: Plan

### **Key Concepts**

In this section we will look at influencing the commissioning body in the planning and service design stage of the commissioning cycle:

1. Having a voice in shaping priorities and outcomes.
2. Getting involved in service design.
3. Market development – preparing your offer for the market. Understanding sourcing and procurement strategies and influencing them.
4. Community right to challenge and other legislation.
5. Influencing the contract at the outset.

### **Priorities and outcomes - agreeing these in partnership, and how a local Compact can help**

Once the commissioner has done a gap analysis and understands both the needs and their capacity or assets, these will be used to determine the outcomes they want to achieve. Outcomes thinking has become a standard service planning concept in local government. However, there are still real difficulties around using outcomes to commission services. A recent survey carried out by the New Local Government Network asked commissioners what they thought were the constraints on them carrying out outcomes-based

commissioning in their area and they found that 29% of the commissioners questioned felt that they lacked sufficient data whilst a whopping 39% said they had difficulty in defining them.<sup>9</sup>

Understanding the commissioning authority's outcome framework is vital. Outcomes may be linked to the local Sustainable Communities Strategy and Health and Wellbeing Board's plans but whatever the language used, the chances are high that commissioning decisions will be driven by cost as much as social outcomes.

"The naivety of the VCS is awful; they shouldn't go into discussions without being clear what the real agenda is."<sup>10</sup>

Local politics is the backdrop to the defining and setting of outcomes. A solid understanding of the local political context and the ability to make alliances with key politicians will help in any discussions between the VCS and commissioning partners.

The rhetoric enshrined in documents such as local Compacts, voluntary and community sector engagement strategies or commissioning and funding frameworks about the need to engage the VCS in determining and shaping service priorities and outcomes are vital. But these are often secondary to the relationships formed through the process of negotiating them.

Once again, if you want to influence conversations about outcomes, it's not just what you know, but "who you know". Research, network, lobby, and be solution focussed. You will have valuable things to contribute to the understanding of the needs of your community, so make sure your contribution is heard.

## **Service Design**

Commissioning bodies should be asking "how do we want to achieve our outcomes?" in an open way, without preconceptions. There is a common misconception amongst commissioners and providers that if you are planning to bid to provide a service, you cannot play a part in service design. This is categorically not true. The procurement process is different to - and separate from - the service design process, and is probably the most important opportunity for the VCS to contribute to decision-making.

Support for your involvement comes from the Cabinet Office's lean standard operating process, which places a heavy emphasis on engagement with supply markets before procurement processes commence – see Government Sourcing: A New Approach using LEAN<sup>11</sup>.

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<sup>9</sup> NLGN Commissioning Dialogues 2012: [www.nlgn.org.uk/public/2012/commissioning-dialogues-3/](http://www.nlgn.org.uk/public/2012/commissioning-dialogues-3/)

<sup>10</sup> Chief Executive Officer of a municipal CVA

<sup>11</sup> Cabinet Office: 'Government Sourcing - A New Approach using LEAN': [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/380629/Government\\_Sourcing\\_-\\_A\\_New\\_Approach\\_July\\_12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380629/Government_Sourcing_-_A_New_Approach_July_12.pdf)

“This is the stage of the commissioning process where services are conceived and are designed and specifications developed and engagement with partners, stakeholders and *current and potential providers* takes place.”<sup>12</sup>

The more complex the social problems, the more important it is to design services in such a way that ‘deep value relationships’ can be formed between the frontline service deliverer and the client.

It can be frustrating when dealing with commissioning authorities. The idea that services ought to be designed to achieve economies of scale is a hangover from the core principle of the conventional ‘command-and-control’ management logic used to run public services for decades, where services are built around functional specialisations. VCS organisations are often in a better place to ask the real nature of what citizens want or need from their local services. Services are beginning to be designed to “wrap around” an individual or family, perhaps with an individual lead support worker, as in initiatives such as The Troubled Families project<sup>13</sup>. Partnership organisations can make valuable contributions to conversations about services designed in this way – which can produce “economies of scope”.

Some authorities are more comfortable having broader brush design discussions with a larger group of providers than more detailed conversations with one organisation. Within authorities, different commissioners will adopt different practices. But to be a valued partner in co-designing services, the VCS needs to demonstrate how services redesigned around the citizen in this way are demonstrably better at delivering services to customers at lower costs and with better relationships with users. Evidence based decision-making is likely to be the next step in public service provision, along with Payment by Results - which we look at more closely later in this section .

VCS organisations dependent on public sector funding will need to provide evidence of their impact if they want to be involved in service design.<sup>14</sup>

## Market development

Ask yourself this question of the commissioners in your area. Do they know what you do? How do you know they do? Never wait for the commissioners to come to you with their own analysis. Do your own market intelligence and take it to them. Do not overestimate the skill and competency of commissioners – they are only human and, like everybody else,

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<sup>12</sup> Cabinet Office: ‘Procurement Policy Note – The Public Services (Social Value) Act 2012 – advice for commissioners and procurers’:  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79273/Public\\_Services\\_Social\\_Value\\_Act\\_2012\\_PPN.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Services_Social_Value_Act_2012_PPN.pdf)

<sup>13</sup> Local Government Association: ‘Troubled Families Project’:  
[www.local.gov.uk/web/guest/localism/-/journal\\_content/56/10171/3491811/ARTICLE-TEMPLATE](http://www.local.gov.uk/web/guest/localism/-/journal_content/56/10171/3491811/ARTICLE-TEMPLATE)

<sup>14</sup> Cabinet Office: ‘What Works: evidence centres for social policy’:  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136227/What\\_Works\\_publication.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136227/What_Works_publication.pdf)

woefully over-stretched and wanting the quickest route to solving their problems. Constructive and useful conversations can happen if the spirit of “let’s solve this problem together” is adopted.

Many VCS organisations simply don’t have the expertise or resources to wrap their service offer up and present it to the commissioning authority in a credible way. Some authorities recognise this and are proactive in helping VCS organisations with developing their offer to the market, putting resources into helping them to demonstrate the social value they deliver to commissioners.

There have also been national initiatives launched to help VCS organisations with developing their commercial skills, such as the Cabinet Office’s Masterclasses<sup>15</sup> and the Association of Chief Executives of Voluntary Organisations (ACEVO) programme<sup>16</sup> supporting charities bidding for the Ministry of Justice’s probation contracts. Information from these programmes may be relevant to other opportunities too.

If you feel unsupported in your area and the Compact is not being adhered to, or isn’t being used to enhance partnerships with commissioners, Compact Voice can help.<sup>17</sup> An example of successful co-production is the Get Oldham Working project, where the voluntary sector is taking responsibility for service design and delivery in partnership with statutory partners in order to maximise employment opportunities for local people.

Liz Windsor-Welsh, Chief Executive of Voluntary Action Oldham, explains:  
“We are facilitating a formal partnership of voluntary sector providers, called “Society Works”, who are committed to this shared vision to mobilise our shared resources to Get Oldham Working.

Oldham’s voluntary sector partners are part of the delivery teams with regard to the five priority areas. Society Works is keen to go further than this and develop a united response that creates referral pathways between services, explores greater joint delivery models and pinpoints the gaps and opportunities. This will enable us to evidence the significant role the voluntary sector currently plays in supporting people into work.

It also develops opportunities for new relationships based on the principles of equity with our statutory partners, where we have a shared responsibility to respond to borough wide priorities and invest our existing resources and expertise in finding joined up solutions.”

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<sup>15</sup> Gov.UK: ‘Masterclasses to help civil society organisations win government contracts’:  
<https://www.gov.uk/government/news/masterclasses-to-help-civil-society-organisations-win-government-contracts>

<sup>16</sup> Third Sector: ‘Acevo launches programme to help charities win probation contracts’:  
<http://www.thirdsector.co.uk/Infrastructure/article/1175102/acevo-launches-programme-help-charities-win-probation-contracts/>

<sup>17</sup> Compact Voice support menu: <http://www.compactvoice.org.uk/supportmenu>

## Sourcing/procurement strategy

Sourcing decisions for local authorities and other local bodies are increasingly complex. The move to community budgeting makes it even more so. It throws up all sorts of uncomfortable challenges to an organisation. Essentially, if an authority is serious about commissioning, it is the job of elected members, their partners and senior strategic managers to make decisions about what and how services are delivered, based on the evidence they have collected and the outcomes they are seeking. These are strategic policy decisions and are not the work of the procurement team.

VCS organisations report having fantastically productive discussions around service design and co-production in partnership with senior managers at a strategic level, only to find that none of this filters down to directorate or service levels where the spend actually happens - and where attitudes can be much more antagonistic and protectionist.

Alternatively, there may be a commissioner working at a service or local level who is creative and open to dialogue even in an authority where it isn't the norm. It pays to find out the name and something about the person with the purse strings at whatever level the commissioning is happening.

Does the authority even claim to be commissioning at all? It's worth finding out something about the authority's attitude to sourcing. If they are wedded to an in-house delivery model, you may never have a chance to win a contract to deliver, but by engaging in partnership working using Compact principles, can you influence those services at a design level? If they are big outsourcers, are there opportunities for supply chain contracts or partnerships with the contractors?

### **A word about Community Right to Challenge**

The Coalition Government is very clear about its desire to beef up the role of the VCS in the delivery of public services, and established the Office for Civil Society to help charities and social enterprises in this endeavour. One flagship policy is the Community Right to Challenge<sup>18</sup> initiative, giving local organisations the opportunity to challenge local authorities to open up service delivery to competition. But it's worth remembering that the challenge is just to open up a service to a tendering process – no more than that. Private sector providers wouldn't dream of wasting their time on preparing a bid to a hostile client, so why would you spend your scarce resource on pursuing something that has little chance of success – or that might become a poisoned chalice if you did win it? For many VCS organisations there is an added fear of antagonising the hand that feeds them. Most organisations don't want to risk their core funding from the local authority in return for an opportunity to engage in a competitive tendering exercise that they may well lose out on.

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<sup>18</sup> My Community Rights: 'Understanding the Community Right to Challenge': <http://mycommunityrights.org.uk/community-right-to-challenge/>

## Best value

Best value has been around since the Local Government Act of 1999. Like social value, it imposes a duty on local government organisations to consider overall value, including economic, environmental and social value, when reviewing service provision. Under this duty, a Best Value Authority is expected to make arrangements to secure “continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

The recent DCLG Best Value Guidance<sup>19</sup> states that Local Authorities should honour the commitments established in local Compacts in ensuring consultation and mutual understanding for the benefit of local communities. Significantly, it sets arrangements it expects an authority to make in regard to its funding of VCS organisations, although it is worth remembering that these are not statutory duties:

- Avoiding passing on disproportionate reductions in funding compared to the levels they take on themselves.
- Giving three months’ notice of any actual reduction in funding or other support.
- Meaningful and active engagement with organisations and service users before making a decision on changing or ending services.
- Consulting local voluntary and community sector organisations at all stages of the commissioning cycle, including decommissioning.

Best value applies to commissioning decisions and contracts of whatever scale. It’s worth bearing this in mind in commissioning discussions, although using this sort of stick will often be less effective than offering a carrot. For more information it is worth referring to your local Compact or contacting Compact Voice for support and advice.<sup>20</sup>

## Social value

The Public Services (Social Value) Act 2012, effective from January 2013, requires commissioners to include social value in public service contracts above a certain value – although the spirit should be considered in other contracting opportunities. They need to demonstrate how the service to be procured will “improve the social, environmental and economic well-being of the relevant area”.

It is stressed in the guidance issued by Cabinet Office on the Act that the VCS should be included in discussions around service design for social value but there is no statutory obligation for a commissioning authority to do so.

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<sup>19</sup> DCLG: ‘Best Value Statutory Guidance’: <https://www.gov.uk/government/publications/best-value-statutory-guidance--4>

<sup>20</sup> Compact Voice and the Department for Communities and Local Government: ‘Best Value Guidance and the Compact – Briefing note’: <http://www.compactvoice.org.uk/resources/briefings-and-responses/briefing-best-value-guidance-and-compact>

“Commissioners should consider social value before the procurement starts because that can inform the whole shape of the procurement approach and the design of the services required. Commissioners can use the Act to re-think outcomes and the types of services to commission before starting the procurement process.”<sup>21</sup>

The Compact also commits that government will ensure that social, environmental and economic value forms a standard part of designing, developing and delivering policies, programmes and services.

The aim of the Social Value Act is to rebalance a public services provider market that currently favours big organisations with financial muscle and expert bid-writing capabilities. It requires authorities to put a value on the knowledge, expertise and local connections of smaller, community-based VCS organisations in the hope that they stand a better chance of winning contracts. But if the intentions are good, the reality is less clear. Demanding cuts mean public services are under great pressure to let huge contracts on a lowest-cost basis. There's also the issue of proving social value: how does that intangible sense of "doing good" show up on the spreadsheet?

Compact Voice has produced a briefing which aims to help local Compact groups to get to grips with the concept of social value.<sup>22</sup>

## Types of contracts

The influence partnership bodies have in discussions about service design can help to determine the way that a contract is drawn up. If the authority hasn't invested in capacity building in the VCS through providing resources, training and signing up to a local Compact, there's a strong chance that they won't be drawing up contracts that the VCS has much chance of bidding for, never mind winning.

Both authorities and their service providers find the procurement process tortuous and frustrating. However, only a few of the problems with the process are due entirely to the EU procurement rules; the main problems are largely in the hands of public bodies.

It is at this stage that you need to be ensuring that the commissioning body's procurement procedures don't get in the way of the commissioners – and the VCS – making sure that the process chosen is one that will get the right result. If you wait until the Pre-Qualification Questionnaire<sup>23</sup> is issued, it will be too late. Many local public bodies and authorities have put a lot of work into changing their procurement and grant policies to make sure they are

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<sup>21</sup> Cabinet Office: 'Procurement Policy Note: Public Services (Social Value) Act 2012': <https://www.gov.uk/government/publications/procurement-policy-note-10-12-the-public-services-social-value-act-2012>

<sup>22</sup> Compact Voice: 'Social Value and the Implications for Local Compacts': <http://www.compactvoice.org.uk/resources/briefings-and-responses/social-value>

<sup>23</sup> See section 3 of this guide

more appropriate for SMEs and the VCS. However, too many have not, and still put in place ridiculously cumbersome procedures and thresholds, often not realising that the costs incurred for their providers will eventually be paid for by the public sector.

Procurement officers often need help – and most would welcome it – in understanding the problems that can be caused. You may think you might not have the time to invest in helping public bodies streamline their procurement rules, but opportunities to work on this in partnership gives you the chance of savings days of unnecessary effort later.

### **Contract size**

The reality is that commissioners may be unsure about what they are allowed to do for contracts that are under EU thresholds and may therefore adopt a precautionary principle.

VCS organisations all too often have the experience of productive and creative discussions at the service design stage being totally undermined by a centralised, risk adverse procurement procedure. Central legal and procurement teams are often criticised for putting a dead hand of legislative fear on to their service level colleagues and effectively snuffing out the chances of VCS organisations running services.

The reality is that not only are many contracts below the relevant thresholds, but EU procedures are much, much less prescriptive for ‘part B’ services<sup>24</sup> – which include the ones that the VCS are most likely to bid for, including transport, educational, health and social services. For commissions below the threshold it is possible, and probably easier, for the commissioner to give a direct grant. EU principles of fairness and transparency still apply but many authorities have developed their own ‘gold-plated’ rules and processes requiring unnecessary bureaucracy and competition.

NCVO says there has been a move in government toward larger contracts and cheaper prices, rather than quality and value for money<sup>25</sup>. It argues that this is damaging the VCS’s ability to win tenders. The reality is still that most commissioners, even at a local level, are unlikely to have enthusiasm for performance managing a huge range of working relationships with small providers even if they are charities.

### **Social Clauses**

For contracts above the threshold, EU commissioning rules require fair and transparent processes. Ultimately this is designed to protect the ability of companies from around Europe to compete to deliver public works and services in other countries. This doesn’t mean a service can’t be designed to provide community benefit but it does mean that the origin of a service provider can’t be specified. As a result, it is entirely possible for a tender specification to require the creation of local employment, training and volunteering

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<sup>24</sup> For more information, see ‘ Public procurement law: the basics’: [www.out-law.com/page-5964](http://www.out-law.com/page-5964)

<sup>25</sup> Third Sector: ‘Government procurement process often excludes charities from contracts, NCVO submission says’: [www.thirdsector.co.uk/news/1169524/](http://www.thirdsector.co.uk/news/1169524/)

opportunities, and for a successful provider to work with local VCS organisations; what might be termed a ‘social return on investment’.

### **Outcomes based and Payment by Results**

Payment by Results (PbR) is at the centre of much of the government’s plans for public service delivery. From a commissioning perspective, the result of service co-design should be a contract drawn up to reflect desired outcomes with scope for innovation. However, not every service will be suitable for PbR and there is likely to be a lot of trial and error over the next few years as it beds in. Also, it requires deep pockets to be able to cope with the cashflow problems caused by the delay in getting the full payment or to deal with the risk of not getting it at all.

One of the aims of PbR commissioning is to stimulate innovation, but procurement teams can be notoriously risk averse and tend to respond with tightly drawn contracts, restricting the ability of the VCS providers to meet the needs they were established for. Structuring a PbR contract appropriately can be expensive and require substantial analysis and involvement by all parties.

Developing a common language, finding effective, low-cost contracting models, building scalable infrastructure systems and replicating all these across sectors can be part of a local Compact framework. It might also prompt commissioners to consider how smaller VCS organisations, struggling with the bureaucracy and cost of commissioning, can find it tough to break down and price risk.

The more that commissioners can make risks explicit the easier it might be for VCSOs to respond positively them, particularly as many organisations – especially trustees - are themselves risk averse. You might also help them to understand that, often, it is more expensive to engineer a PbR contract and price the risk than to just offer a standard contract – or a grant!

These issues are addressed in Principle 3 of the Compact, to help ensure that VCS organisations have a greater role and more opportunities to deliver public sector services.<sup>26</sup>

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<sup>26</sup> Compact Voice website: ‘The Compact’:  
<http://www.compactvoice.org.uk/resources/publications/compact>

### **Key Thinking Points for Stage 2: Plan**

1. How are the intended outcomes being defined – do they reflect your understanding of what is needed for the people whose interests you represent?
2. Will you have to argue to get involved in – and stay involved – in the service design process? What can you offer to the process?
3. Will you be able to separate your organisation's interests from the more abstract process of creating new service designs?
4. How have you influenced the commissioning body's policies and procedures on contracts and grants? Can you afford not to put in the work to help make sure they are practical and proportionate?
5. Are you ready to respond to PbR and outcomes-focused contracts? Are you ready to invest in initiating a Community Right to Challenge?

## 5. Stage 3: Do

### **Key concepts**

In this section we consider the tendering process and the barriers and opportunities this presents to VCS organisations:

1. Finding a contract – should you bid?
2. Pre-qualification Questionnaires
3. Government Procurement Pledge
4. TUPE
5. Consortia
6. PbR and social finance
7. Supply chain issues
8. Contract Governance

## **The tendering process**

### **Finding a contract**

If your partnership organisation has been part of a co-production exercise, and therefore linked in to the earlier stages of commissioning, you will have an on-going dialogue with the commissioners. The specification they issue should put VCS organisations in a great position to bid – or get grant funded. If this ideal scenario is not your experience there are still a number of ways of finding contracts. The more you are proactive in making relationships with local commissioners and other strategic bodies, the more likely you will find out about their opportunities and how they advertise them or even to be approached directly.

For more information on finding and creating opportunities, visit the [KnowHow Nonprofit website](#) or the Government's Contracts Finder website: <https://www.gov.uk/contracts-finder>.

## **Pre-Qualification Questionnaires**

Many authorities use preferred provider frameworks, for which entrants have to pass a minimum threshold set through to a Pre-Qualification Questionnaire (PQQ). If there is a preferred provider list, how do VCS organisations get listed on it?

Although pre-qualification is an optional step in the procurement process for contracts under the EU threshold, it tends to be standard practice for public bodies when procuring services. There is no standard PQQ so the standard varies between authorities with some written very much with large contracts and private sector businesses in mind.

This may be a VCS organisation's first contact with potential commissioners so it's important to demonstrate the legal and financial status, management and the technical capacity of their organisation. PQQs are not always interested at this stage in how they would deliver the service but they do need to be satisfied that the organisation is competent to take on the risks and liabilities of the contract terms.

It helps for VCS organisations to be prepared in advance for PQQs as meeting the standards required can be an exercise in checking that they're ready to deliver public service contracts.<sup>27</sup>

## **Framework Contracts**

Many public bodies, often in partnership, create 'framework contracts' which result in one or more organisation winning the chance to secure a succession of future work without having to go through the full bidding process each time. However, often there is no guarantee that they will get any work at all. VCS organisations have experienced the frustration of winning a framework contract and then no work materialising. VCS organisations will need to reassure themselves that bodies advertising framework contracts are serious about using them and have a good track record of using them once created.

## **Government Procurement pledge**

The Coalition Government has made much of their commitment to reforming public procurement, stating their intention to level the playing field and improve access to public procurement for potential providers of all types and sizes. Their Procurement Pledge<sup>28</sup> formalises this intention.

Part of the pledge is aimed at a more streamlined procurement process, making it easier,

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<sup>28</sup> Cabinet Office: 'Procurement Pledge': <https://www.gov.uk/government/publications/our-procurement-pledge>

quicker and less costly for potential providers, especially smaller providers, to access public procurement.

When the pledge was first published in May 2012, there was no mention made of the VCS or of the Compact, but this was amended following representations from Compact Voice. The pledge now refers to the important role that both play in the design and delivery of public services.

The Local Government Authority (LGA) launched a Local Government Procurement Pledge to highlight the sector's commitment to greater collaboration with business, SMEs and the VCS. This also states the need for proportionate and appropriate use of Pre-Qualification Questionnaires (PQQs) for contracts below the Official Journal of the European Union (OJEU)<sup>29</sup> threshold but as yet there is very patchy evidence of its take-up by local councils.

### **Bidding and winning – should you?**

The political debate over whether or not VCS organisations should be commissioned to deliver mainstream public services is not for this guide to address, but organisations do need to consider their mission and values when bidding for work, and consider whether they should avoid relationships or contracts that threaten them.

Underestimating the risks associated with traditional service contracts, let alone PbR contracts, is very easy to do. The pressure to secure contracts can be so intense that risk assessments can turn into a box ticking exercise, if they happen at all. But before bidding it is worth considering a number of things including:

- Control over referral numbers and criteria,
- Variations in effectiveness and length of time in generating outcomes,
- Sensitivity to political and economic changes outside your control,
- The responsibilities you take on beyond generating outcomes, particularly TUPE.

### **Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and other transition arrangements**

Designed to safeguard the terms and conditions and continuity of employment of staff transferred from one employer to another, they are often cited as a barrier to VCS organisations taking on state-run services. There is a huge amount of work to be done in checking legal obligations and this should be done by specialists. TUPE will also apply whenever the funding or contract for a project ends or a VCS organisation merges and that work is taken over by another provider.

This highlights the transaction costs incurred in bidding for and winning contracts – not just on one side or another but overall. If the local authority is core funding the voluntary sector, then they are paying for the transaction, but if not it comes out of charitable giving. Either way, the dialogue between both sides should be about trying to make the administration

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<sup>29</sup> See [www.ojeu.com](http://www.ojeu.com) for more information.

costs proportionate and considering the efficacy of contracting over grant funding. This also means both sides being realistic about who will bear the costs and risks of liabilities such as property assets and the pensions of transferring staff (particularly if the pension fund is in deficit). When deciding whether to bid it is always worth thinking about who the local authority will be decommissioning if your bid is successful and what this will mean for your long-term relationships. This is a big concern and will be a hugely political decision. As ever it pays to be aware of the political landscape and to be involved in partnership working, including through local Compact groups and agreements, at an early stage in the commissioning process.

## **Consortia**

Consortia-building has become the favoured approach of government and commissioners. In times of austerity, public sector bodies may feel they haven't got the resources to commission loads of little voluntary organisations, preferring to cut costs by commissioning at scale with a single point of contact with the VCS and requiring fewer skilled commissioners to manage a single contract than a score of grants.

The problem is that if contracts remain big, the sector will get beaten in the bidding process again and again by big private sector organisations. So if the sector is going to have to learn how to win big contracts it will have to change: either by building bigger organisations with structures that allow them to take on capital, or by forming partnerships, mergers or consortia. Either way the focus is on creating the scale and resilience to win contracts.

The VCS is, of course, very diverse and so this approach will suit some organisations more than others. While the formation of consortia can allow smaller VCS organisations to combine their expertise and resources and share the risks of competitive tendering it can lead to the creation of partnerships simply in order to win contracts, displacing real long term associations of interest focused on the grass roots. It can also be a costly, time consuming and speculative process which may not end up in gaining contracts which best support their work.

It is also worth thinking about the structuring of the finance – a centrally managed contract involving a number of smaller sub-contractors, or a contract alliance with a central contract being atomised and delivered by different partner organisations, may not be viable. The added cost of administering these arrangements with the same finances has left many VCS organisations thinking “why bother?” This is also highly relevant to PbR contracts, as sharing risk and resources can make a group of organisations much more attractive to commissioners and investors.

The consortium approach has been pioneered in Gateshead where their consortium, Commissioning Xchange, has received backing and investment from the local council.

Gev Pringle, CEO of Gateshead Voluntary Organisations Council says that the local council has been incredibly supportive, with strong partnership working at senior level to get their consortia to a position where they were ready to bid.

However, the bidding process has been a steep learning curve as contracts have not always been structured in a way that has reflected prior discussions, and with values significantly less than expected. Gev also believes that the risks associated with TUPE have been a barrier to constituent organisations continuing with the bidding process.

Gev is confident that commitment to the consortium is still strong, particularly from elected members and senior officers and that the on-going work on co-production and social investment will yield results.

### **Social impact bonds, PbR and social finance**

In recognition of the risks for VCS organisations in taking on PbR contracts, the government has encouraged the development of social impact bonds (SIBs) whereby private investment is paid upfront to providers in return for payments if the relevant outcomes are delivered. If the service does not achieve the required result, the council doesn't pay, which could be attractive to councils as the financial risk lies with the private investor.

For the VCS this is a low-risk method of financing, although the performance and reputational risk of the contract lies with them, but for SIBs to attract investment, VCS organisations must be able to demonstrate measurable outcomes and assure investors that they are achievable which may rule out services without a track record of positive results, or at least the potential. Many VCS organisations are not very good at collecting and sharing data, but will have to improve if they are to attract this sort of financing.

There are political questions, too, about inviting private funding into communities. Some groups will have concerns about the impact of a reward-driven funding model and about services provided in partnership with groups that may have their own vested interests. However, local authority commissioners will be watching early adopters such as Manchester and Essex with interest and Social Impact Bonds may be worth closer inspection for VCS organisations interested in bidding for relevant contracts.<sup>30</sup>

For an example of partnership working around Social Impact Bonds, see Cornwall Voluntary Sector Forum's website:

[www.cornwallvsf.org/new-social-impact-bond-project-for-cornwall-vs/](http://www.cornwallvsf.org/new-social-impact-bond-project-for-cornwall-vs/)

<sup>30</sup> See the Social Finance website for more information: [www.socialfinance.org.uk](http://www.socialfinance.org.uk)

## Supply Chain Issues

The experiences of VCS organisations in the Work Programme of ‘cream and park’ practices – whereby the private sector primes ‘cream off’ easier clients and park the rest with voluntary organisations – has led to acknowledgements from government that their procurement practices leave a lot to be desired. Having in the past favoured the big providers winning contracts, there are now efforts being made to improve supply chain management.

The Department for Work and Pensions (DWP) introduced the Merlin Standard, a standard of behaviour to which prime providers are expected to adhere in their relationship with their subcontractors. It is designed to encourage excellence in supply chain management by prime providers, to ensure fair treatment of sub-contractors and development of healthy high-performing supply chains. This has not spread beyond DWP as yet.

NCVO and the services firm Serco worked together to develop a set of standards<sup>31</sup> that will govern the relationship between prime contractors and subcontractors, including the role of the Compact in these relationships. It includes supply chain management, the level of risk that a subcontractor can take on and the level of support that a sector body needs from a prime contractor.

Local commissioners appear to be in need of direction in addressing supply chain issues too. In December 2012, Compact Voice published their investigation into local authority’s funding and engagement with the VCS. The report revealed that only nine local authorities in England could account for money spent through indirect contracting with the VCS in 2011-12. This sent out alarm bells, as it suggests that local authorities may be failing to recognise the contribution of the VCS in service delivery, and were also failing to ensure compliance with the supply-chain principles of the Compact.<sup>32</sup>

## Contract Governance

Having navigated the minefield and won a contract, whether independently or as part of a consortia or supply chain, you need to be clear that it is a contract you want. You will need to undertake ‘due diligence’ before you take over the running of a service. Are the assets that were promised really there? Is the pay of the staff you are taking over what you were told it was during the tendering process? Are the liabilities that you are inheriting what you were expecting? Don’t sign a contract until you know that you have won what you thought you were bidding for.

It remains absolutely vital that the principles adopted by your organisation still hold firm. Strong governance to uphold the independence of your organisation in all relationships and

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<sup>31</sup> NCVO and Serco Code of Practice: <http://www.ncvo.org.uk/about-us/media-centre/press-releases/335-ncvo-and-serco-launch-code-of-practice-to-raise-standards?highlight=WyJzZXJjbyJd>

<sup>32</sup> Compact Voice: ‘Local Authorities and the Voluntary Sector: investigating funding and engagement’: <http://www.compactvoice.org.uk/FOI2012>

activities - as well as an enduring connection to the causes and communities you serve - will enable you to take that strength of purpose and identity into relationships with partners and others. It is important that your independence is respected and that the financial and regulatory framework you have put in place supports and maintains your independence and your ability to fulfil your contractual obligations and meets the needs of beneficiaries.

As they are ultimately responsible for the contract, it is the challenge of the chief executive and the board of a VCS organisation to know enough about what goes on in their organisation without resorting to micromanagement. And that is hard to do.

Some principles to remember:

- What are we measuring - Is our performance framework based on what matters to beneficiaries or only on what matters to the board?
- Do trustees and the board know enough about the day to day business of the contract?
- Is the management culture one of openness – do staff have to cover up their mistakes or are they seen as an opportunity to learn?
- Do the board and senior management team spend time on the things that matter to the organisation as a whole? Financial risk is not the only type – reputation and trust are hard to win back once lost.

### **Key Thinking Points for Stage 3: Do**

1. Do you have a good network and access to information on the bidding opportunities that become available?
2. Do you have a framework for deciding which bidding opportunities to pursue and which ones to leave well alone?
3. Have you got the organisational culture needed to work in partnership with other organisations in a consortium?
4. Have you got the text of your pitch worked out in advance (or ones that you can tweak and reuse) or do you have to rework each bid afresh because you can't find ones you have done before?
5. Have you got the technical and commercial nous to assess and price a bid, and can you afford the specialist advice needed to assess key risks (e.g. pensions)?
6. Have you got a procedure for taking on a new contract, including due diligence?
7. How will the management of a new contract affect your organisation's culture?
8. How can you ensure you remain true to your core values?

## 6. Stage 4: Review

### **Key concepts**

In this last section, we consider the final phase in the commissioning cycle – the ‘review’ or monitoring phase:

1. Importance of on-going and proportionate monitoring
2. Challenges of PbR contract monitoring
3. Decommissioning

### **Importance of on-going and proportionate monitoring**

It goes without saying that monitoring, like so much of the commissioning activity covered in this paper, is not a discrete process restricted to one phase of the cycle. Effective monitoring begins much earlier by defining clear service outcomes and commissioning for those outcomes. By being part of this earlier dialogue, the monitoring and reviewing of the service being delivered should be much more intuitive, with a focus shifted from activities to results. For providers and commissioners, it is vital that the trust built up as part of the commissioning dialogue should not be lost once a contract has been signed. Principle 3.6 of the Compact states that monitoring should be proportionate to the size and scale of the contract.

Some VCS providers have had experiences where a contract is awarded, and then commissioners put no effort into seeing what is going on with it. It seems that all the effort goes into procurement rather than ensuring the service is being delivered effectively.

Contract governance can seem like a chore you would prefer to avoid, but it’s also your opportunity to make sure that the contract remains as important to your client as it is to you. Client/contractor relationships can very quickly become adversarial and nit-picky, so you need to work to make sure that you bring a partnership approach to the table and look for opportunities to engage in joint problem-solving when difficulties arise. Contract governance can also wither on the vine if things are going well and it is tempting for a provider to go along with this. Don’t. Ungoverned contracts can all too soon become unwanted contracts.

Whatever the experience of the commissioning process and the relationship with commissioners, once a contract is awarded the providing organisation needs to be asking some basic questions of their own service. If we think back to the ‘Analyse’ phase in Section 2, one of the most successful strategies for a VCS organisation in gaining both credibility and contracts, was being able to provide evidence about their activities: who is using them, what difference have they made and what the unmet needs are that they can identify to be addressed in the future.

## Challenges of Payment by Results monitoring

This process becomes even more crucial when recording and monitoring progress on a PbR contract.

The Cabinet Office has published guidance for commissioners who want to design PbR programmes supported by or paid for via social impact bonds or similar, and estimate the potential savings resulting from them.<sup>33</sup>

These incredibly complex formulations may justify the scepticism many in the VCS have about PbR, but it does show the importance of being able to demonstrate the impact of the service commissioned and whether it has met the aims of the commissioning strategy.

“The sector has to get better at marshalling the evidence base. I’m not sure we’ve progressed much beyond counting bums on seats – people need to invest in their capacity to talk about evidence and outcomes.”

Olivia Butterworth, Head of Communities and Voluntary Sector at the Department of Health

Recording and monitoring progress is crucial to the on-going success of VCS organisations. It enables them to learn from previous successes (and failures) and build on them - but inexperienced or overzealous commissioners may demand inappropriately specific monitoring arrangements.

Hopefully, this will have been addressed earlier in the process, but referring to your local Compact or voluntary sector support organisation can help to remind them of the need for monitoring arrangements that are proportionate and useful while allowing space for innovation in how outcomes are to be achieved.

## Decommissioning

According to NAVCA’s guidance, decommissioning means:

“The process of planning and managing a reduction in service activity or terminating a contract in line with commissioning objectives”.

- [www.navca.org.uk/localvs/lcp/briefings/decommissioning](http://www.navca.org.uk/localvs/lcp/briefings/decommissioning)

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<sup>33</sup> Cabinet Office: ‘Social impact bonds: a data gathering how-to guide for commissioners’: [www.gov.uk/government/publications/social-impact-bonds-how-to-guide-for-commissioners](http://www.gov.uk/government/publications/social-impact-bonds-how-to-guide-for-commissioners)

Many VCS organisations are engaging with commissioning out of necessity, owing to drastic cuts in grant funding. Organisations working with the most disadvantaged groups are the most likely to identify state funding as important to them, and because of their greater reliance on state funding, statutory cuts will have all the greater impact on these organisations. Cuts are tending to fall heaviest on local authorities containing the greatest concentrations of deprivation, and on those organisations which are providing non-statutory services within them. Within this landscape of increasing austerity, with greater competition for decreasing public resources, it is inevitable that VCS organisations who have gained contracts to deliver services on behalf of a local statutory body may, at the end of that contract, be decommissioned.

The Panel on the Independence of the Voluntary Sector's second report states:

“The voluntary sector is increasingly being treated in funding, contracting and regulatory arrangements as interchangeable with the private or public sectors - potentially a mere arm of the state, a delivery agent or sub-contractor without an independent voice.”<sup>1</sup>

- ‘Independence under threat: the voluntary sector in 2013’:

<http://www.independencepanel.org.uk/publications>

There are real threats as well as opportunities to the sector from commissioning. The need for positive relationships, enshrined wherever possible by a local Compact, has never been greater. Decommissioning a VCS organisation would have grave repercussions for the viability of that organisation, both financially and in terms of its mission and reputation. The good practice guidelines contained within a local Compact may not prevent a contract ending, but the need for a proper notice period and clear communication about transition arrangements are paramount.<sup>34</sup>

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<sup>34</sup> For further information, see Compact Voice's Partnership Working Toolkit, see Section 6: Decommissioning Well and Positive Dispute Resolution:  
[http://www.compactvoice.org.uk/sites/default/files/partnership\\_working\\_toolkit\\_2014.pdf](http://www.compactvoice.org.uk/sites/default/files/partnership_working_toolkit_2014.pdf).

## 7. Action list for local Compact groups

Local Compacts exist to help local public sector bodies and voluntary and community sector organisations work together to deliver better outcomes for communities, and provide services for the benefit of them. They take the principles of the national Compact and interpret them to reflect local need.

It's vital that local Compact groups (sometimes known as Compact implementation or steering groups) take the lead on making their Compact relevant to local partnerships, community needs and commissioning decisions. This demands being aware of – and ready to influence - the local political landscape.

Most important is the need to communicate that the Compact can help commissioners do their job better: it is a tool for describing good practice, not an extra hurdle to be cleared. By following Compact principles in commissioning, the process becomes clearer, with shared expectations and less ambiguity.

Essentially, good local Compacts are those which nurture relationships through mutual understanding and openness, and where all participants are able to appreciate and articulate the interests, purpose and needs of their stakeholders for the greater benefit of all.

In this spirit, here are some key actions for local Compact groups to consider. The actions have been organised by the phases of the commissioning cycle but are not necessarily restricted to that area of work.

This is not a "to do" list, rather it is a framework for thinking about the kinds of issues that would help to promote partnership working in commissioning and enable fuller participation of the VCS throughout the process.

## Actions local Compact groups can take to improve the commissioning process

### 'Analyse' phase of the commissioning cycle

#### Identifying needs

- Get involved in the project team for the commissioning exercise (at least until any procurement exercises are initiated later).
- Be active in understanding the scope and initial objectives of the commissioning project and don't be afraid to challenge them. Given that savings will be an important driver, ensure these are explicit and challenge short-termism or unrealistic budget targets.
- Communicate the benefits of working in partnership - particularly the potential of VCS organisations to access socially excluded groups and contribute to the commissioning process.
- Ensure that the consultation and decision-making processes are open to the active involvement of relevant VCS organisations and networks, including the possibility of grant-funding pilot schemes. Compact Voice's Meaningful Engagement guidance can help<sup>35</sup>.
- Encourage the involvement of VCS organisations with specialist knowledge and expertise in co-designing service solutions.
- Promote the use of VCS resources for producing good practice materials or staff training/induction.

#### Knowing the market

- Provide information on the number, size and capabilities of voluntary sector providers and potential providers in the market. Make sure that the 'assets' that the VCS represents are clearly understood and recognised within the needs analysis.
- Develop understanding of the proportion of spend between in-house providers, private providers and the VCS, separate the figures out by different specialisms and service areas.
- Ensure that useful information about VCS providers is accessible to commissioners - be ready to contribute evidence and insights.
- Encourage VCS organisations to consider how their services fit with – and what distinguishes them from – those being provided by other organisations in your area. How will their services help to deliver commissioners outcomes?
- Talk to organisations about whether services could be provided more effectively by working in partnership or by another organisation. Be prepared to engage fully in the commissioning process and be ready to challenge and revise your own assumptions as new ideas emerge.

#### Developing the supplier base

- Ensure early notice and accessible advertising of forthcoming procurement opportunities for all potential providers, including the VCS. Encourage and market 'meet the buyer' events, provider forums and other opportunities for the VCS to engage with commissioners.
- Is there a "How to do business with" guide? Are organisations aware of it and is it adhered to?
- Get to know the various players involved in the commissioning process and make sure they understand that you want to help them. Press for a named contact for enquiries from potential providers.
- Encourage investment in capacity building work to support provider networks with developing greater skills and knowledge (e.g. governance, accounting, full cost recovery, tendering, negotiation, contracting, monitoring, etc.).

### 'Plan' phase of the commissioning cycle

<sup>35</sup> Compact Voice: 'Ensuring Meaningful Engagement When Consulting': <http://www.compactvoice.org.uk/resources/publications/ensuring-meaningful-engagement-when-consulting>

### **Service design**

- Encourage the involvement of service providers and users in the design of services through meaningful consultation with stakeholders and contributions from VCS providers.
- Ensure that the processes for developing service designs and specifications are outcomes-focused. How are the intended outcomes being defined – do they reflect your understanding of what is needed for the people whose interests you represent? Is there a clear logic for the service design that is backed up by evidence?
- Check that best value and social value considerations can be achieved by including wider social, economic and environmental objectives in the service design and specification.
- Check that specifications are clear and free from jargon and consider any added value the VCS could offer when delivering a contract. Will providers be asked to demonstrate how they would address local service users' needs?

### **Influencing procurement strategy**

- Exercise influence on the use of different types of funding (e.g. grants, service level agreements, contracts) and the mechanism to choose the most appropriate funding approach to ensure outcomes are met.
- Collaborate on developing innovative approaches or pilot schemes for which grant funding would be more appropriate.
- Work proactively with the procurement team to ensure that the procurement process is accessible to VCS providers and that they have the right skills to compete effectively.
- Lobby for adherence to the Local Government Association's Procurement Pledge.
- Encourage consideration of the benefits of dividing the contract into smaller lots or having a mix of providers to deliver the contract rather than one main provider.
- Where a 'preferred provider' (or framework) approach is operated ensure that VCS organisations know how to access it.
- Consider developing partnership working/consortia as a way of enabling smaller organisations to bid.
- Consider whether opportunities for subcontracting and consortia bids from VCS providers are identified and encouraged.
- Make sure that the issues of risk are allocated to the body best able to deal with it and resist attempts to transfer too much risk to providers.

## **'Do' phase of the commissioning cycle**

### **Publishing contract opportunities**

- Ensure that bidding opportunities are widely publicised and that VCS organisations are included in distribution lists.
- Encourage key suppliers to publicise opportunities for sub contracts.
- Check that the procurement timetable is long enough to encourage bids from smaller providers, partnerships or consortia.

### **Pre-qualification questionnaire (PQQ)**

- Ensure that pre-qualification criteria are proportionate to the value of the contract and the level of risk.
- Check that the pre-qualification criteria do not unnecessarily rule out potentially competent VCS organisations without an extensive track record and that those organisations have the ability to understand which bidding opportunities to pursue and which ones to leave well alone.
- Demand a standard PQQ form to reduce administrative burdens on prospective bidders.
- Lobby for procurement exercises to be cancelled and restarted if absurd requirements that discriminate against VCS organisations and SMEs have been incorporated into PQQs.

### **Invitation to tender**

- Check that the tender documentation is clear, concise and jargon-free; encourage VCS organisations to ask questions early in the process, encourage commissioners to respond rapidly (to allow time for follow-up questions), and demand time extensions if key issues are unresolved by the deadlines.
- Make sure that procurement teams have provided prospective providers with all the relevant information about the background, objectives, procurement process and timetable so that VCS organisations can be clear about the roles and responsibilities they are being asked to take on.
- Consider supporting preferred providers in undertaking assessments of TUPE obligations; do VCS bidders have a procedure for taking on a new contract, including due diligence?
- Offer training to potential providers to enable them to improve their tender submissions.

#### **Contract and payment terms**

- Ensure that the contract terms and conditions are proportionate to the scale and complexity of the contract.
- Be aware that the impact of payment terms on the cash flow of a VCS organisation might deter them from bidding and ensure that payment terms are sufficiently flexible to make early or advance payments.
- Make sure that social impact bonds have been considered - particularly for PbR contracts – and that time has been built in to allow bonds to be raised.
- Take responsibility for ensuring that there is a procedure and a clearly identified liaison person for disputes, including payment problems.

#### **Evaluation and clarification of tenders**

- Check that the evaluation process has been explained to tenderers at the outset, including the criteria to be used and their relative importance.
- Ensure that social value, having been given the appropriate weighting in the specification, is reflected in the evaluation criteria and that tender evaluation panels have the right skills to assess compliance with social impact criteria.
- Make sure that VCS organisations are treated fairly and that they have the opportunity for clarification and feedback if they feel they have not been.

#### **Award of tenders**

- Ensure that bidders are aware of, and entitled to, constructive feedback.
- Make sure that the commissioning body has agreed transition arrangements in advance with providers and that these have been factored into the project timescales.

### **'Review' phase of the commissioning cycle**

#### **Contract management**

- Encourage contract management arrangements are made clear in the tender documentation.
- Ensure that the reporting procedure is clear, proportionate, standardised and is outcomes-focused - are VCS organisations supported in their ability to performance manage and track their impact?
- Lobby for scope within the arrangements to encourage and incentivise innovation in service provision from the VCS.

#### **Service review**

- Make sure that mechanisms for service reviews are collaborative and partnership-based.
- Ensure that service user feedback is taken into account and can be responded to.
- Insist on proper notice periods and clear communication about transition arrangements when decommissioning is necessary.

## Glossary of Commissioning Essentials:

An overview of concepts, terms and abbreviations for effective partnership working

Term	Definition	Find Out More
<b>Best Value</b>	The duty to deliver services to clear standards – covering both cost and quality – by the most economic, efficient and effective means available.	See section 3 “Plan” and Compact Voice’s <a href="#">‘Best Value Guidance and the Compact: Briefing note’</a> .
<b>Capacity</b>	An organisations ability to deliver the demands of a contract or service. Capacity building - the need to equip VCS organisations with the skills and competencies to bid for and secure contracts to deliver public services	See section 2 “Analyse” And Third Sector Research Centre’s <a href="#">‘Partnership and mainstreaming: voluntary action under New Labour’</a> .
<b>Compact</b>	The agreement between the Government and the VCS, outlining principles to help them work effectively in partnership to achieve common goals and outcomes for the benefit of communities and citizens in England.	See <a href="http://www.compactvoice.org.uk/about-compact">www.compactvoice.org.uk/about-compact</a> .
<b>Civil Society</b>	The part of society that consists of organisations and institutions that are run for the benefit of people, are not for profit and are independent of government. The Office for Civil Society holds responsibility for charities, social enterprises and voluntary organisations in the Cabinet Office.	See Cabinet Office <a href="#">‘Promoting social action: encouraging and enabling people to play a more active part in society’</a> .
<b>Commissioning Academy</b>	A programme designed and delivered by the Cabinet Office for senior commissioners from all parts of the public sector to improve their organisation’s commissioning practice - improving outcomes and increasing value for money.	See <a href="#">Gov.UK Commissioning Academy information</a> .
<b>Co-production</b>	The partnerships that government bodies form with citizens, users and VCISOs in order to innovate and deliver improved public service outcomes.	See section 3 “Plan” and Nesta’s <a href="#">‘Co-Production: Right here, right now’</a> .
<b>Cabinet Office</b>	Government department responsible for, among other things, efficiency and reform across government and the promotion and development of Civil Society.	See Gov.UK <a href="#">About the Cabinet Office</a> .
<b>CCG</b>	Clinical Commissioning Groups. Statutory NHS organisations representing groupings of GP Practices responsible for designing and commissioning healthcare services in their area. Replaced PCTs	See Compact Voice’s <a href="#">‘Informing and Influencing the new health landscape: A guide for local Compacts’</a> .
<b>Community Right to Challenge</b>	Part of the 2011 Localism Act giving local organisations the opportunity to challenge local authorities to open up service delivery to competition.	See section 3 “Plan” and Compact Voice’s blog <a href="#">‘The Big Society, the right to challenge and the dangers of astroturfing’</a> .
<b>Competitive Dialogue</b>	Part of EU procurement law only used in complex contracts. Restricted opportunity for at least three potential bidders to engage in dialogue before the formal tendering process continues.	
<b>Consortia</b>	Collaborative working between VCS organisations in order to access public service procurement	See section 4 “Do” and NAVCA’s <a href="#">‘Interact:’</a>

	opportunities.	<a href="#">Consortium learning and development</a> '.
<b>Contracts</b>	Legally binding agreement specifying the services to be provided and the payment made for providing them.	Information contained throughout the guide, in particular see section 3 "Do".
<b>Decommissioning</b>	Applying commissioning principles to cut back or cease services which are no longer necessary or affordable.	See section 5 "Review"
<b>DCLG</b>	Department for Communities and Local Government.	See Gov.UK – <a href="#">About DCLG</a>
<b>EU Procurement Rules</b>	Regulates the way in which local authorities purchase construction works, goods and services and require transparency, objectivity, equality of treatment of bidders and non-discrimination on the grounds of nationality of the contractors. These rules are in addition to the local authorities' own requirements and UK legislation.	See section 3 "Plan" and NAVCA's article ' <a href="#">Charities and local authority procurement</a> ' (.doc).
<b>Framework Contracts</b>	An agreement with suppliers, which establishes the terms governing contracts awarded during a given period, in particular price and quantity. Often used when commissioning consortia.	See section 4 "Do" and CIPS's ' <a href="#">Knowledge summary on Framework Arrangements</a> ' (pdf).
<b>Gap Analysis</b>	The use of research data to understanding citizens, their underlying needs, how far they are from being met by current provision and the assets available to meet them in the future.	See section 3 "Plan"
<b>Grant</b>	Non-repayable sum of money given to a VCS organisation. May be given by public body to fund a specific project or service which the VCS organisation will be required to monitor and report on.	See section 2 "Analyse"
<b>HWB</b>	Health and Wellbeing Boards: established by the Health and Social Care Act 2012 as a forum for key leaders from the health and care system to work together to improve the health and wellbeing of their local population and reduce health inequalities.	See Compact Voice's ' <a href="#">Informing and Influencing the new health landscape: A guide for local Compacts</a> '.
<b>JSNA</b>	Joint Strategic Needs Analysis – statutory requirement to gather information on the health and wellbeing of local people. It includes evidence about what works and what services are available in order to make decisions about how to commission future services in line with the priorities of the Health and Wellbeing Board.	See Compact Voice news item ' <a href="#">Guidance on JSNAs published by Department of Health</a> '.
<b>LGA</b>	Local Government Association - cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government.	See Local Government Association website: <a href="http://www.local.gov.uk">www.local.gov.uk</a>
<b>OJEU</b>	Official Journal of the European Union - the publication in which all tenders from the public sector which are valued above a certain financial threshold according to EU legislation, must be published.	See OJEU website: <a href="http://www.ojec.com">www.ojec.com</a>
<b>Outcomes</b>	The overall end effect on service users or population groups as a consequence of a service or activity that has been provided.	See section 3 "Plan" and ' <a href="#">When the salami's gone: SOLACE guide to commissioning and sourcing</a> ' (pdf) by Eric Bohl

<b>PbR</b>	Payment by Results - the practice of paying providers for delivering services after agreed results have been achieved.	See section 3 “Plan” And Compact Voice’s blog <a href="#">‘Getting to grips with Payment by Results’</a>
<b>PQQ</b>	Pre-Qualification Questionnaire - used to identify potential suppliers that are most capable of performing a contract.	See section 4 “Do”
<b>Preferred Supplier</b>	A provider who is part of a framework contract agreement.	See Compact Voice case study: <a href="#">‘Wolverhampton: One contract for the voluntary sector’</a> .
<b>Prime contractor</b>	A prime contractor undertakes to perform a complete contract, and may employ and manage one or more subcontractors to carry out specific parts of the contract. Used when a purchaser wants to award a contract ‘of scale’ for services which require a variety of competence and capability or when a provider wants to tender for a contract which requires skills which they lack and would be better provided by other suppliers.	See section 4 “Do”  And <a href="#">NCVO and Serco Code of Practice</a> .
<b>Procurement Process</b>	The bidding or tendering process by which contracts are awarded. See EU Procurement Rules.	
<b>Procurement Pledge</b>	A government document setting out an agreed understanding with potential providers and their representative bodies. The Local Government Association has produced its own version.	See section 4 “Do” and Cabinet Office’s <a href="#">Procurement Pledge</a>
<b>Service Design</b>	The activity of planning and organising the components of a service in order to improve its quality and the interaction between service provider and user and according to their needs.	See section 3 “Plan”
<b>SIB</b>	Social Impact Bond: A scheme whereby initial funding of a project is paid for by investors. The provider carries out the project, and the investor is paid by the government according to the results achieved, at specific points agreed in the contract.	See section 4 “Do” and Gov.uk <a href="#">information on social impact bonds</a> .
<b>Social Value</b>	The Public Services (Social Value) Act 2012 requires commissioning authorities to demonstrate how the service to be procured will “improve the social, environmental and economic well-being of the relevant area”.	See Compact Voice’s <a href="#">‘Social Value and the implications for local Compacts’</a> .
<b>Sourcing</b>	Identifying, evaluating and implementing the most effective delivery models for securing strategic objectives.	See section 3 “Plan” and <a href="#">‘When the salami’s gone: SOLACE guide to commissioning and sourcing’</a> (pdf) by Eric Bohl
<b>Supply Chain</b>	Refers to the approach where one large ‘prime’ contractor commissions and manages a supply chain of subcontractors to deliver the contract.	See section 4 “Do” and <a href="#">DWP Work Programme evaluation</a> (pdf).
<b>TUPE</b>	Transfer of Undertakings (Protection of Employment) Regulations protect employees’ terms and conditions of employment when a business is transferred from one owner to another.	See <a href="#">KnowHow NonProfit website</a> .