



COMMISSIONING IN CRISIS

How current contracting and procurement processes threaten the survival of small charities

Foreword

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At the Foundation, we know that charities are at the heart of a thriving society. With over 30 years' experience of funding locally-rooted and high impact charities, we've witnessed their success in addressing some of society's toughest social issues. They're invariably doing a tough job. And it's getting tougher.

I see it when I visit charities across England and Wales – and I see how commissioning is making their work even harder. Forced to undergo lengthy, convoluted and expensive processes, these charities are fighting tooth and nail so their vital support can be 'commissioned'. It's a key cause of concern.

As a champion of small and medium-sized charities, we provide core funds and support them to build their capacity, but we know that is not enough. Funding alone cannot address all the challenges they face. The systems they operate in need to be fit for purpose. So what does fit for purpose look like?

We set out to truly understand what is happening to these organisations and why commissioning is such a challenge for them. We were shocked at what we found. This is not the case of a few bad apples – the problems we uncovered are widespread and severe. Small and medium-sized charities are both actively and inadvertently marginalised

by a broken commissioning landscape.

Common sense is failing and commissioning is in crisis.

The evidence in this report shows that this isn't just a problem for small and medium-sized charities, although they are the most severely affected. We're all feeling the effect, through the local services we access or bought on our behalf by local authorities.

This report isn't about 'commissioner-bashing'. We recognise commissioners face their own challenges. We're also not asking for the unattainable. It's about change.

Change that is needed now and at every level. Both commissioners and Government need to change the systems that govern processes, with corresponding work in the voluntary and community sector to increase smaller charities' capacity to meet commissioners' needs. By listening and learning about the direct experiences of charities who have participated in tendering processes, we have been able to identify clear ways forward and these must now be put into practice.

These changes do not have to be more expensive, raise levels of risk or reduce efficiencies. But the impact on local providers, who play a critical role in our communities and the individuals they support could be profound. The onus now is on Local and Central Government to recognise the experience, expertise and value of small and medium-sized charities and take these recommendations forward.

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Executive summary

At Lloyds Bank Foundation for England & Wales we have long argued that services delivered locally by small and medium-sized charities need to be part of society's wider plan to address disadvantage. Why? Because they're the services that are often created in response to problems local people face. Trusted by communities and run by individuals who work for their community day in, day out, they have the expertise to provide tailored support to the people that need it, for as long as it takes for them to live independent and stable lives.

Yet we know that current commissioning processes are a major threat to the survival of smaller charities¹. The demise of grants and rise of contracts has been driving these challenges. And it has resulted in a shift in Government funding from smaller, more local charities towards ever bigger organisations. This move towards larger contracts has seen small and medium-sized charities lose up to 44% of their income from public bodies. For the charities providing evidence from 120 tender processes, more than half reported that they were either prevented from bidding or they were unsuccessful. Even those that secured some money reported many difficulties in the process.

Whether the commissioning process is run by local authorities, NHS Clinical Commissioning Groups (CCGs), Police and Crime Commissioners (PCCs), Central Government departments or others, and whether the services are related to domestic abuse,

What do we mean by “commissioning”?

For the purpose of this report, we use commissioning to describe a process by which public bodies identify services they need for local people and the resources they have available to fund them.

Organisations are invited to bid as to how they would deliver the services against a specification and within the budget available. In its broadest sense, it is a process used to secure the best possible and most cost-effective service for local people. Commissioners are those individuals within commissioning organisations who identify the need for services, manage the process and make the decision on which organisation will deliver the services. It is closely linked to a procurement process which focusses on buying things at a specific price, for a specific quality. Several statutory agencies commission services including local and municipal councils, Policy and Crime Commissioners, NHS Clinical Commissioning Groups and Central Government departments.

¹ [Small and Medium-Sized Charities After the Crash – What happened and why it matters](#), Lloyds Bank Foundation for England & Wales, 2016

homelessness, or mental health for example, this research demonstrates the depth and breadth of the challenges commissioning presents to all those involved. These challenges are particularly stark for small and medium-sized charities. There is hard evidence that systems and processes are both inadvertently and actively undermining the ability of small and medium-sized charities to compete on a level playing field, with ramifications on services, costs and ultimately lives.

Commissioners are up against it

Small and medium-sized charities are not alone in the challenges they face. We recognise that commissioners themselves are also facing a tough task. They are operating under ever-tightened budgets, with smaller staff teams and ever fewer resources. Caught between a rock and a hard place, they are trying to meet targets to reduce costs and abide by procurement teams' excessive demands while at the same time trying to ensure services are available to meet communities' needs. Yet the systems they are working within are preventing them from making use of simpler processes, and from achieving the greatest long term value. That is why we believe it is better for everyone - commissioners, charities, service users and the tax payer - for commissioning processes to be reformed.

What is a small and medium-sized charity?

For this report, a small and medium-sized charity is defined as a charity with income of £25,000 - £1m. 97% of the sector has an income of less than £1m, with more than 40,000 charities falling into the income bracket this report focuses on.

Commissioning's worst offenders

This research sought to better understand the processes behind commissioning, to identify good practice and call out poor practice. In reality, examples of poor practice across England and Wales far outweighed the good. We've witnessed the disappearance of common sense amongst commissioners in favour of standard, rigid processes that failed to understand the social issues they were trying to address.

According to Cabinet Office guidance, commissioning is supposed to embody ***“the effective design and delivery of policy, solutions or services”***.² But the examples below show how far removed the reality of commissioning can be.

1. Unrealistic payment structures

Payment by results contracts are, in themselves, tricky due to the cash flow problems they create. Add to this additional payment pressures and many charities, particularly those that are small and medium-sized, can be excluded:

“A complex and risky payment mechanism, the requirement to work with subcontractors and to pay smaller contractors upfront.”

2. Inaccurate information

When commissioning services, information provided needs to be correct so that bidders can submit accurate tenders. Problems inevitably arise when bidders cannot access this information:

“The TUPE process was not accurate and the commissioners stated that it was not up to them to ensure the information was accurate.”

3. Absurd and irrelevant demands

Adopting commissioning processes that apply to a wide range of services can make them inappropriate for the specific service being commissioned:

“The procurement procedure [for mental health support] followed the same mechanism for procuring building work. We were required to evidence our site licences and to send our Health & Safety policies regarding hard hat areas and other safety features to be on site.”

² [Commissioning Academy Guidance](#), Cabinet Office, 2013

4. Pushed out by backroom deals

Many charities maintain regular contact with local commissioners to ensure they are ready when bids emerge. Despite having been promised a fair and transparent commissioning process which would enable commissioners to fund the most effective service, charities can then miss out when back room deals are instead agreed by the commissioning body:

“When the tender was released, [the service we deliver] was removed, with no explanation as to why. A few months later we found out that another provider had been given the money, without a proper process.”

5. Penalised for quality and success

Completing a 27,000 word bid is already a big ask for a small charity without professional bid writers to take on the task. Yet things can get even trickier when rigid processes penalise charities for already holding the contract and / or recognised quality marks:

“We were...at a disadvantage as the existing service provider, already holding the quality mark for high risk services - we couldn't score marks for our transition plan, and (inexplicably!) were not awarded full marks for already holding the required accreditation!”

6. Funding shortfalls

Full cost recovery has been an issue of debate in the charity sector for years. Where the costs of delivering the service together with the necessary back office administration have been slashed in a new contract, organisations already struggle to make ends meet. Yet they are asked to bear any additional costs that arise from meeting the contract specification, wherever they derive from:

“On further reading the contract details it states that if you run out of money due to demand it is down to the charity to find the income required to complete the contract, no further funds will come from [the commissioner] and the charity has to sign to agree that they will use their charitable income to complete the contract if necessary.”

7. Unfunded TUPE requirements

TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006), while necessary to protect staff, can be challenging for many charities when it is not proportionate nor properly resourced. Where these requirements are increased without associated funding, organisations are marginalised even further:

“The [commissioner] decided on "TUPE plus" for any staff transferring with the daycentres. Essentially this meant increasing salaries and benefits for staff in line with Council increases. They also wanted a no redundancy guarantee. They also wanted savings. It was ridiculous.”

8. Forced mergers

Partnership working can be effective, enabling a range of providers to meet needs together while only requiring the commissioner to manage one relationship. It can take many forms, both formally and informally, whether across whole organisations or different services. In most cases, partnership working will only be successful where the conditions, values and relationships are right and it should only be done where it adds value to the services and organisations. Commissioners should not impose a form of partnership and certainly not mandate charities to:

“Agree to merge back office / administration with another organisation.”

9. Breakdown in relationship

Most bidders would expect that if, based on experience, they could propose a more effective way of meeting a need and delivering a service, they should do so and it should be considered. This is an important part of the commissioning process because it enables both commissioners and service providers to ensure the services commissioned and delivered are shaped to deliver the best results, using their intimate knowledge of what is successful on the ground. Charities can find it impossible to tender for a contract that they know will fail where there is:

“A score out of 5 based on how much you question / negotiate the contract.”

10. Inappropriate contract amalgamations and divisions

Large contracts can present a very real challenge when holistic services which respond to local needs are required. This is made harder still when services are packaged up across large contracts which do not reflect the nature of services and make-up of providers in the area:

“The local authority amalgamated 118 small contracts into three big contracts, with a lot less money available for the three contracts than for the 118 contracts. This was a 30% cut, plus some services specs were deleted from the three contracts. You could only 'win' one contract...though I think you could still bid for all three. This meant from the outset we could not bid for what we were already providing, and the bigger charities bidding did not want smaller charities in their consortia.”

Small and medium-sized charities are hardest hit

Across all these commissioning ‘horror stories’, small and medium-sized charities are inevitably the hardest hit but they highlight the wider challenges presented by commissioning. The requirements themselves can shut many small and medium-sized charities out, while in other cases they have too few resources to dedicate to the tender process, so inevitably find it harder to respond to disproportionate requirements. Where tender requirements and processes bear little relation to the need and nature of the service in question, we have to question their use and validity.

The patterns of poor practice

The examples above only begin to lift the lid on the scale of the problem. This research collates examples from tenders from right across England and Wales, indicating that poor practice does not reflect isolated issues. While each example is concerning in its own way, three key themes unite all the poor practice we uncovered:

a) Understanding: lack of knowledge by commissioners about the service they are commissioning and the needs of individuals can lead to practices which trivialise local expertise and shut out those with the skills and knowledge to meet needs effectively.

Current approaches and processes place commissioners in the driving seat of service design but in too many cases the consultation needed (whether with service users, service providers, experts or other stakeholders) to shape effective service specifications does not happen. Service users,

service providers and relevant experts are being ignored. As a result the services people need are not recognised and built into the tender, existing service providers are overlooked and unrealistic expectations are set of services in the contract terms. This can have significant implications on service quality and value for money, with some of the best providers withdrawing from a competition that won't allow them to deliver the services that they know are needed. Where they do compete, a lack of understanding can risk commissioners placing too high a weight on cost alone that can result in commissioned services not meeting the local needs for which they were intended.

b) Specifications: aspects of contracts and tender specifications can automatically exclude smaller charities.

- (i) Contract sizes unrelated or inappropriate to services being commissioned** has resulted in in the growth of ever bigger contracts, rolling different services and geographical areas into single agreements. Preference is being given to larger providers for the apparent new money they bring to the area, but this fails to recognise the additional resources that local charities leverage from trusts, businesses and individuals. High value tenders can lead to perverse incentives, leading to bidding by organisations which are attracted by the high value contracts, as opposed to the incentives of the small and medium-sized charities that are committed to meeting a need in the area, having grown in response to these local demands. Driven by a desire for assumed economies of scale or even arbitrary targets to reduce the number of contracts, commissioners risk missing out on the long term value delivered by small and medium-sized charities that will meet local needs and budget constraints. Bigger contracts do not in themselves lead to better services and can instead see those with the skills and expertise to deliver services marginalised from the process.
- (ii) Disproportionate financial specifications** can be introduced in two guises: either demanding a total income that is not related to the size of the contract; or requiring evidence of delivering a contract at a significantly higher value than the one on offer. In both cases, the specifications arbitrarily but automatically exclude smaller providers, even where they may be best placed to deliver and have in fact previously delivered the same contract.
- (iii) Inappropriate and restrictive payment mechanisms**, primarily focused on payments by results, push financial risk to the provider. For smaller charities, these payment approaches can prevent them from bidding for the service because they do

not have the cash flow to cover upfront service payments and contract payments in arrears. Payment by results is even more problematic when services are responding to complex needs where outcomes are not simple and linear.

- (iv) Unclear and underfunded TUPE specifications** can further marginalise small and medium-sized charities by making contracts financially untenable. With incomplete or inaccurate information then provided by the commissioner, small and medium-sized charities end up excluded from the process because they do not have the reserves, or HR and legal expertise to navigate the complex environment, regardless of their ability to deliver an effective service.

b) Processes: the processes commissioners follow can inadvertently impede on providers' ability to bid effectively and successfully, particularly for small and medium-sized charities who have very limited resources and capacity.

- (i) Excessive application requirements** that do not reflect the value or nature of the service being commissioned are common, such as asking 44 questions that need 500 - 2,000 word answers each for a contract worth £350,000 per year. Not only are these costly and time consuming to complete and indeed for commissioners to assess, but they can prove prohibitive to small and medium-sized charities that do not have access to a dedicated bid writing resource. At the same time, the design and assessment of excessive applications can be costly and time consuming for commissioners when they are under their own significant resource pressures.
- (ii) Tight timescales** only serve to add to the challenge. While delays in tenders being published and uncertainty around the future funding of services is common, so too are the tight turnaround times set for providers to submit bids. Small and medium-sized charities are forced to work out of hours in an attempt to meet unrealistic timescales, in some cases just a couple of days. This is particularly prohibitive for partnership working, despite many tenders specifically identifying a desire for partnerships. Ultimately, this can see providers excluded irrespective of their ability to deliver quality services to those who need them.
- (iii) Shifting goalposts and a lack of communication** have left providers in the dark about what commissioners want and how their wishes can be met. Whether this is adding or removing requirements from specifications that are not communicated or at very short notice, it can mean that providers' suitability to deliver the service and

the suitability of their bid can change at the last minute leading to wasted time and resources or quality services being marked down.

At the mercy of unscrupulous, bigger organisations

Poor commissioning practice can result in small and medium-sized charities being further marginalised by the poor practice in some larger providers that it enables and can encourage both in terms of private companies and in some cases charities. Using their scale to drive down costs, irrespective of service quality, some larger providers are aggressively seeking to increase their market share. The focus of some on chasing contracts rather than meeting needs fails to put service users front and centre and in doing so, they can drive out the committed local charity that has delivered effectively for the community for many years. The reluctance of some larger organisations to work with local partners can often leave smaller charities at the mercy of their demands. This creates a power imbalance that leaves those with the local knowledge and expertise without the ability to negotiate.

Bringing the change we need

There are many steps that could be put in place to support commissioners to achieve long term value and to ensure small and medium-sized charities can bid and compete on a fair and realistic basis which will ultimately enable them to deliver to their strengths, – steps which would see local expertise valued and enable smaller charities to compete fairly for funding and we believe would be better for service users and commissioners themselves, who are often struggling to do a good job in difficult circumstances.

To facilitate this, **at a local level, commissioners need to:**

- ✓ **Increase their understanding** through a more collaborative approach to commissioning, engaging in meaningful consultation, working with experts and learning from past and present contracts to co-produce services.
- ✓ **Take a proportionate approach** to all stages of commissioning, both in terms of what they ask of services, how they are funded and how agreements are made, and in particular making more use of simpler, grant funding arrangements.
- ✓ **Place more emphasis on the social and long term value** that can be achieved through commissioning.

In essence, these principles are already enshrined in EU law but implementation is poor. Whilst they provide a useful guide, commissioners need to be empowered by systems which let them take decisions locally and which meet the need in their own area. It's clear that current systems are not providing the right structure or support.

At a Central Government level, a framework is needed to guide, support, empower and challenge commissioners to take decisions locally in a way that does not shut out local expertise and existing services through:

- ✓ **Challenging poor commissioning** practice, encouraging good practice and holding commissioners to account
- ✓ **Introducing a measureable target** for commissioners to work with small and medium-sized charities
- ✓ **Improving transparency** throughout the commissioning process and delivery of contracts.

There is a role for the sector here too, both for charities and independent funders – charities themselves need to demonstrate the value of their local work and challenge commissioning, while independent funders need to support them to do so. A more detailed breakdown of recommendations for all those involved in commissioning is provided in Part B of this report.

Ensuring action

To respond to the concerns and poor practice highlighted in this report we need real action. The commissioning of public services needs to be reformed so that those smaller charities with the expertise and track record are funded. In a world of constrained budgets, changes to commissioning will, we believe, allow commissioners and Government more widely to make the best use of every public pound. And putting the skills and expertise of small and medium-sized charities at front and centre of these changes will ensure that, while commissioning is here to stay, the process works for those who meet needs locally.

This matters because in many cases, small and medium-sized charities are central to meeting many of the challenges we face in society, being an integral part of the ecosystem of support services meeting needs throughout England and Wales. In fact, many of our toughest problems cannot be addressed without the innovation and expertise that comes from small and medium-sized charities that fight from the bottom-up. The large, standardised services that we will be left with if small and medium-sized charities cannot compete will not be able to respond to the different issues that

individuals face. And organisations attracted by large contracts and market share may only be around for as long as the contract lasts rather than seeing their role as a valuable local asset that supports a community in need.

Small and medium-sized charities offer key and distinctive solutions we need in society. Now we need to make sure the commissioning landscape enables these charities to maximise their potential. Government has already taken some steps to enable this such as through the Commissioning Academy, aimed at driving up standards. We welcome these efforts and the Minister for Civil Society's commitment to improving the situation for small and medium-sized charities and ultimately service users. This report outlines the scale of the challenge and the need for Government both locally and central to go further in its response.

Introduction

Across Government, commissioning has become the bedrock of public service delivery. It should be the means through which individuals and communities access the services they need in the most cost-effective way. In many ways, it is more important now than ever before as pressures on public finances mandate that the most value is obtained from every public pound. While commissioning through contracts has been on the rise since 2003/04³, research we conducted in 2015⁴ shows that it remains a significant challenge for small and medium-sized charities at the same time as demand for their services is going up. So why isn't commissioning working? And why does the process continue to cause anguish to those set up to deliver services?

Research we conducted in 2015 showed that commissioning is one of the biggest challenges faced by small and medium-sized charities – those with an income between £25,000 and £1m. Almost half of those surveyed, find the commissioning process 'difficult' or 'impossible' with a common belief that small and medium-sized charities are placed at a disadvantage by the process.

This disadvantage is real. Research we commissioned the National Council for Voluntary Organisations (NCVO) to undertake illustrates the extent to which smaller charities have been losing out to their larger counterparts, with small and medium-sized charities losing up to 37% of their contract income between 2008/09 and 2012/13 while the largest charities saw an increase of 34%.⁵ These

“Commissioning is essentially the effective design and delivery of policy, solutions or services. The best commissioners have the confidence to challenge the status quo, take on radical change, collaborate effectively with external stakeholders, gain a deep understanding of the need and target resources effectively to meet those needs”.

Cabinet Office, 2013

³ [UK Civil Society Almanac](#), NCVO, 2015

⁴ [Expert Yet Undervalued and on the Frontline: The views and voices of small and medium-sized charities](#), Lloyds Bank Foundation for England & Wales, 2015

⁵ [Navigating Change: An analysis of financial trends for small and medium-sized charities](#), NCVO, 2016

charities are not small in number either – charities with an income of less than £1m make up 97% of the charity sector.⁶

We have raised these challenges with Government and have been supporting Government to address them, both in developing proposals and co-publishing a toolkit with charities for commissioners in Wales tackling violence against women, domestic abuse and sexual violence.⁷ Yet more change is needed – and doing so requires a deeper understanding of the issues at play.

In response, this research delves into the detail of the challenges faced in commissioning. We set out to understand the processes which are driving smaller providers out of the market place, but in doing so uncovered that commissioning practices are not just challenging for the small; they are challenging for all. Good examples of commissioning have been difficult to find, while examples of poor commissioning practice exceeded expectations in both depth and breadth. The challenges incurred by a flawed approach are having the biggest impact on those providers which are small and local, those organisations that have developed in the communities they serve - organisations that have developed responses and services that reach parts of the population the Government never could and that the state now wants to commission.

For the charities providing evidence from 120 tender processes which invited organisations to bid to run public services, more than half reported that they were either prevented from bidding or they were unsuccessful. Even those that secured some money reported many difficulties in the process.

This report investigates how this has happened, revealing the sometimes ludicrous scenarios where processes have overtaken common sense and standardisation has led to the lowest common denominator for service delivery. It shows how current commissioning practices are preventing services that support disadvantaged individuals in need from receiving the support they need to do so. It also sheds light on how the processes themselves are having a devastating impact on a charity's ability to compete to provide this support.

Commissioning does not have to be this way. In this report we recommend systems that commissioners and Government more widely should adopt to ensure commissioning works for everyone. It uses real life examples across services from mental health to domestic violence and unemployment to criminal justice to name but a few. The impact these actions have on charities

⁶ [The Civil Society Almanac](#), NCVO, 2016

⁷ [Tackling Violence Against Women, Domestic Abuse and Sexual Violence: A collaborative commissioning toolkit for services in Wales](#), Lloyds Bank Foundation for England & Wales, Imkaan, SafeLives, Welsh Women's Aid & Women's Aid Federation of England, 2016

built on local expertise are significant not just because of the threat they present to local providers, but because of what this means on the ground, to the availability of services for those who need them most.

Methodology

This report collates evidence from more than 120 different tenders, including those published by local authorities, CCGs, PCCs and Central Government departments. Information was collected both through a survey, discussions and wider evidence gathered by our network of Grant Managers visiting charities on the ground right across England and Wales. The report is focused on services for individuals facing multiple disadvantage, i.e. the services often best delivered by locally embedded small and medium-sized charities. It includes a wide range of social welfare services such as those around mental health, criminal justice, domestic abuse, substance abuse and unemployment. Charities supplying information for the report predominantly have an income between £25,000 and £1m. All of the information shared in this report is done so anonymously, with the words of charity representatives used to tell the story as it happened for them.

The rationale: Why commissioning small and medium-sized charities matters

Commissioning lays the foundations for everyone to access appropriate and effective services and is central to tackling some of society's toughest problems. It has to be able to fund organisations with the answers to these problems. Small and medium-sized charities often have the answers so it's critical that commissioning works for them.

Small and medium-sized charities typically started in response to local needs, developing services where there were none and giving a voice to those who were ignored:

“Charities can be flexible and needs driven, they provide a better quality and more cost effective service. They are used to doing more with less and don't have to follow a 'one size fits all' approach.”

Embedded in the communities they serve, they are able to deliver high value services, leveraging in extra funding from other sources and working with large numbers of local volunteers. By delivering targeted and person-centred services they are able to avoid the failure-demand that disadvantages so many larger, generic service providers.⁸ When these charities lose out in commissioning, the impact stretches far and wide. From the impact on those involved in competing for bids:

“This bid nearly caused me a nervous breakdown.”

To the people they serve:

“It was our whole world, we were terrified of what would happen to our service users if a less passionate and caring org won the contract.”

To the commissioners who have to deal with the cost of re-commissioning when ineffective providers' services do not meet local needs:

⁸ [Saving Money by Doing the Right Thing: Why 'local by default' must replace 'diseconomies of scale'](#), Locality, 2014

“[The commissioner] had de-commissioned the specialist service... and commissioned a generic... provider. The generic... provider had been [previously] decommissioned for poor service.”

All of us lose out when there is reduced access to the services that would help everyone overcome the issues they face and maximise everyone’s potential in society. Commissioners and Government need to be able to work with small and medium-sized charities if they are to meet the needs of people in communities throughout the country. These organisations are essential to achieving Government’s objective to benefit “all of our citizens, every one of us, whoever we are and wherever we’re from.”⁹ They are the eyes and ears on the ground that can feed into and direct Government work and they are responding to often severe needs in real-time in a way that Government itself never could without them. If Government is to work for every one of us, commissioning has to work for every one of us too.

⁹ [Statement from the New Prime Minister](#), Theresa May, 2016

Part A: The breadth of poor practice

While the examples of commissioning's 'worst offenders' included in the Executive Summary are from the more extreme end of the commissioning spectrum, they reflect the wide-reaching problems of commissioning which span geography and sector. They are not only problematic in the challenges they cause themselves, but also in the behaviour they can encourage in larger providers.

1. The challenges in commissioning

The examples of commissioning challenges collated in this research were broad but all fall within three themes:

a) Understanding: commissioners' lack of knowledge about the service they are procuring and the needs of individuals can lead to practices which trivialise local expertise and shut out those with the skills and knowledge to meet needs effectively.

b) Processes: the processes commissioners follow can inadvertently impede on providers' ability to bid effectively and successfully.

a) Specifications: aspects of contracts and tender specifications can automatically exclude smaller charities.

The consequences of these problems disproportionately fall upon small and medium-sized charities who are powerless to change the system. The following sections take a closer look at what has gone wrong, as the first step in recognising how commissioning can better serve individuals accessing services.

a) A lack of understanding

Understanding the issue that services are being commissioned to address is critical to designing and assessing the most appropriate service. Understandably, commissioners themselves are under pressure here. It is often not possible to be an expert across the range of needs for which services have to be secured and commissioners may fear conflicts of interest or breaking competition rules if they consult or negotiate with potential providers. Many departments have faced restructures and severe budget cuts which in themselves present significant challenges, but commissioners are

ploughing ahead with commissioning processes before fully getting to grips with the issue at hand. These can all result in both time and money wasted in the long term.

In too many cases, this fundamental principle of understanding is overlooked:

“Total misunderstanding by contractee about who the named client group are, what their needs are, and no recognition of the need for established relationships in order to effectively deliver.”

As is consultation:

“Throughout the process it was clear to us that the [commissioner] had little experience of the needs of this client group. They....didn't consult with others locally or nationally on what might be achievable.”

As is expert advice:

“We did not feel that there was a real understanding of [the issue] within the tender - the commissioners did not use an experienced expert in putting the specifications together.”

They are even failing to make use of information gleaned from years of local service delivery:

“Having previously provided a service that was well thought of, we would have assumed that the Council would take the learning and seek tenders based on the success of the service, with any enhancements and improvements that they would have wanted to add. Instead they totally redesigned the contract and we were clear that the contract in that form would fail.”

Competitive tendering of contracts demands a thorough understanding of the need for a service because the specifications prescribed by the commissioner set out what service is to be delivered and in what way. As a result, it is the commissioner deciding this, rather than the provider who brings a solution to the problem. A lack of understanding when commissioning through contracts can mean that:

- Services that individuals need are not recognised and built into the tender

- Organisations that are already delivering these services are overlooked
- Unrealistic expectations are set of services:

“The scale of the contract and geography involved were not given enough thought re. how it would be possible for any provider to deliver and work meaningfully... The contract design needs to be realistic.”

Those bidding to run services, who understand the issues and how to tackle them, would traditionally have questioned unrealistic expectations or approaches which they believed would not bring the desired benefit. However, evidence has emerged to show this is being discouraged. In addition, relationships are breaking down as commissioners move away from a consultative approach.

A lack of emphasis on learning has in too many cases seen effective monitoring overlooked once a contract is in place. This is particularly problematic where large providers have detailed in their bids that they will work with local specialists:

“Commissioners believe that it is taking place but there are no effective monitoring requirements so, in reality, little of value is happening and commissioners remain unaware.”

What does a lack of understanding look like?

In one case, a tender in the Midlands was launched six months before new legislation came into force that would impact on the service being purchased. This happened despite potential providers raising questions about the implications the legislation would have early on in the process. Four months later (a few weeks before the contracts were due to begin), the whole process was retracted to enable commissioners to assess the implications of the new legislation on services. The resources invested in the commissioning process by commissioners and providers were wasted and providers were left unable to plan beyond a six month contract extension. This unnecessary and poorly planned process inevitably raises questions about the good use of public funds.

Implications

The issue of commissioners understanding what they are trying to buy, how and from whom is intrinsically linked to value for money. Both in terms of understanding the costs involved in different commissioning approaches and a lack of understanding of the real needs and issues leading to unit cost trumping quality. Commissioners do not realise the consequences of their decisions on the services that are commissioned. The implications of this approach are two-fold:

1. Some charities that may be best suited to delivering services do not bid, knowing that they would not be able to deliver an effective service at the price on offer:

“We called an extraordinary Board meeting to decide whether to apply as it seemed prices would not meet costs.”

2. In placing too high a weight on unit cost, commissioners may select services which do not meet the need of service users:

“The weight towards value for money meant that larger organisations could undercut us. We did not propose a costly service, indeed, we offered great value for money, as well as a safety net of already existing services and funding streams. However, the weight towards value for money was 30% - even where we scored highly on all the other categories, we could not have won. We were not prepared to offer a poor quality service.”

What does a lack of understanding mean for smaller charities?

A small charity in Yorkshire acknowledged that the tender put them ‘between a rock and a hard place’. They knew the contract would be hard to fulfil and wasn’t designed to best meet needs, but they still would have worked hard to make it work any way they could – because they exist for those who need them, not for economic opportunities.

b) Specifications actively disadvantage small and medium-sized charities

Many factors about the commissioning process present challenges for all providers, with small and medium-sized charities facing the biggest uphill struggle. Things can get tougher still when specifications actively prevent smaller providers from bidding, despite these specifications not being proportionate or relevant to the service being commissioned. United in their irrelevance to service quality, they can take a number of guises:

- **Contracts sizes unrelated to services**
- **Disproportionate financial specifications**
- **Inappropriate and restrictive payment mechanisms**
- **Unclear and underfunded TUPE specifications.**

i) Contract sizes unrelated to services

The growth of ever larger contracts is closely associated with Government funding increasingly focusing on larger organisations. Small and medium-sized charities' income from Government contracts *decreased* by up to 37% between 2008/09 and 2012/13 while Government contracts to the largest charities *increased* by 34% in the same time.¹⁰ The reality of this trend of smaller providers losing out is reflected in one charity's experience:

“In 2011 40% of our funding was from government grants, in 2015 25% of our funding was government grants and contracts and 2016 it is now down to 3%.”

This has contributed to this charity's total income falling by 63% over five years.

¹⁰ [Navigating Change: An analysis of financial trends for small and medium-sized charities](#), NCVO, 2016

An apparent unquestioning belief in economies of scale has seen contracts get bigger:

“All modalities that had previously been commissioned as smaller contracts were amalgamated into a contract”

“The size of contract increased from an average of £200k per year to £1m per year.”

There is a fear among smaller charities that this shift represents a desire for commissioners to cease working with them, and it's supported by the range of measures that have been put in place that inadvertently play against them:

“Being a small organisation who had previously delivered the service at less than 1/4 of the amount now being tendered, we were looked upon as 'maybe too small to deliver the service'.”

While the main driver for larger contracts is believed to be cost savings, there is also an argument that commissioners see them as an opportunity to encourage more joined up services and standardised responses across the region. Yet the processes involved can mean that the end service, while standardised, is done so to the lowest common denominator with specialisms, local knowledge and understanding, lost and quality diminished as a result:

“The driver for this change was largely cost savings - however, I think there was a genuine desire for services to be

Why does size matter?

Small and medium-sized charities are specialists at adapting their services to individual people. They tend to avoid a 'one size fits no-one' approach which makes them well placed to deliver complex services. Larger providers which don't understand local needs can struggle to deliver services in such a personalised way.

integrated, work better together across the county... [We] supported the ambition to create one large service but felt the timescales were far too tight to enable the level of service transformation and partnership development which would be required to enable a proper supply chain to be developed."

Many of the larger providers that now win the big contracts are new to the area, attracted by large contract values and the prospect of increasing market share:

"The size of this contract attracted predatory national organisations"

For commissioners, this can be seen as beneficial:

"The contract went to a national company with no track record of [the issue] as they promised to invest money in the borough."

However, this fails to recognise that local providers can still bring in new money, not least through the additional resources local charities leverage from trusts, businesses and individuals. New money from big providers does not always materialise and if it does, does not equal better money. These outside organisations typically have no local footprint and win the contract over the established local provider who has developed in response to the need, before any large contracts were ever available. When these local charities lose out, so too do the service users as the new services lack the knowledge, experience and relationships that have been built up over many years. It can also impact on the additional resources that the local charities would have otherwise been able to leverage into the area.

While commissioners may argue that smaller charities can still compete by working in partnership, as evidenced throughout this report, it is often not possible due to the commissioning process used and, in particular the lack of accountability in subcontracting arrangements. There are no assurances for charities working in any form of partnership, whether this is with a prime provider or a more balanced arrangement. This can largely be attributed to commissioning processes which do not provide enough time or give too much power to larger providers:

“The [commissioner] merged a series of small contracts into a single tender... The [commissioner] encouraged partnership bids e.g. held networking events. However, [they] did not require prime providers to give any assurances to supply chains regarding subcontracts (“not their role”).”

Where partnerships do form, it’s normally at the expense of the charities involved, negotiating relationships across a range of providers, reminiscent of the role commissioners used to play when managing a series of smaller funding agreements:

“We, the group, are doing the local authorities’ commissioning work for them, unpaid, taking large amounts of CEO time away from achieving their charitable objects.”

Across all of these challenges, questions arise about whether larger contracts result in the savings they pursue. Economies of scale can disguise the higher overheads of bigger organisations and the lower impact of more generic interventions¹¹:

“Deeming an integrated contract to be better ‘value for money’ and removing small sums (often around £25,000) from small organisations achieving great impact in favour of large providers where such a sum may be swallowed in large

What really happens when local charities miss out in commissioning?

One of the charities the Foundation supported in the South East recently returned its grant after losing out in a separate commissioning process locally, thanks to the commissioner’s move to a larger contract. The charity’s service was not viable without local statutory support. By the local charity losing the contract, the area subsequently lost all the additional funding the charity had already secured, including the Foundation’s investment.

¹¹ [Saving Money by Doing the Right Thing: Why ‘local by default’ must replace ‘economies of scale’](#), Locality, 2014

overheads or used to fund a single salary of someone with no experience in family support.”

Where both costs and service quality suffer in the long term, it is clear that commissioning is not achieving what it needs to.

ii) Disproportionate financial specifications

It is not uncommon for commissioners to place financial specifications in a tender as a means of minimising financial risk. When used excessively they can shut out smaller charities in two ways:

1. Requiring a total income that is not related to the size of the contract on offer:

“While being able to successfully deliver a contract of the size on offer, we have a total annual income of £200,000 so we were automatically excluded from bidding as our annual income was deemed too small.”

2. Requiring evidence of delivering a contract of a much higher value than the one on offer:

“Evidence of successful management and delivery of a contract value over £1million (our largest is £500,000) [despite the contract on offer being far lower than this].”

In both cases, these automatically but arbitrarily exclude providers with no regard to the fact that they may be best placed to deliver the service. It can be particularly infuriating for small and medium-sized charities when these specifications have been added to new tenders despite not being required previously:

“We needed a turnover of double the contract value which cut us out. We had to partner with an organisation to meet the turnover requirement, despite the fact that we had successfully delivered this on our own for 3 years.”

Excessive insurance specifications have a similar impact:

“A guarantee that you will provide insurance to indemnify the [commissioner] against claims of abuse for twelve years after the end of the contract.”

Such demands are unrealistic, disproportionate and beyond the means of a small or medium-sized charity. In setting these specifications, commissioners are placing a higher value on organisation size than what an organisation can deliver and achieve, despite Cabinet Office guidance which advises against imposing ‘arbitrary minimum requirements’¹². They are particularly disproportionate in their impact when they are not even scored in the bidding process:

“The measurement of risk on held reserves and revenue was not a scored section and so had no effect on the outcome. We did ask if so why it was included as this would immediately bar all small agencies. No true answer was received.”

iii) Inappropriate and restrictive payment mechanisms

As commissioners move away from grant payments towards contracts, there has been a tendency to adopt a payment by results approach which pushes the financial risk on to providers. This has been shown to prevent smaller charities from competing because they do not have the cash reserves to be able to pay for services up front:

“The contract is on a payment by results basis which is almost impossible for the voluntary sector to cope with as most organisations do not have the funds to cover the cash-flow issues this causes.”

Consequently those charities who may be able to deliver the best results are prevented from doing so. Social impact bonds have been suggested as a means to address this problem, attracting external investors to make the upfront payments. However, these processes are typically suited to much larger organisations and are yet to be proven as an effective approach for smaller providers. These bonds would also not overcome the problems that stem from payments by results approaches as they fail to recognise how payments should be determined. In setting success targets that trigger payments, commissioners can over-simplify what can be highly complex issues.

¹² Procurement Policy Note 01/12: Use of pre-qualification questionnaires, Cabinet Office, 2014

Similarly, payment by results does not reflect the vital preventative role that many charities perform:

“For every outcome we can deliver and every statistic that we can provide to funders, it is practically impossible to share the extent of the emotional effort that can go into supporting clients with no discernible outcomes and nothing that can be articulated in monitoring reports. Many of these cases might be classed as ‘unsuccessful’ as we have not hit a target with them, however we have provided a lifeline for young people in crisis and possibly prevented some potentially horrible situations from developing.”

Once again, this hits small and medium-sized charities the most, because they do not have the additional income to easily make up for shortfalls in statutory contracts. Other funders, such as independent foundations, often will not fund services that should be covered through the state. This can leave charities with limited options when it comes to making up the shortfall.

(iv) Unclear and underfunded TUPE specifications

TUPE requirements are understandably complex at the best of times and, whilst recognising their importance for employment rights, can prevent charities from bidding and winning contracts where the TUPE liability is too high. Much of the problem lies in commissioners putting services out to tender that have high TUPE liabilities without the contract value to match:

Why don't payment by results work ?

Payment by results mechanisms don't recognise external factors and wider system failures that could mean an individual continues to need help, no matter how successful the service is. These factors are not reflective of the quality of service they have already received which do not come for free:

“We're paid for unique service users so if a survivor completes her journey and then comes back into service within 12 months, we won't be paid for her again. This contract fails to recognise that we can do everything in our power to make a survivor safer but we have no control over the perpetrator so a woman may come back into service because he has further assaulted her despite the full range of safety measures that we've put in place.”

“[We] encountered significant barriers because of the TUPE requirements which made the tender uneconomic to deliver”

“The cost implications of the existing staff structure left very little surplus to recruit our [worker] to plug the gaps in service provision so there was very little point in tendering. Plus we could not underwrite the cost of future redundancies under the TUPE arrangements.”

The complexities involved in navigating these requirements are further complicated where commissioners fail to provide accurate information:

“[The commissioner] would not provide necessary TUPE info. The incumbent provided salary commitment for TUPE of over 150% of the total value of the contract. The [commissioner] then said we did not demonstrate ability to mitigate TUPE liability.”

Such a lack of information would make bidding difficult for any organisation but for smaller charities the challenge is far greater. They do not have the legal or HR expertise on hand that is available to larger providers. Their ability to compete is impeded further by TUPE expectations which go above and beyond normal expectations and place even more unrealistic demands on potential providers.

c) Charities pushed out by processes

Commissioners' knowledge and understanding, or lack of, together with disproportionate specifications are not the only factors that can make commissioning challenging for small and medium-sized charities. The processes put in place can both discourage and disadvantage some providers particularly those who don't have access to dedicated, specialist bid writers. At the same time, these processes bear no relevance to the quality of the service provided by the commissioned service. The challenges centre on:

- **Excessive application requirements**
- **Tight timescales**
- **Shifting goalposts and a lack of communication.**

(i) Excessive application requirements

Most of the evidence collected in this research relates to contracts with a value of between £100,000 and £600,000 per year, with many falling under £150,000. Yet the application processes often appeared more suited to multi-million pound contracts for no discernible rhyme or reason. Complex applications are no doubt costly and time consuming for all to complete, but they without doubt are most difficult for small and medium-sized charities. These organisations already have demands on their resources that stretch them to the limit, if they are able to compete at all. The challenge begins even in getting to grips with what is included in the tender and associated process:

“The bidding process was extremely long-winded and took our CEO 5 days to read all the relevant documents, clarify the meanings of many of them,...and gain advice on how to answer obscure questions which felt irrelevant to our service.”

The time and resources inevitably increase considerably once the charity has established whether they are in fact able to bid:

“It was a huge amount of work. It involved approximately two staff members and took 10 days of our time. We only have 10 staff so this is a significant amount of work.”

“We are a very small organisation so reams of paperwork are out of all proportion to the benefit we might get from this sort of commissioned work.”

While it is important that commissioners go through diligent processes, questions need to be asked about whether all of the information requested is relevant, appropriate or even used in the decision making process and whether simpler procedures could be introduced. The key issue here is that these excessive application procedures are not proportionate to the value of the contract on offer.

In one example, 27,000 words were required for a contract worth less than £350,000 a year:

“The method statement within the Invitation to Tender was 44 questions, each with word limits of 500-2,000... We felt this to be excessively complex for the value of the contract, and it was difficult for a small, local, specialist organisation to compete on an equal basis with a professional bid writer from a generic regional provider.”

The excessive nature of application processes is not only an issue for bidders. There are resource

What does an excessive application really look like?

In one example, the excessive nature of the tender process for a community mental health service was evident throughout all stages for a contract worth less than £800,000 a year:

Stage 1:

We successfully got through the PQQ stage 1 with a good score of 70% and were invited to all subsequent stages.

Stage 2:

A 25,000 word...application requiring diagrams, charts, signed forms from potential subcontractors and consultations meetings with them.

Stage 3:

6 x Competitive Dialogue Meetings including presentations, flow charts, partners to briefed for each meetings (8 week process)

Stage 4:

Final invitation to tender - another 25,000 [word] document to be completed and more flow charts and signed documents from subcontractors and partners.

implications for commissioners themselves in preparing and responding to them too:

“The documentation sent to us probably cost more than the contract. The standard operating contract was several hundred pages long.”

Commissioners are required to invest significant resources and time to assess excessive and lengthy bids. In many cases this is demanded despite many charities having delivered the service for many years without the need for reams of detailed documentation. This inevitably begs the question as to why it has been introduced, where it appears to have no benefit to the commissioner, provider or service:

“There has to be a better and more efficient means of commissioning and procuring contracts...that does not involve commissioners and providers spending thousands just to save a few pennies.”

It can have a negative impact on the services delivered, whatever the size of the bidding organisation:

“Not only will excessive requirements prevent smaller organisations from competing but they will also result in resources being diverted from service delivery in order to meet them which ultimately could see a reduction in service quality - commissioners need to give consideration to the time taken to complete the tenders and whether this is appropriate for the contract value.”

(ii) Tight timescales

While many charities report delays in tenders being published and uncertainty around the future funding of services, the timescales given to those bidding when tenders are published can be a matter of days or weeks – the charity bidder always has to bear the consequences. Such short application windows can have a debilitating impact on local charities who typically rely on a small number of employees, supported by more volunteers. These charities are inevitably focused on delivering services so tenders often have to be completed out of hours:

“We all pitched in, and worked out of hours many evenings as a team”

“We were bidding against large organisations, with teams of professional bid writers....we still had our ordinary day jobs of delivering services to do, writing the bid was something we had to do on top of that.”

Tight timescales are particularly problematic where partnerships are involved. Partnerships can be very timely to negotiate, especially where they are encouraged by tenders rather than being pre-established ways of working:

“There was very little lead in time for proactive conversations to take place and the eventual tendering "window" was only about 6 weeks long and took place over the summer. There was insufficient time for everyone to come together to design the service.”

Further difficulties are added when these tight timescales take place over traditional holiday seasons when staff numbers are even lower. Examples of this can also be seen when one-off funds are made available nationally which are not tied into existing funding cycles. Once again, it indicates a lack of understanding about which providers will be best placed to deliver services and how they operate.

The impact of pressures on service providers brought about by tight timescales reach beyond those directly on the providers themselves and cut to the very nature of the services being commissioned:

“The turnaround for the tender was a matter of days so the bid was rushed, running the risk that plans and targets weren’t fully thought through.”

(iii) Shifting goalposts and a lack of communication

Much of the anguish induced by commissioning stems around a lack of communication:

“It was like playing guess what's in the commissioners' heads!”

It is exacerbated when specifications change at the last minute or without communication. This can prevent organisations from putting forward a suitable service offer:

“Crucial information was changed at the last minute, making it impossible to create a viable budget for the service.”

Given the time and resource it takes for providers to bid for tenders (time and resource which is inevitably diverted from service delivery), it is important that their time is not wasted by commissioners shifting goalposts. This is particularly the case when changes mean the provider will no longer be able to bid, removing any chance of reward for their effort:

“After being told about whom to partner with to submit a bid (which we partnered with and developed a service model) following the marketplace event, the commissioners totally changed the specification of the service from what they said they were looking for at the marketplace event, also meaning we were no longer eligible to apply.”

For those that can still apply, they are at risk of specifications changing which can make their bids less suitable, without having had a fair chance to make amendments. This could relate to aspects of the bid which are subsequently left out:

“The [commissioner] also put things into the spec which we weren't aware of at the last minute, and withdrew parts of it without being clear what they had withdrawn...We hadn't done any of this and it was a surprise to us that it was in there, so we immediately lost points.”

Excessive reporting requirements

Excessive processes aren't only an issue for bidding. It affects reporting too, with strict and onerous reporting standards for those who are delivering services. This impacts on commissioners' time as well. For one small charity in the North West, they have to submit and present a 39 page report quarterly which subsequently has to be digested by five senior authority staff members in addition to the countless hours of administration associated with it.

Or from specifications that were included but no longer necessary:

“Throughout the pre-procurement there was a requirement to partner with an organisation... This was withdrawn but it wasn't made clear so we partnered with an organisation and lost points for doing so.”

Or for budget changes:

“A cut of 22% in the budget overnight meant that the service we delivered was never going to be able to meet the aims of the original tender.”

For providers that have actively sought clarification from commissioners, shifting goalposts that are not communicated can be especially infuriating:

“We asked a specific question regarding one area of work and [were] told that wasn't included. We later found out that the successful providers had included the service we had been told was not included and that was part of why they won.”

The lack of transparency is also apparent even where tenders imply they are open to smaller providers:

“Contracts which were advertised as separate opportunities being awarded, instead, to one provider as an ‘integrated’

Is it just a breakdown in communication?

Problems are not just about a lack of information, but the wrong information too. A charity in Wales was advised by the commissioning lead to bid with two other small charities as consortium bids would be favoured. In reality, the contract was awarded to the only bid that was a single provider.

service (the service believes that this was always the intention but commissioners weren't transparent, leading to wasted time and false hope)."

Once more, these factors make it hard for any providers to bid but the challenge is particularly great for smaller, more local charities. With fewer administrative resources, they are less able to adapt to changing specifications as their organisations are focused on service delivery and time spent bidding is inevitably time taken away from the day job of meeting individuals' needs.

Both shifting goalposts and delaying tenders make these charities vulnerable. It can affect smaller organisations the most because they tend to rely on a smaller number of income sources¹³ and do not have the cash reserves to make up for an unexpected shortfall or a prolonged delay in contracting:

"Difficulties were caused by the [commissioner] constantly changing its bid dates / closing dates. The whole process took a year of uncertainty and instability. We couldn't plan properly, staff and service users had the threat of withdrawal of services, or redundancy hanging over them all that time."

In the most extreme cases, commissioners simply closed the tenders, opting to deliver the service in-house or discontinue funding for the intervention, perhaps with an intention to re-tender at a later date.

Where charities do bid and lose out, their future chances of winning a tender are further marginalised when commissioners fail to provide any feedback on their bid:

"I have requested feedback on our bid and have, as yet, had no response."

Learning from the feedback could be invaluable for a provider but there are reports of commissioners refusing to even provide details of how the charity scored, let alone provide information about how it compared with others. These are often wrongly attributed to data protection regulations. Aside from preventing charities from building on their failure, this secretive and prohibitive environment breaks down relationships further and raises suspicion as to whether fair processes have indeed been followed.

¹³ [Too Small to Fail: How small and medium-sized charities are adapting to change and challenges](#), 2016, IPPR North

2. The impact of poor commissioning: The role of larger service providers

The impact of poor commissioning practices throughout this report stretch far and wide. They include poor practice amongst some larger providers, including some large charities. Evidence of this began to emerge in the survey results we published last year¹⁴ and continued through this latest research. It shows how the prospects of smaller charities, those specialists with local expertise, are very dependent on how larger organisations, whether they are companies, statutory providers or large charities, choose to behave.

With commissioning decisions driven by unit cost, larger providers are able to use their scale to drive down prices, whatever the implications for service quality:

“Some even bid on a loss-leader basis, so they don’t expect to make or may even lose money, because they want to get a foothold in a particular market.”

This emphasis on cost irrespective of service quality which sees more large providers being more successful has weakened the arm of smaller charities, forcing them to accept the poor terms of prime providers and having little come-back when agreements are ignored.

What is the impact on smaller charities?

For a charity in the Midlands which had delivered services for thirty years, their survival became threatened with the arrival of big contracts. These big contracts were attractive to large providers. The smaller charity adapted by forming partnerships but their experience shows how some larger organisations are not keen to work with local agencies. These organisations show no or little regard for the smaller charity’s expertise and trusted position in the local community.

¹⁴ [Expert Yet Undervalued and on the Frontline: The views and voices of small and medium-sized charities](#), Lloyds Bank Foundation for England & Wales, 2015

Problems can start to arise during the bidding process itself. There are numerous examples of charities that have been unable to bid because larger providers did not want to work with smaller, local providers:

“Bigger organisations...repeatedly ignored our attempts to contact them with a view to sub-contracting”

Even where procedures are put in place to encourage partnerships with smaller providers, they are not always done in a meaningful way:

“The bid had to be made by a large org. The prime locally ran an "engagement evening" but it was clear they were just ticking a box.”

In some cases, smaller charities contribute to the bidding process but then are left out of the bid altogether:

“The charity reneged on their promise and cut out our charity...., advising us at the last minute that we had not been included. We challenged them but they didn't seem to care and were quite arrogant about it.”

For some, these negotiations are even more fraught where the large provider puts a condition on partnership working which prevents the smaller charity from being a part of any other bids, only to drop the smaller charity in the final hour. Inevitably, this is too late for the small charity to find another partnership to join.

Where smaller charities are able to be included in the submitted bid, problems of ‘bid candy’ arise. Bid candy is a situation when smaller charities are included in bids by larger organisations with an expectation that they add knowledge and legitimacy to the proposal. After the bid has been won, small charities receive few if any referrals from the prime provider. This was identified in our research in 2015¹⁵ and the latest commissioning evidence shows that the problem pervades:

“We were named as a subcontractor in the winning bid but were never commissioned.”

¹⁵ [Expert Yet Undervalued and on the Frontline: The views and voices of small and medium-sized charities](#), Lloyds Bank Foundation for England & Wales, 2015

There is also evidence to show that larger charities are actively relinquishing contractual agreements in favour of maintaining all the money in-house after bids have been won:

“The contract was awarded to a national charity that has not worked in this area previously. They included us within their tender as a subcontractor and to demonstrate their local links...but then 3 days before 'go live' date, they decided they would TUPE the staff and not sub-contract after all...As such, the TUPE'd staff are now providing generic support and there is no longer a specialist service [...] in the county.”

The impact on skills and experience, factors which are critical in delivering meaningful services, cannot be underestimated:

“In terms of loss of expertise, many of those who might have TUPE'd over have left and also all seniors have been made redundant in spite of great expertise – and we have lost several hundred years of experience.”

For those that do receive referrals, they remain subject to the demands of larger organisations:

“When the tender became successful the agreed funding to deliver the service was reduced and the number of participants for the program was increased by the lead partner who won the contract.”

Other examples show how larger generic charities are sweeping up contracts, yet fail to deliver the service they are paid for:

“The bid was won by a national organisation who had few local contacts - but have been able to run the service by signposting to other services who are not actually receiving funding to provide the service.”

Of course, not all large providers set out to take advantage of smaller charities for their own gain, but current commissioning processes allow big providers which are profit- or market-driven organisations to behave as they wish, irrespective of the impact on smaller providers and service users.

Part B: Towards a brighter future

1. Recommendations for commissioners

While the challenges presented by commissioning appear high, none of the issues are new and neither are they insurmountable. The challenges brought by commissioning do not drive up service quality and have often come about through more generic process changes that have unforeseen consequences. Many charities themselves have tried to respond to these challenges:

“Small / medium charities are being told the answer is to change to stay alive. We did, we built, we changed delivery.”

But their changes alone are not enough. They need to be met in the middle by commissioning practices that do not place them at an unfair disadvantage. Commissioners have the power to affect change and in many cases, doing so will simplify their own processes and reduce their own costs in addition to ensuring the best services are commissioned for people and communities.

This section outlines the steps that commissioners themselves should take to overcome the challenges outlined in the research. They build upon the best practice approaches such as the Merlin Standard¹⁶ that already exist and while simple in their approach, could revolutionise commissioning and services. Many of these solutions come from providers themselves, developed through a thorough knowledge and understanding of the communities they serve and grounded in everyday experiences of how best to meet pressing needs. It is through these steps that commissioners can **“challenge the status quo”** needed for the **“effective delivery of policy, solutions or services”** that is supposed to be embodied in commissioning.

¹⁶ www.merlinstandard.co.uk

Primarily among commissioners, this means:

- **Increasing understanding**
- **Taking a proportionate approach, with non-discriminatory specifications**
- **Placing more emphasis on social and long term value, using effective processes**

a) Increasing understanding

According to the Cabinet Office, commissioners need to:

“Gain a deep understanding of the need and target resources effectively to meet those needs.”

Taking the approach back to first principles, commissioners need to begin by recognising:

“The values and ethics that should underpin working with very vulnerable people.”

It’s imperative to accept that commissioning services for individuals at risk is different to purchasing pencils or toilet rolls and processes must reflect that. Training for commissioners will always be essential, and there are opportunities available if they receive sufficient investment, such as through the Commissioning Academy.¹⁷ Investment in training can increase long-term value for money as commissioners are better able to respond to local needs:

“Whilst we and other local charities need to look at improving bidding skills we also need to educate the people awarding contracts that big is not always best.”

Commissioner’s training budgets are inevitably under pressure themselves but this should not limit the level of understanding available to individual commissioners. It’s recognised that commissioners increasingly work across a number of different areas and they will not always be experts in all the issues for which they commission services themselves – but they

¹⁷ www.gov.uk/guidance/the-commissioning-academy-information

should seek support from those with the expert knowledge. There are a range of approaches which can support this, as set out below.

Checklist for commissioners:

- ✓ **Engage in meaningful consultation with existing providers and service users**
- ✓ **Ask experts for advice to establish which services are needed, where and how**
- ✓ **Make use of learning from existing services**
- ✓ **Co-produce services with local communities**

Engage in meaningful consultation with existing providers and service users

Timely and meaningful consultation offers a host of opportunities for commissioners. In reality consultation should be a key aspect of every stage of the commissioning cycle, but the nature and focus of the consultation will change to reflect different needs:

“Good commissioning involves public bodies consulting people properly about services, engaging with and developing the supplier market, and considering social value – all before getting to the procurement stage.”

Engaging service users and providers enables commissioners to not only understand individuals' needs but also to learn from their experiences:

“Dialogue with existing providers [highlights] what works well and what needs improving.”

Understanding which services already exist and are meeting needs locally is central to this. It can help in both service design and assessment of submitted bids which in turn can ensure that the services commissioned are those which most effectively meet need and provide the most long term value. The Public Contract Regulations 2015 explicitly allow for consultation on the specification and the commissioning process.

The local knowledge gained through consultation is key to understanding which services will best meet local need. It's important that this knowledge is taken on board and used during tender development and decision making processes – the Cabinet Office notes that involving service users in decision making processes is encouraged under EU law.¹⁸ Understanding local need mustn't just be a tick-box exercise and requires an investment in both time and money. Genuine consultation must be properly resourced. Engagement isn't cost or time-free and this needs to be built into the commissioning process from the very beginning – it has to begin with consultation on strategic decisions that form the very start of any commissioning process.

Ask experts for advice to establish which services are needed, where and how

Consultation can be further built upon through specific expert advice. In many cases it is available through second tier charities which would not be competing to deliver services themselves so does not raise issues of conflicts of interest. Experts such as these can help throughout the commissioning process and can be particularly insightful in assessing the local context:

“Before commissioning there has to have been a needs assessment, ideally carried out by an independent but someone with knowledge and understanding...to focus on services not just contract costs and cost savings.”

Experts can also help to design services and support commissioners to understand what should be expected of services.

This is essential because experts will often be able to bring real life experience to the commissioning process. It can help services to be designed 'with, by and for' the individuals and communities they seek to support, providing the insight and experience needed to deliver successful outcomes.

¹⁸ [The Art of the Possible in Public Procurement](#), Bates, Wells & Braithwaite, E3M & hct group, 2016

Make use of learning from existing services

Commissioners typically have access to significant amounts of learning from former contracts, often available from many years of service delivery. Much will already be accessible through existing contract monitoring and reporting arrangements. This learning needs to be properly used to better understand what is or is not working. Improved, proportionate monitoring would enable commissioners to learn in real time and ensure that the services that are delivered meet needs, and would compel action where they do not.

Commissioners should also be able to learn from counterparts in other areas, sharing their own experiences about what has worked or not worked. Opportunities to learn are available through structured means such as the Commissioning Academy but informal networks also offer a range of opportunities for peer support.

Co-produce services with local communities

Following all of these processes would help commissioners to achieve co-designed services that work for service users, Government and service providers and make sure that every pound of public money is spent in the most effective way:

“Commissioners need to listen to what the deliverers of services are saying. They need to find out what the people actually want and not want the Council thinks they need. True co-production needs to be at the heart of bid design.”

b) Taking a proportionate approach, with non-discriminatory specifications

Taking a proportionate approach to commissioning also applies to the specifications and weighting of requirements in decision-making processes. There are a number of practical steps which commissioners could take to level the playing field in competing for funding and which would help ensure that the Treaty principle of equal treatment behind EU rules is followed¹⁹. This would retain focus on the need being addressed and the skills and expertise of those best suited to deliver the service, as set out below.

Checklist for commissioners

- ✓ **Allocate funding in smaller lots which are relevant to the service being commissioned, local market and geography**
- ✓ **Adopt 'simplest by default' payment structures which are suitable for the service being commissioned, making more use of grants and non-competitive approaches**
- ✓ **Increase the accountability and transparency of subcontracting**
- ✓ **Place more emphasis on the social value that can be generated**
- ✓ **Support small and medium-sized charities to prepare for the tender process**

¹⁹ [The Art of the Possible in Public Procurement](#), Bates, Wells & Braithwaite, E3M & hct group, 2016

Allocate funding in smaller lots which are relevant to the service being commissioned, local market and geography

Designing contract sizes around end need and purpose, rather than commissioner-convenience and making use of smaller arrangement would overcome many commissioning challenges. They are already supported in legislation - the Public Contract Regulations 2015 already encourage contracting authorities to 'break contracts into lots to facilitate SME participation' and explain their reasons where they choose not to do so:

“If the contract had been broken into smaller packages of work, some of the charities that already have a relationship with the participants could have bid in their own right or in partnership.”

For commissioners, doing so can help to ensure those best placed to deliver the service have a fair chance of winning:

“Smaller contracts could have widened who could bid, with local providers bringing more local knowledge.”

Smaller lots can simplify the contracts and processes involved, reducing the resources needed to develop, bid, assess and monitor both internally and externally.

Adopt ‘simplest by default’ payment structures which are suitable for the commissioned service, making more use of grants and non-competitive approaches

Commissioners have flexibility in the payment approaches that are implemented – there is no reason why payment by results has to be used. Similarly, for smaller contracts, there is no need to run a competitive tendering process. Using a ‘simplest by default’ approach²⁰ brings benefits to the commissioner and in turn would not prevent some organisations from receiving funding.

Grants offer a far more simple solution and can be more effective when commissioning services for individuals with complex needs, as has been demonstrated:

²⁰ [Joint Review of Partnerships and Investment in Voluntary, Community and Social Enterprise Organisations in the Health and Care Sector](#), Department of Health & NHS England & Public Health England & representatives of the VCSE sector, 2016

“For many years grants to small, local charities from local authorities have been hugely beneficial and provided such organisations with the capacity to function... There is of course no legislative mandate that requires authorities to go out to tender for smaller contracts and, of course, grants are not subject to tendering at all.”

Procurement rules already have a clear provision within the EU directive for a simpler process to be used when commissioning services under a €750,000 threshold through the light touch regime for social, health and education services which includes grants²¹. Under this regime, commissioners have the freedom to choose the processes which are most appropriate for the service being commissioned as long as they follow the principles of transparency and equal treatment²²:

“It is...essential that commissioners, understand the flexibilities that are available within the rules and where they may not apply. A less risk adverse approach could be adopted for the benefit of local communities.”

Grants may seem more risky but with the right processes in place, they don't have to be. Independent funders demonstrate this every day. Grants also promote collaboration rather than competition and enable charities to work in a way that best meets the needs of the individuals they support:

“The vital ingredient to the future success of small, local charities is the need to maintain the freedom and flexibility of differing funding routes including grants that allow them to pilot schemes and offer new ideas without having to conform or subordinate to our main funders (commissioners or large national charities) that may stifle innovation that has been the mainstay of past success.”

Using funding agreements that promote innovation has the added benefit of providing a wealth of learning about what works, potentially leading to savings and better services. Commissioners have the opportunity to maximise the learning from this through arranging feedback presentations for services to come together to share outcomes and experiences. Nurturing innovation is one of the benefits of grants that is highlighted by Grants for Good²³,

²¹ [The Public Contracts Regulations 2015: Guidance on the new light touch regime for health, social, education and certain other service contracts](#), Crown Commercial Service, 2015

²² [The Art of the Possible in Public Procurement](#), Bates, Wells & Braithwaite, E3M & hct group, 2016

²³ www.dsc.org.uk/grantsforgood

a campaign to increase the proportion of Government funding allocated through grants which highlights the advantage of a grants-based approach. Other benefits include their ability to:

- Save time, effort and resources
- Empower people and communities
- Adapt to change
- Invest locally to sustain specialist services.

Whatever the contractual arrangement, the principle of up-front payment is critical. Agreements could still include a provision to pay back any money owed as a result of missed targets, but it would provide charities with the capital to pay for the up-front service delivery costs. Value for money could be further increased by taking a more strategic and long term approach through:

“Longer term commissioning that focuses on outcomes and genuine innovation for the benefit of the service users.”

This would enable providers to better plan and provide consistency in support, rather than continually focusing efforts on securing the next contract. For commissioners themselves, it would reduce costs as they would not need to go through the resource-intensive commissioning process so frequently.

Increase the accountability and transparency of subcontracting

Better subcontracting arrangements would help to redress the power imbalance inherent in relationships between prime providers and smaller charities. For example, where a prime provider approach is used but there are specialist local charities already working in the area, there needs to be more formal requirements to ensure that the larger organisation does not overlook and overpower those with the skills and experience to deliver effective services:

“Where the commissioner must see big charity involvement as a safeguard, there should be a legal condition to share a stipulated proportion of the contract work and reward with local charities.”

Commissioners should scrutinise prime provider relationships as part of the assessment process, ensuring that the smaller provider is included in a meaningful way. Charities wishing to be subcontracted should also be able to develop partnerships with as many prime providers as they choose.

Where adopted and encouraged, subcontracting needs to be performance-managed on the basis of a good supply chain to ensure smaller partners receive referrals and rewards for their work:

“Safeguards [should be] put in place to ensure that named subcontractors are not 'dropped' on contract award.”

This means commissioners maintaining a dialogue with sub-contractors to ensure a direct line of communication with smaller providers. It could be done through provider forums that include sub-contractors.

Place more emphasis on the social value that can be generated

The Social Value Act offers the potential for commissioners to develop a supply chain built on shared values. It is central to commissioners doing more with less. They could increase the value of every pound they spend by better understanding and counting for social value:

“Social Value - how is this being taken into consideration - it cannot be enough to just say you will employ local people - or work with local organisations.”

While there have been moves to encourage commissioners to take social value into account, commissioners need to allocate sufficient weighting to it in any tendering process, particularly when commissioning services for people with complex needs. Doing so would demonstrate the additional benefits that small and medium-sized charities can bring and can support commissioners to award funding to providers that are focused on quality rather than cutting costs.

Support small and medium-sized charities to prepare for the tender process

Recognising the additional challenges that small and medium-sized charities face and the important role they play in delivering services to individuals, commissioners should be:

“Providing assistance to smaller providers to write tenders and link up with other potential partners.”

Commissioners can invest in support from an independent organisation to develop the capacity building and skills of smaller, local providers such as through running bid-writing workshops. This can help smaller organisations to understand how they can ‘speak the language of commissioners’ to demonstrate their impact in a way that commissioners understand, and preventing them from becoming:

“bamboozled by jargon.”

Making the investment can be invaluable, particularly where partnerships are encouraged since developing strong consortia and partnership arrangements can be time and resource intensive. The success of similar support is evident through a project we funded which provided consultancy support through Women’s Aid Federation of England to specialist domestic abuse services bidding for funding from the Department for Communities and Local Government. In that case, an up-front investment of £50,000 saw specialist providers become successful in the bidding process, securing more than £3.5m of refuge funding.

c) Placing more emphasis on social and long term value, using effective processes

A greater understanding of the issue and existing service providers will inevitably help to determine the processes that are most appropriate to follow to meet the identified needs. These processes should help, not hinder commissioning and its outcomes:

“All commissioning should be open, honest, fair and transparent. All organisations should be given the opportunity to bid for contracts, particularly those who are already delivering the service.”

There are a number of steps which would enable commissioners to ensure the processes they follow do not have an inadvertent negative impact on services, by preventing those most suited to delivering from competing, as set out below.

Checklist for commissioners:

- ✓ **Take a proportionate approach, using processes relevant to the size and nature of the service being commissioned**
- ✓ **Be transparent about the processes and intended outcomes**
- ✓ **Ensure clarity in communications, particularly where there are changes**
- ✓ **Allocate sufficient time for bids to be submitted, recognising the time taken for partnerships to be developed**
- ✓ **Make use of longer term funding arrangements**

Take a proportionate approach, using processes relevant to the size and nature of the services being commissioned

Proportionality, which is grounded in EU laws²⁴, needs to be evident across commissioning processes as a whole, whether it is in determining the scale and complexity of the contract, the depth of the bidding process or the monitoring of the service. These processes need to be proportionate to the amount of money available:

“The scale of the tender process should be proportionate to the value of the contract.”

“Contracts / sub contracts should be simple and risks should be proportionate and relate to those services actually being delivered.”

In essence, this means making commissioning processes simpler, focused on ensuring the most effective service is commissioned rather than focused on bureaucracy:

“The process should begin by making sure that only information that is absolutely necessary should be asked for. This means adapting bids so that they are relevant to the service being commissioned – specifications should not demand policies for processes and procedures which bear no relevance.”

Just as providers adapt their services to the needs of the individual, commissioners should adapt their processes to the needs of the service. Commissioning a mental health service would inevitably require different services and standards to commissioning a construction company. Doing so would bring advantages for those assessing as well as those submitting bids, reducing levels of work whilst still ensuring that all those things relevant to the delivery of the service are verified.

Processes could be further simplified and improved by making better use of interviews, emphasising the skills and knowledge of those delivering the service as opposed to the eloquence of professional bid writing teams:

“The tender process should have a built in interview as part of the process - many successful bids and tenders are being written by bid writers, fundraisers

²⁴ [The Art of the Possible in Public Procurement](#), Bates, Wells & Braithwaite, E3M & hct group, 2016

who know what to write. Commissioners should insist on meeting those who will be running the service.”

Similarly, making better use of monitoring and evaluation would place less pressure on providers already delivering services whilst also reducing the demand on resources for commissioners:

“Monitoring and evaluation is a far better tool to ensure quality than a tender process.”

“Past performance should answer almost all of the questions in the tender documentation.”

Be transparent about the processes and intended outcomes

The principle of transparency should underpin commissioning as a whole - it is central to maintaining trust and forms one of the Treaty principles upon which all EU rules are based²⁵. If partnership working and co-production are seen as the foundations to address some of societies' most intractable social issues, transparency in commissioning has to improve, built around better sharing of information:

“Make the commissioning process public: publically advertised - selection panel made public - so know who's judging it - public announcement of successful bidder - evaluation of project made publically accessible.”

Ensure clarity in communications, particularly where there are changes

Communication needs to be effective throughout the whole process. 'Commissioning Open Days' can help to make sure that those with the skills to deliver services know about upcoming commissioning possibilities. Communications also need to make clear the strategic direction of the commissioner as well as details about the service and tender process. From the start:

“Pre-commissioning engagement / promotion [needs to be] much more widely broadcast.”

²⁵ [The Art of the Possible in Public Procurement](#), Bates, Wells & Braithwaite, E3M & hct group, 2016

It includes clarity about outcomes and enables providers to establish whether they should commit time and resources to bid. Smaller charities cannot afford to waste these resources if there is no realistic chance of them winning the bid:

“Commissioners ought to be clearer on tender specifications from the outset to reduce wasting small organisations’ time and energy.”

For commissioners, this will help to make sure that submitted bids meet their expectations.

Open conversations are crucial for potential providers to get a better understanding of commissioners’ aims and priorities and can be much more accessible for local providers than reams of paperwork. They can be facilitated through activities such as provider briefings, ‘meet the buyer’ events and publishing a named contact for enquiries from potential providers. Answering questions and holding open events is in keeping with providing an open and fair process.

These conversations would help charities to understand where they should bid and would make clearer where the delineation between quality and unit cost lies. Honesty about this would enable providers to establish whether they are able to deliver an acceptable level of service within a constrained budget:

“Be honest about the desired outcome - if price is the most important thing then don't pretend it is through quality service or economic contribution to the city.”

Ensuring these communications are accurate would overcome the challenges providers face as a result of tender specifications changing at the last minute. Commissioners should make every effort to ensure the specifications are fully agreed before the communications launch. Where later amendments have to be made, it is imperative that they are communicated and timelines are adapted accordingly:

“Any significant changes to stipulations on service delivery should be made explicit, in order to avoid disadvantaging the existing local provider.”

This would assure commissioners that those best placed to provide services know about the tender and submit bids that accurately reflect their aims.

Allocate sufficient time for bids to be submitted, recognising the time taken for partnerships to be developed

Timescales allocated within the commissioning process need to be appropriate. Internally, this begins with not delaying contracts which are up for renewal, leaving services in limbo but allocating sufficient time to run an effective commissioning process. Commissioners need to remember that meaningful consultation takes time and this needs to be built into plans.

Appropriate lead-in times are needed to allow organisations to prepare appropriately and are of particular importance where partnerships are encouraged. Effective partnerships can be a way to enable smaller providers to bid for contracts but they take time to develop and processes need to take account of that. As one charity explained:

“Partnership development takes time and many discussions... Partnership management also costs in terms of time and therefore money. This needs to be resourced. Perhaps one level of resourcing for a partnership and less for one lead bidder. You get more from a partnership in terms of breadth of service, specialism and potentially geographical spread.”

There are examples of commissioners making funds available to support partnership working, recognising the resources needed to make partnerships work effectively. More commissioners should make such support available, subsequently helping charities to work together and to make the rhetoric surrounding partnership working a reality.

In some cases, the timeline may need to be extended and commissioners need to have the flexibility to do this. For example, where amendments are made to specifications, potential bidders need time to respond accordingly. This will inevitably take longer for smaller providers. It is imperative that ample time is provided:

“Changes to the budget should not be made 2 days before the deadline.”

Make use of longer term funding arrangements

Services would be available more consistently if funding was allocated on a more sustainable basis and longer agreements were put in place. Taking a longer term, strategic approach could bring benefits for all commissioners, service providers and service users and would help to ensure:

- Services are commissioned which support people in the long term and overcome the 'revolving door' syndrome of lighter touch interventions
- Service providers are able to plan, innovate and adapt to changing demands
- Commissioners are able to deliver long term outcomes and reduce commissioning costs through fewer tender processes.

Longer term agreements would shift the focus from lowest unit cost to best long term value, which is more important than ever given the pressure on public finances. It is not an impossible task either. Camden Council has already moved to seven year funding agreements for charities in the area. However, in taking the long term view, commissioners need to be careful not to be drawn into agreements that prevent service issues being addressed by the provider which won the bid and allowing enough flexibility to respond to changing needs.

2. Strengthening the commissioning framework: A role for Central Government

There has been much talk across Government of the need to increase value for money and empower local communities. There is also a desire to open up public service delivery to small and medium-sized charities, but so far the rhetoric has largely failed to become a reality:

“They...said they wanted local - the contract went to a national organisation.”

“The bid was open to small charities but required a national significance and regional or national working.”

Attempts have been made previously to share best practice and highlight the invaluable role of charities in delivering public services but these efforts do not go far enough. The situation has reached a critical level, where Government needs to better support commissioners and make them accountable for ensuring small and medium-sized charities can fulfil their potential and remain embedded in communities across the country.

It is clear that Central Government needs to take decisive steps to improve commissioning both at a local and national level. While it is important for commissioners to be able to respond to need locally, expectations about the nature of commissioning need to be set centrally. Throughout this report, key steps are highlighted that commissioners need to take to ensure their actions do not prevent the organisations best suited to meet needs from winning funding. Yet the power to change does not solely rest in the hands of commissioners. Procurement teams, government departments and elected officials all have a role to play. That is why clear direction and support is needed from Government centrally – this is a cross-governmental issue that is the pivot point for a thriving society.

To gain traction, these changes must be championed at a ministerial level and through a dedicated Crown Representative to ensure the message is embedded right across Government, with specific, direct actions taken by Crown Commercial Services to support commissioners in running a fair and transparent process. To ensure these steps are acted upon, targets need to be introduced which can be reported on and measured.

Specifically, Central Government needs to be support these changes by:

a) Providing guidance and sharing best practice which empowers commissioners to ensure they gain a thorough understanding of needs, assets and services and adopt ‘simplest by default’ payment approaches

Crown Commercial Service needs to lead the way to help reduce the burden on commissioners and service providers whilst ensuring that high quality services are delivered.

b) Central Government championing changes to commissioning and ensuring the resources are in place to implement them

This should be led by the Minister and a newly recruited Crown Representative for the Voluntary, Community and Social Enterprise Sector.

c) Central Government, in consultation with the sector, introducing a target for public spending with small and medium-sized charities

There needs to be a clear indication of the desired direction of travel for working with organisations with an income of under £1m.

d) Measuring against the target and reporting back to Parliament

Monitoring and accountability are needed to act as a real incentive for change, through scrutinised reports from Cabinet Office, Department for Communities and Local Government (DCLG) and the Crown Representative for the Voluntary, Community and Social Enterprise Sector including better use of data through the Mystery Shopping service.

e) Strengthening the right to challenge

Service providers and the public need to be able to identify and question where commissioning standards are not met and when services do not meet needs, as a means of further ensuring standards are driven up.

f) Increasing the reach and scope of the Commissioning Academy

The Cabinet Office needs to improve access for commissioners and better connect the Academy with efforts to improve the capacity of small and medium-sized charities.

g) Improving transparency

This is needed at all levels, among commissioners, service providers and Central and Local Government to support better understanding as to whether standards are being met and whether public funds are being spent effectively.

While the commissioning challenges are currently severe, particularly for small and medium-sized charities, none of them are insurmountable. They require a change in approach and process that puts service quality at its heart. These solutions do not call for new investments, but better spending of existing funds. Small and medium-sized charities offer sometimes the only answers to some of the most challenging issues individuals and Government at large face. They must be given the opportunity to put these answers into practice.

3. Recommendations for the voluntary and community sector

Commissioning reform is unlikely to happen overnight and local charities have a role to play in making their voices and experiences heard to effect change. Charities must first make clear what their services mean to individuals and communities by:

- ✓ Clearly demonstrating the impact of their work locally
- ✓ Drawing attention to the wider benefits their services bring to the local community.

At a local level, charities should identify and challenge poor commissioning by:

- ✓ Sharing this report with locally elected members
- ✓ Checking whether commissioners are following the Merlin Standard²⁶
- ✓ Making use of the commissioning 'Mystery Shopping' service to report poor commissioning practice on: MysteryShopper@crownccommercial.gov.uk or 0345 010 3503²⁷
- ✓ Engaging with local infrastructure bodies where available to improve information gathering and sharing.

Independent funders have a role in supporting this work, through:

- ✓ providing core, long term funding to small and medium-sized charities
- ✓ building the capacity of smaller charities to better equip them in the bidding process
- ✓ pushing for structural change both centrally and at a local level, supporting Government and commissioners more widely to make systems more effective.

²⁶ www.merlinstandard.co.uk

²⁷ Information and guidance about how to use the service is available at: www.gov.uk/government/publications/mystery-shopper-scope-and-remit

Lloyds Bank Foundation for England & Wales is investing across these areas through its:

- ✓ Invest programme, providing longer term core funding
- ✓ Enable and Enhance programmes to strengthen small and medium-sized charities to build their capacity
- ✓ National programme, to champion the role of small and medium-sized charities.

Part C: Conclusion

All of the evidence shared in this report unequivocally demonstrates that the current approach to commissioning is in crisis. It is not designing or delivering effective services for all. Commissioners are not challenging the status quo to take on radical change. Effective collaboration is lacking. Needs and how to meet them are not understood. Resources are not being targeted effectively. In short, commissioning is failing at every level.

It is seen most prominently in the marginalisation of small and medium-sized charities. A lack of understanding of what service is needed and how it can be delivered, together with processes that inadvertently disadvantage them and specifications that actively shut them out of the process can lead to profound challenges for smaller, more local charities. Small and medium-sized charities losing out on the opportunity to provide services should be a concern for us all because it reflects the loss of the local expertise and an understanding of which is critical in making sure that Government does not leave any individuals or communities behind. The impact can be felt far and wide, in access to services, public finances and community cohesion.

Attempts to improve commissioning, with a particular focus on increasing the capability of smaller charities to bid, have not sufficiently led to the change that is needed. Sharing best practice hasn't opened up the market and guidance alone will never improve behaviours. Commissioning reform needs a more joined-up approach, with efforts at both a local and national level to ensure the interests of taxpayers, charities and service users are best served. Government's steps to address this is welcome, but it is clear that more needs to be done. To achieve this, it is essential that commissioning works for small and medium-sized charities. They are the beating heart of a thriving society and are the only way to make sure that everyone can access the services they need and deserve.

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