



Commissioning in Crisis:

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),

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

Central Government departments or others, and whether the services are related to domestic abuse, 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.

BREAKING DISADVANTAGE BETTERING LIVES

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The Foundation invests in charities supporting people to break out of disadvantage at critical points in their lives, and promotes practical approaches to lasting change.

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