

1. What's this guidance about?

Carers Centres are increasingly finding themselves in competition with other third and even private sector organisations. Surviving and thriving will depend upon our ability to articulate the unique value of specialist carers services, to form partnerships and to re-shape our services in accordance with the changing expectations of carers and those that commission on their behalf. Adapting to this world is made more challenging by some of the misapprehensions that exist about commissioning among some providers and indeed commissioners themselves who do not always follow the guidance and rules set out below.

2. What rules do commissioners have to follow?

There is a great deal of government guidance on tendering, commissioning and procurement which may be useful to quote when local authorities (LAs), Primary Care Trusts (PCTs) and other commissioners do not appear to be commissioning intelligently.

Some commissioners have taken a very narrow view of commissioning. They have been accused of confusing commissioning (taking a strategic, long term approach to develop a market place of providers capable of providing a variety of services and reaching a variety of groups) with procurement (purchasing a service). Some have also used the requirements of EU procurement law / Government guidance to unduly constrain themselves: "a common misconceptionis that Government Accounting represents a set of restricting and prescriptive accounting 'rules', which negate against sensible funding arrangements.... Government Accounting should be interpreted as a range of both high level rules and principles to protect public funds from misuse....whilst allowing a degree of flexibility within this overall framework to achieve these ends through the most sensible means."ⁱ

EU procurement law applies to contracts over the current threshold (from 2006, service supply contracts totalling £144,459 or more). The rules allow for open tenders; tenders restricted to preferred bidders after a selection process; and (rarely) negotiated tenders where e.g. no one has responded to a tender, or there is only one organisation which can supply a serviceⁱⁱ. Guidance says: "the myth that the EC Procurement regime is a barrier to effective procurement from the VCS must be dispelled. Firstly, most contracts with the VCS are likely to be in the field of social services, health, education and other community services. Such contracts, although subject to the EC Treaty principles of transparency and non-discrimination, are not subject to the full application of the EC procurement Directives, but to a lighter regime."ⁱⁱⁱ These are "Part B" services.^{iv} Note that procurement rules do not cover grant giving.

The Compact is the government's national framework for how relationships between government and voluntary sector should be conducted (see www.thecompact.org.uk). Most LAs have a local version and they should follow it – where it is breached, there is a complaints process^v. The Compact's *Funding and Procurement Compact Code of Good Practice* sets out some useful principles which are echoed in a number of other government documents and covers all kinds of funding arrangements. Among other things, government undertakes to:



- provide whenever possible an opportunity for the voluntary and community sector to contribute to programme design;
- respect the independence of the sector;
- recognise it is legitimate for voluntary and community organisations to include the relevant element of overhead costs in their estimates for providing a particular service;
- make payments in advance of expenditure (where appropriate and necessary) in order to achieve better value for money;
- implement longer term funding arrangements where these represent good value for money;
- be proportionate in monitoring requirements and focus on outcomes;
- give enough notice of the end of grants or contracts.^{vi}

The Compact stresses that tendering is not the only viable approach, a message that has not been picked up by all LAs. LAs are also advised to consider:

- Project funding – to pay for a particular project or service, usually through a contract or grant.
- Development funding – to invest in new capacity ...usually through a grant or loan
- Strategic funding – to organisations recognised to be of strategic importance ...usually through a grant.^{vii}

Treasury guidance on “grants in aid” states: “funding bodies need to decide on which form of funding is most likely to generate the desired outcome, and how the basis of funding chosen will best support the funded organisation”. See Appendix for the difference between a grant agreement and a contract. Most councils have Standing Orders setting (usually low) maximums that can be given as grants.

The guidance for statutory funders states they should always attempt to achieve value for money (VFM), but “VFM is not the lowest price – it is defined as the optimum combination of whole life costs and quality to meet the user’s requirement.”^{viii} Funders are encouraged to take a proactive approach to “encourage organisations to apply or become suppliers. A proactive approach may be particularly important for voluntary and community organisations who may not have applied for funding in the past, including black and minority ethnic organisations, faith groups and community groups. Organisations should have enough time to respond, particularly to larger pieces of work or those involving joint working (for example, consortium bids).”^{ix} Commissioners are encouraged to develop a diverse supplier base and “consider offering training to potential suppliers, outside of any particular procurement, to enable them to improve tenders”.^x It is not in commissioners’ interest to have only a small number of large suppliers as this reduces competition. Small voluntary sector groups may be best placed to reach certain communities.

3. What else in current government policy do we need to think about?

Thinking on commissioning is taking place in the context of the Health White Paper, *Our Health, Our Care, Our Say*, and *Putting People First* which articulates the aim to drive funding “upstream” i.e. away from crisis services, towards early intervention and prevention. Local government reforms (see *Trust Guidance on LAAs*) is encouraging health and all council departments to contribute to the local authority’s role as a “place shaper”, with Joint Strategic Needs Assessments across all service areas and joint commissioning. Inspection targets can be jointly owned by health and social care and set locally. Local Strategic Partnerships (LSPs) which should involve the voluntary sector and Local Involvement Networks (LINKs – made up of patients, public and stakeholders in health and social



care) will influence commissioning. For instance, adults' and leisure services could jointly commission a service to promote carer health through sport or leisure activities; adults' and housing services might jointly commission for better quality housing for disabled people and their families. Health and Social Services bosses are being asked to use their commissioning powers to strengthen workforces and will be aware that the paid health and social care workforce is diminishing, making support for carers an attractive option. Personalisation puts commissioning power in the hands of individual service users and their advocates (see Trust Guidance on *NHS Operating Framework and Putting People First Concordat*). There are now health inspection levers relevant to carers commissioning, particularly in delivery of the Stroke Strategy (see *Trust Guidance NHS Inspections*).

Health guidance, *Commissioning framework for health and well-being* (DH) notes that "traditionally, health commissioners have been wary of using community and voluntary groups to deliver services"^{xi} and suggests that in order to "enable people to have greater control over their own health" commissioners should commission "more easily accessible, extended self-care through the effective use of, among others.....local third sector voluntary and community support groups" as well as "identifying and supporting the needs of carers"^{xii}

This is built on in NHS guidance, *World Class Commissioning* which specifies 11 competencies for PCT and PBC commissioners including:

- Work collaboratively with community partners
- Proactively seek and build continuous and meaningful engagement with the public and patients
- Manage knowledge and undertake robust and regular needs assessments that establish a full understanding of current and future local health needs
- Prioritise investment according to local needs
- Effectively stimulate the market to meet demand and secure required clinical, and health and well-being outcomes
- Make sound financial investments to ensure sustainable development and value for money^{xiii}

World class commissioners will show "visionary leadership", they "are not risk averse" but "prepared to experiment where the potential benefits justify the risks". They commission for health, clinical / care and wider community outcomes^{xiv}. The PCT should routinely ensure "that patients and the public can share their experiences of health and care services and uses this to inform commissioning"^{xv}. Market building will involve commissioners that develop "formal and informal relationships with existing and potential providers...Signalling to current and potential providers their future priorities, needs and aspirations."^{xvi} Commissioners have "a clear understanding and knowledge of the abilities and role of the third sector, and of its ability to provide against service specifications" and promote "services that encourage early intervention, to avoid unnecessary unplanned admissions"^{xvii}.

The report of the DH led Third Sector Commissioning Task Force, the enthusiastically titled, *No excuses. Embrace partnership now. Step towards change!* tells commissioners that it "envisages a mature and equitable relationship between public sector commissioners of health and social care services and the third sector. The relationship must help secure the design of user-centred services to meet locally identified need and their delivery through a diverse range of type and size of providers." The DH says this will be achieved by, among other things:

- systematic involvement of health and social care service users at all stages of commissioning



- understanding among commissioners about the third sector, and its potential to add value to needs assessment, strategic planning, and to empowerment of service users and community capacity building, as well as the delivery of services
- allowing longer term contracts, 'full cost recovery' and the fair balance of financial risk
- proportionate regulation (including licensing and accreditation) of health and social care providers
- support for new providers entering the market (e.g. through Futurebuilders England and/or a Department of Health Social Enterprise Fund).^{xviii}

The Cabinet Office and I&DeA have a National Programme on Third Sector Commissioning. *Partnership in Public Services An action plan for third sector involvement*^{xix} outlines how third sector delivery of public services will be encouraged, including the promotion of social clauses in tenders. Social clauses specify that tendering organisations will be assessed on how the delivery of their work benefits the work's target community, for instance by employing ex-carers to support carers. Similarly, "co-production" is the principle of involving the recipients of services and their carers in every stage of service design, delivery and evaluation – this is increasingly popular with enlightened commissioners.

4. Which tenders should we go for?

You should always check that the service you are tendering for is compatible with your constitutional aims and your strategic objectives. Could delivering this work divert and change the nature of your Carers' Centre? Will taking on this contract be in your stakeholders' interests? Are the risks shared fairly between you and the commissioning body? What happens if you fail to deliver? Are some factors in success beyond your control? Does the work require initial investment?^{xx} It is useful to have a written protocol outlining how decisions will be taken and who has sign-off powers.

Working in partnership with other organisations can be very attractive to commissioners and preferable to competing. Competing can mean risking ending up with nothing if you lose. In a partnership you share some of the strengths and risks of the partner organisation. How much do you know about their sustainability and ability to deliver? Absolute contractual clarity from the outset is essential, covering decision making, recruitment, management, finances, and what happens if something goes wrong. Take legal advice on all contracts and partnership agreements.

5. Build relationships with commissioners

This is crucial for success. Public sector commissioners are moving from a crude, "poacher vs gamekeeper" model of commissioning towards the more sophisticated relationship typical of private sector commissioning, where suppliers and purchasers often work together to develop new products and services. This is particularly the case in markets, like the carer support market, where there are a small number of suppliers, perhaps just one capable of providing a particular service, such as carer support to a BME community. Most commissioners will welcome approaches from organisations interested in talking about ideas that they have for new services, and crucially, who are interested to hear about the commissioner's view of gaps in the market. Much can hinge on having already established positive relationships with policy makers and budget holders when tenders are being prepared. Carers themselves can play an important part in lobbying – see Trust guidance on local



campaigning on the Legislation and Guidance page of [Trustnet](#). Once tendering is underway there may be strict restrictions on discussions with staff in commissioning bodies.

Key commissioning contacts are:

- LA and PCT Directors
- Local Strategic Partnerships (LSPs) who determine local funding priorities
- Local Involvement Networks (LINKs), which replace patient forums and help to shape health priorities. Government Offices which negotiate local inspection priorities with LSPs
- Small commissioners such as Practice Based Commissioning GP practices, brokers for Individual Budgets and indeed individual recipients of Individual Budgets or Direct Payments, who can also group together to purchase services. ^{xxi}

6. Full Cost Recovery and generating a surplus

Sometimes it is possible to find other sources of funding for overhead costs or to bid on a matched funding basis. However, government guidance states that “The key reason for the lack of ‘core funding’ within the voluntary and community sector is that debate has historically and typically been based on a false principle that ‘core’ costs are somehow unrelated to an organisation’s ‘real work.’ Many funders have traditionally paid only for the marginal costs of the services they are seeking. But if funders follow this practice, necessary overhead costs cannot be met, or are met from donations and other sources of income which were not intended for this purpose....It is important therefore that funders agree to meet the full cost of services, including the overheads that relate to the activities they have commissioned.”^{xxii} See notes on The Compact in Paragraph 2 above. Charities can fail when they expand on a purely project funding basis, without planning for their expanding core costs.

As well as training, travel, NI, pension, include proportionate contributions to: premises; furniture; IT; core staff (finance, admin); recruitment; line management; publicity; mailing; evaluation; contingency (maternity/ sick leave cover, re-recruitment); insurance; inflation. Carefully consider one off start up costs in particular. You must justify your estimates, based on quotes or past experiences, avoiding obvious round figure guesses.

The government also tells commissioners to “allow VCOs the freedom to determine their own price in competition in the same way as private sector companies”,^{xxiii} but it remains rare for contracts to be awarded that generate a surplus for a third sector bidder. Sometimes a particular budget line can be used to ease a specific pressure on your finances. Unless you are a social enterprise, check how a surplus-generating contract sits with your charitable status— you may need to establish a subsidiary. Also, another bidder may undercut you: in reality, the third sector has to constantly balance the risks of losing contracts, with the risks of contracts proving unsustainable.

The DH have developed an open book accounting method^{xxiv} that involves justifying all basic costs and then apportioning margins to individual costs based on the risks inherent in each aspect of the work. Risks are established by a risk assessment and risk management plan. Negotiations with commissioners decide whether provider or commissioner will bear each risk. If the commissioner agrees to bear any cost arising from the risk, the margin is eliminated. If the provider bears the risk, a



margin is negotiated. Both parties agree what will happen to any surplus over the agreed margin. Usually this is shared, often on a 20/80% basis in favour of the commissioner.

If you are bidding to provide an existing service, you may need to take on existing staff, retaining their current employment conditions (this is called the Transfer of Undertakings, Protection & Employment or TUPE), requiring you to ensure their employment terms and conditions are costed as part of your bid. This can be a complex area, with a high risk of hidden costs, so legal advice is essential. If information on this is hard to establish, the cautious approach is to qualify the tender, but this may lead to it being disqualified.

7. Outcomes

Commissioners are being encouraged to commission for outcomes and these should be clear in the tender document. This should mean less focus on how a service is delivered and its outputs, and more focus on the evidence it can provide that it reached the people in most need and made a positive difference. Commissioners will usually have to rely only on the information you present, not their prior knowledge of your service.

The broad aims of a project should be articulated as outcomes for service users. For instance, the outcome of a training event for professionals might be that those professionals make greater numbers of appropriate referrals to your service, meaning that the carers they are in contact with are routinely offered support at an earlier stage. Be aware of the differences between “hard” outcomes (differences that can be easily counted or measured, such as numbers of carers in employment) and “soft” outcomes (subjective differences such as self esteem or isolation). Soft outcomes can be measured using self-evaluation questionnaires. The Trust is developing tools in this area. Some centres are using or adapting tools such as The Trust’s “My Life Now”, which won’t translate easily into outcomes statistics, but do provide evidence that your work is focused on identifying and meeting an individual’s preferred outcomes. Some funders ask services for personal information about the carers reached, which a service can only supply if individual consent has been gained from each carer.

Demonstrating that your work aims to achieve outcomes requires establishing need and generating baseline data in order to show “before and after” information. Evidence of need should include a combination of research, government policy, case studies, statistical breakdowns of your client group and accounts of previous similar work. Distinguish between preventative interventions, aimed at those at most risk, and support interventions, aimed at those in most need. Avoid unjustified statements about need and continually question your assumptions. For every statement you have included, ask yourself “why?” and “how?” – commissioners will!

Measurable targets form the evidence of how you will progress towards your outcomes. They should be SMART: specific, measurable, achievable, realistic and time-sensitive. Again, ask yourself why your targets will achieve the outcomes you are aiming for. What evidence do you have of your ability to deliver these targets? How will the new resources you are bidding for fit into your existing



infrastructure and build on your history of delivering successfully on similar work? What Quality Assurance (QA) systems will you be using?

8. We are here to help!

As a Network member of The Princess Royal Trust Carers you can make use of the experience of other Network members and our staff team. There is a range of relevant guidance on [Trustnet](#). Other Carers Centre Managers may be able to share similar bids on carerscentres@yahoo.com. The Trust team will be happy to provide a fresh pair of eyes to comment on your bids!

Appendix A: Distinguishing Between Grants And Procurement

From: *Think Smart ... Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector*

“Procurement is defined as being the acquisition of goods and services from third party suppliers under legally binding contractual terms where all the conditions necessary to form a legally binding contract have been met.” (4.1) There is a fine distinction between this and grant giving:

“The grant giver is not contracting for a service which forms part of its own business. It is offering financial support to a VCO in an area of work, designed and proposed by the VCO, which it wishes to sponsor. .. Over the last decade, it has become more commonplace for grants to be awarded following competitive bids for funding. Also grant giving bodies often now require some form of written grant agreement, detailing roles and responsibilities of both parties. These may be non-legally binding agreements (often referred to as grant agreements or service level agreements) or in some cases, legally binding grant contracts. During the life of the grant, there may be more “hands on” management of progress than was the case in the past, as grant givers come under greater pressure to justify the proper disposal of public funds....Increasing use of competition and written agreements in the award of grants has led to some confusion with public procurement contracts. It is important to distinguish between procurement and grants and consequently to apply the appropriate procedures. Expert advice should be sought in cases of doubt.” (4.1-4.5)



Appendix B: sources and further reading

Trust Guidance documents on:

- LAAs
- NHS Inspection
- NHS Operating Framework and Concordat

Commissioning framework for health and well-being

Author: Care Services Improvement Partnership (CSIP) / DH at www.commissioning.csip.org.uk

Good Practice Guides on Open Book Accounting

Author: DH at www.changeagentteam.org.uk and www.integratedcarenetwork.gov.uk

World Class Commissioning

Author: DH at www.dh.gov.uk/en/Publicationsandstatistics/Publications/index.htm

Guide to the Community rules on public procurement of services

http://ec.europa.eu/internal_market/publicprocurement/guidelines_en.htm summary at www.rbwm.gov.uk/web/procurement_eu_rules.htm

Government Accounting Particularly Chapter 22

Author: HM Treasury Updated 2003
www.government-accounting.gov.uk

Practice-based commissioning briefing

The Kings Fund November 2007 at www.kingsfund.org.uk

The Office of Government Commerce

www.ogc.gov.uk

Funding and Procurement Compact Code of Good Practice

Author: Home Office Active Communities Unit
Link: www.thecompact.org.uk

No excuses. Embrace partnership now. Step towards change! Report of the Third Sector Commissioning Task Force

Author: DH 2006

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4137144

Guidance to Funders: Improving funding relationships for voluntary and community organisations

Particularly chapter 4 (Wider Funding Context)

Author: HM Treasury 2003 updated in 2005

www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm

Think Smart ... Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector

Particularly sections 7, 9, 10, 11, 12 and 13

Author: Office for Government Commerce and Home Office 2004

www.homeoffice.gov.uk/comrace/active/funding/index.html

Loose talk and a hard nut: commissioning for better outcomes, Edited by Andrew Cozens,

Author: Public, SOLACE and IDeA 2006

www.guardian.co.uk/public

Before Signing On The Dotted Line – all you need to know about procuring public sector contracts

Author: National Council of Voluntary Organisations

Full cost recovery: A guide and toolkit on cost allocation

Author: Association of Chief Executives of Voluntary Organisations 2004

www.acevo.org.uk/main/publications.php?content=pubcatalog



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References

- ⁱ Guidance to Funders: Improving funding relationships for voluntary and community organisations (1.14)
- ⁱⁱ Article 11 of the Services Directive, EC Directive 92/50/EEC
- ⁱⁱⁱ *Think Smart ... Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector* (3.1)
- ^{iv} Guide to the Community rules on public procurement of services
- ^v The Compact Mediation Scheme is available to help in these situations. Where behaviour which contravenes this framework constitutes maladministration, a complaint may be brought to the Parliamentary Ombudsman in the usual way. Cases involving Local Government may be referred to the Local Government Ombudsman.
- ^{vi} *Funding and Procurement - Compact Code of Good Practice* (Intro); Appropriate notice is 3 months (3.7).
- ^{vii} *Funding and Procurement - Compact Code of Good Practice* (2.4)
- ^{viii} *Think Smart ... Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector*
- ^{ix} *Funding and Procurement - Compact Code of Good Practice* (3.7)
- ^x *Think Smart ... Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector* (1.2.3)
- ^{xi} *Commissioning framework for health and well-being* DH (5.2)
- ^{xii} *Commissioning framework for health and well-being* (2.3)
- ^{xiii} *World Class Commissioning* p4
- ^{xiv} *Ibid* p5
- ^{xv} *Ibid* pp8-10
- ^{xvi} *Ibid* p18
- ^{xvii} *Ibid* p19
- ^{xviii} *No excuses. Embrace partnership now. Step towards change! Report of the Third Sector Commissioning Task Force* DH 2006
- ^{xix} Partnership in Public Services An action plan for third sector involvement, Cabinet Office, 2006:
www.cabinetoffice.gov.uk/thirdsector
- ^{xx} Futurebuilders can provide loans, grants and advice to establish new public service delivery work:
www.futurebuilders-england.org.uk; www.communitiesscotland.gov.uk
- ^{xxi} See The Trust's Guidance on Individual Budgets / Direct Payments on the Legislation and Guidance page of Trustnet
- ^{xxii} *Funding and Procurement - Compact Code of Good Practice* (Appendix D)
- ^{xxiii} *Think Smart ... Think Voluntary Sector: Good Practice Guidance on Procurement of Services from the Voluntary and Community Sector*
- ^{xxiv} See Good Practice Guides at www.changeagentteam.org.uk and www.integratedcarenetwork.gov.uk