

1 Background and Context

In spring 2011 a survey of issues emerging for the third sector in Leeds identified commissioning as one of the top priorities. To meet this need the Third Sector Leeds (TSL) Leadership Group have made commissioning one of the key points for its work plan for 2011/12 and set up a commissioning sub-group to lead on this. The first action for this sub-group was to draft this position statement, which sets out some principles and actions that Third Sector Leeds believes will increase commissioning good practice in Leeds.

Commissioning is described by the government as "the cycle of assessing the needs of people in an area, designing and then achieving appropriate outcomes" (Cabinet Office, 2011). An alternative definition from the National Association for Voluntary and Community Action (NAVCA) states that commissioning is "the whole process of deciding what public services are needed, and how best to use the resources available to get the best for local people. Commissioning is not only about public agencies buying and funding new services using contracts and grants: it is also about exploring new ways for commissioners and providers to collaborate to achieve better outcomes."

This second definition is particularly useful in introducing two important notions; firstly, of collaboration between commissioners and providers in the process, which clearly fits squarely within the commitment to partnership working that we have in Leeds; and secondly, of exploring new ways to do this. It is recognised that there are already examples of good practice in collaboration in Leeds that could be replicated more widely, but there may be more for all parties to do in exploring new ways to achieve better outcomes.

Historically in Leeds, third sector organisations have for the most part been funded through grants and loose funding agreements. With the increased pressure on public resources there has been an increasing use of purchasing services through competitive tender. This has proved challenging to all local third sector providers, even those who happen to have staff with commissioning expertise. The increase in competitive processes contributes to an environment of uncertainty that has had a disproportionately negative impact on smaller organisations in the City, and may lead to greater difficulty in providing effective services to hard to reach groups and building the capacity of people to help themselves.

Currently, one of the largest challenges to local third sector organisations is coming from national organisations who have dedicated bid writing resources. It is crucial that local organisations become commissioning ready in order to compete effectively to deliver services to the communities they are rooted in. The Council's support for the Supporting Links to Commissioning (SLTC) project is a key measure in enabling this to happen.

Good partnership working was demonstrated in 2010 when representatives from the local Third Sector, NHS Leeds and Leeds City Council worked together to produce the revised Compact for Leeds. This document provides a solid framework to promote good commissioning practice in the City. However, as there are still obstacles to third sector organisations successfully operating in the commissioning arena, Third Sector Leeds believes that a set of good practice principles which go beyond the Compact are necessary and should be adopted across the city.

TSL recognises that commissioning, particularly at a time of public expenditure cuts, requires the balancing of a number of factors which may be in tension with each other. TSL believes therefore that commissioners need to develop a consistent approach to commissioning which recognises the benefits to service delivery and sustainability provided by organisations with an evidenced long-term commitment to the city; commissioners

should ensure that their processes, particularly at the procurement stage, enable these benefits to be legitimately taken into consideration as part of the process.

The following sections of this Statement therefore:

- × suggest some key attributes of what an “Intelligent Commissioning Cycle” for Leeds might look like
- × set out some next steps that TSL believes are needed to enable us to move towards that position from where the city is now
- × identify some key areas of change and development in the commissioning arena that require specific attention, and pose questions as to how this will happen.

2 An Intelligent Commissioning Cycle for Leeds

There are many versions of the commissioning cycle to be found; a four-stage cycle is in widespread use. This section is based on the version of that model used by the SLTC project, and sets out what TSL believes would be some key qualities and processes that would make for an effective commissioning cycle for Leeds.

Joint Needs Assessment and Planning

- Intelligent analysis will include information on communities who are seldom heard, those who experience poor outcomes from existing services and any areas of unmet need.
- Third sector organisations will be full participants in the Joint Strategic Needs Analysis process.
- Third Sector Leeds will support this process by identifying organisations that work in specific geographical areas or with communities of interest.
- Third sector organisations will encourage and facilitate the input from communities into this process.
- Commissioners will undertake a full options appraisal, incorporating a risk analysis, considering the risks involved in implementing changes to current services or continuing with the status quo.
- An equality impact assessment will be started at this stage. The process will be transparent to ensure that all stakeholders have confidence in the robustness and validity of the assessment.

Delivery Planning

- Services will be planned following the analysis of local need and gaps in current provision identified.
- Available commissioning resources will be explored and agreed upon including money and in-kind support. Third sector organisations will be clear as to what resources they need to have to deliver quality services and will consider working collaboratively to find the resources identified.
- Third sector organisations will be included in the development of service specifications. To eliminate any potential conflicts of interest requests for representatives will go through the Third Sector Leeds Leadership Group.
- Appropriate outcomes will be identified and developed jointly.

Procurement

- Where the outcome of an options appraisal is to enter into a competitive tendering exercise, promotion of the tender will be transparent and wide-reaching. Third sector organisations will make sure that they are registered on the SCMS Alito and Supply2Health systems.
- Where the service to be procured falls under Part B of the European Procurement Legislation the flexibility that is offered will be utilised.

- Third sector and development resources will be identified and their details published with the tender documents.
- Timely bidder information sessions will be part of all tender exercises. Third sector commissioning infrastructure staff will be invited to be involved in these sessions, as appropriate, as part of the capacity building support available to organisations.
- Pre Qualification Questionnaires (PQQs) will be appropriate and proportionate to the type of procurement e.g. service, goods or works. Third sector organisations will be involved in any reviews of the PQQ documents to help ensure they are fit for purpose.
- Realistic timescales will be built into procurement project plans to ensure that published timescales are kept to. Once timescales are published they will not be shortened. For services not subject to full European Procurement Legislation timescales for submitting documents at each stage of the tender process will be four weeks.
- The scoring criteria and evaluation framework will be published with each tender exercise. The inclusion of the criteria at PQQ stage by Leeds City Council is noted and welcomed.
- Performance standards for responding to questions during tender processes will be agreed and published.
- Guidelines regarding the different types of frameworks being used in Leeds will be developed and published to increase the transparency of the process.
- Third sector representatives will be included on all appropriate evaluation panels. Nominations for inclusion on the panel will come from the Third Sector Leeds Leadership Group.
- Appropriate opportunities to challenge throughout the tender process will be available to all bidding organisations. It will be made clear what types of challenges are open to stakeholders at each stage of the process.
- Timely, detailed feedback will be available to all bidders in all tender exercises to help develop the capacity of organisations to bid successfully in the future.

Performance Management

- Contract management processes will be used throughout the lifetime of the contract/ funding agreement.
- The outcomes detailed in the service specification will be monitored. Where outputs have also been specified there will be the flexibility to negotiate changes in the outputs, if necessary, in order to achieve the outcomes.
- Regular meetings with a named contracts officer will take place to discuss progress and issues.
- The good practice coming from the Supporting People team in regard to performance management will be explored to see what could be replicated by other commissioners.
- Information from the monitoring process will be compared with the issues highlighted by the needs assessment..
- A transparent de-commissioning strategy will be developed and shared with all stakeholders.
- Third sector organisations will provide evidence of the impact their services are having on local people and communities. All stakeholders will meet to look at what has changed through the commissioning of a specific service and to understand why.
 - Strategic reviews of current services will take place prior to any new commissioning exercise. All stakeholders including third sector organisations will be directly involved.

3 Next steps

While recognising the existence of examples of good practice in commissioning and procurement, TSL is concerned that practice is not consistent, and that many third sector organisations are unhappy with various aspects of commissioning and procurement processes that they have been involved in or subjected to. This section sets out some specific actions that TSL believes are needed to enable the city to move towards the kind of practice set out in the previous section.

- Third sector organisations need to be involved consistently at all parts of the commissioning cycle, from needs analysis through to monitoring and review.
- Commissioners need to ensure that proper contract management procedures are in place, that enable organisations to demonstrate the quality and effectiveness of their work, and to ensure that good communication is maintained throughout the funding relationship.
- The development of the “One Council” Approach to commissioning by Leeds City Council needs to be undertaken with the sensitivity to recognise that the commissioning of services is different from the procurement of goods, and that a “one size fits all” approach is not appropriate for the commissioning of services, especially for vulnerable people and disadvantaged communities.
- Commissioners need to recognise the added value delivered by locally-based third sector organisations, i.e. the wider and multiple benefits not directly connected to the contract, and the value that is created across different areas such as supporting local economies, health, employment, community and social cohesion, education, housing and inequalities; they need to develop ways to enable this to be considered as part of their procurement processes.
- Equality Impact Assessments need to be undertaken at the beginning of all commissioning exercises.
- A third sector representative who does not have a conflict of interest should sit on all relevant procurement panels, unless otherwise agreed with Third Sector Leeds.
- In cases where the commissioning body is commissioning services where its own staff deliver similar services or may be tendering to provide such services, a strict separation must be applied so that no member of staff has a potential conflict of interest.
- To avoid unintended consequences, an options appraisal should take place at the beginning of all commissioning exercises. A Third Sector Leeds representative should be included in the options appraisal process. The options appraisal should take into consideration the findings from contract management reports on current delivery of services, and should consider all available options for the commissioning of a new contract.
- Third sector organisations need to become commissioning ready and utilise the support available from Supporting Links to Commissioning and other projects.
- Commissioners need to ensure that resources remain available to continue to support local organisations to become commissioning ready.
- Specifications should be outcome based and the assessment of success and value should consider a variety of factors including social, environmental and economic benefits and not just unit cost.
- Consortium and partnership bidding should be encouraged and supported where appropriate. Processes should be adopted and supported to ensure transparency in the development of consortia and to allow smaller and emerging organisations to become involved. Third sector infrastructure support agencies will assist in this development.
- Commissioning opportunities need to be notified in advance in accordance with the Council’s Contract Procedure Rules, or other commissioners’ equivalents. This will

enable third sector organisations to plan ahead and infrastructure support agencies to plan capacity building support at this point of the cycle.

- Closer links should continue to be developed between commissioning and procurement staff within the Council and other commissioners, to promote intelligent commissioning and communication throughout the full commissioning cycle.
- At the end of each major commissioning exercise there should be a review (which is openly available) involving stakeholders to identify what worked well and lessons for the future.

4 Areas of change and development

It is noted that there a number of these areas that currently seem to sit primarily within specific commissioners/directorates/service areas, but which have the potential for wider impact in the city. All of them will impact directly on third sector delivery organisations, and TSL will wish to see inclusive partnership approaches to meeting the challenges they pose.

Outcomes Based Accountability

This has been adopted as the key methodology within children's services and is being rolled out across the council. With regard to the commissioning of services from external providers, it is an approach that would not appear to be easily supported by or maybe even compatible with current procurement processes. How will this impact in future?

NHS Commissioning

NHS Leeds has started to develop its partnership approach with local budgets; the big change ahead however is the move to commissioning by GP-led consortia. How can other partners support and engage with this to ensure the best outcomes for the city, and so that third sector infrastructure organisations can support the sector to access future processes?

Locality Commissioning

It is noted that locality commissioning is becoming a reality in some parts of Leeds and is seen to be the way forward for many (mainly universal) services; TSL supports this development where it is appropriate. However there are different layers of "locality" and different emerging structures in different services areas (eg clusters in children's services), as well as the Council's new 3-area structure for the city. Moreover there are different understandings of what locality commissioning means, and probably there will be different forms of it developed, which may well be appropriate. Whatever the outcome, there will need to be new protocols and procedures to address this, and these will need to be developed through partnership working. How will this happen?

Personalisation

This agenda, which primarily sits within adult health and social care services at present, has the potential to significantly destabilise organisations which are currently block-contracted to deliver these services. How can this be addressed in ways which minimise the risk of loss of effective and valuable service providers?

Localism Bill

This bill, assuming no further changes, will introduce the "community right to challenge" which will allow local or national third sector organisations, as well as parish councils and council staff who wish to form a mutual, to express an interest in running a council service. If accepted, this will lead to a procurement exercise which will be open to all interested parties, including private sector companies. What strategy will the Council adopt to address such situations?