

Think Twice

The role of elected members in commissioning

Foreword



The recession means that local people need high quality public services like never before. Local economies depend on the flow of public money not drying up. Now is the time for elected members to assert their rights and duties to ensure commissioning protects high quality, democratically accountable, services.

Dave Prentis

General Secretary
UNISON



This pamphlet is published at a fundamental moment in the history of public services. There are those who seek to use the commissioning agenda to further minimise direct involvement in service delivery. Elected members need to remain resolute ensuring they use commissioning as a vehicle for driving improvement not allowing themselves to be bypassed by procurement.

Paul O'Brien

Chief Executive
APSE



Commissioning is a vital political role for all elected members; they need to be involved at the start of the process of determining how council services are delivered. 'Think twice' makes the case for elected members having the widest range of options available to them in making these crucial decisions.

Andy Sawford

Chief Executive
LGiU

Commissioning on the agenda!

'Commissioning' is a word that is difficult to avoid. It peppers ministerial speeches and is the subject of many articles in the local government press. It is widely promoted by the 'public services industry'; it features in the corporate strategies of councils; and is promoted as vital to the delivery of Local Area Agreements and to the work of Regional Improvement and Efficiency Partnerships.

In the current recession, commissioning is promoted as a way to tackle budget deficits and to meet tough efficiency targets.

What is commissioning?

"Commissioning is the cycle of assessing the needs of people in an area, designing and then securing appropriate services"

Cabinet Office 2006

Commissioning is therefore a political issue, not a technical issue.

Is commissioning just another word for outsourcing?

Elected members should be clear that commissioning is concerned more with how services are designed and delivered than with who delivers them. Commissioning is often said to be 'provider neutral' with an explicit assumption that external provision will only be preferred where it offers better value to the commissioning authority.

This suggests that decision making should be informed by evidence about current performance. The use of competition to drive down prices can be a key element in the approach, but achieving 'Best Value' is about quality of services and long-term value. There should be no automatic assumption that commissioning will lead to a procurement process or to the appointment of an external service provider.

Role of elected member in commissioning

Because commissioning is a political and not just a technical issue, the involvement of elected members is critical. Councillors have a statutory duty to put in place arrangements that will result in continual improvement of service delivery with reference to economy, efficiency and effectiveness (Local Government Act 1999). This is to be achieved through service reviews and informed options appraisals.

Unfortunately many models of commissioning greatly restrict the role of elected members to simply establishing service outcome requirements. For example, the 'thin' or 'intelligent' client model determines what is required at a strategic level and lets providers take responsibility for how and in some cases even what, services are provided.

For example, many councillors have been involved in the debate about how frequently domestic waste should be collected. Under a 'thin client' commissioning approach this would be a decision for the

refuse collection contractor. Elected member responsibility would be confined to specifying outcomes such as reduced use of land fill and meeting recycling targets.

Normally, the strategic policy framework is set by the council as a whole, and then the executive or cabinet implement it and is held to account through scrutiny arrangements. But the model of commissioning above changes the division of responsibilities, and undermines the role of backbench councillors. This is because unelected officers take on the job of implementing strategic policy through the commissioning process. So in practice the executive then starts setting policy, and non-executive members may be left without a meaningful role.

Market competition and value for money

A key popular assumption for commissioning is that market competition will automatically deliver value for money. Unfortunately this is not so. The ability of competition to drive down prices is directly related to ‘contestability’ – the ease with which firms can enter or leave a market – and therefore the potential for new entrants to undercut prices. These barriers are high for most public service markets and levels of competition are therefore likely to be low. This is borne out in practice, with only a handful of firms involved for example in the provision of business support services, despite lucrative long term contracts.

This limiting factor is frequently dealt with in business cases by references to ‘market making’ or by an emphasis on tightly drawn contracts, with performance targets and penalties. Evidence shows that in practice ‘market making’ has had little effect on the numbers of firms involved in these markets, while councils have often succumbed to provider pressure to move targets and increase resources. Moreover, research casts

doubt on whether the exclusive long term relationships that characterise these contracts can deliver long term value for money in the absence of competitive pressures following the initial tendering exercise (*Audit Commission: For Better For Worse, 2008; Deloitte: Building Flexibility 2008*).

Torbay Council has recently implemented a ‘commissioning model’. It has appointed two commissioners to act as ‘intelligent clients’ who report directly to the council’s political executive. Commissioners draw up outcome based specifications for service delivery and are responsible for putting arrangements in place to deliver them. Delivery agents could be in-house providers but have no direct accountability to the council executive. Non executive councillors will no longer have any direct contact with operational management.

To provide in-house or outsource?

There is a powerful body of evidence, including awards sponsored by the local government press and best practice case studies produced by the IDeA and APSE, of the quality of the cost effective and innovative services to citizens provided in-house.

Despite the success of in-house service provision, a consistent message of the past decade has been that externalising services is the best way to meet tough efficiency targets and deliver more responsive and accountable public services.

Preston Council has recently implemented a member driven Value for Money model. Over a period of 18 months the council's scrutiny committees have received and considered evidence from heads of service aimed at demonstrating value for money across all the council's services. The process has enabled members to directly drive efficiency while maintaining a strategic role.

The case is now being made for local government to move away from a 'narrow service delivery role' and reshape itself as commissioner of services. There are also ambitions to expand commissioning to 'stimulate' new markets in areas which are currently uncontested or not fully contested. This, for example, could see public libraries run by a provider other than the council.

There is no reason why councillors should accept the conflation of commissioning with outsourcing. The government and others do not define commissioning in such a partisan way.

What is commissioning? Three further definitions

'Commissioning asks these questions: 'what are the needs of people'; what kind of services might address these needs; do we have the people that are good enough and qualified enough ourselves or do we need to use others'?

Phil Hope, Minister for the Third Sector

'Commissioning is ultimately about

embedding public value in the strategic process of determining need, procuring services, managing demand, performance and involving the public in each stage’.

Barbara Allen et al; Journal of Public Procurement

‘Commissioning means securing the services that most appropriately address the needs and wishes of the individual service user, making use of market intelligence and research, and planning accordingly’

National Association for Voluntary and Community Action

The broader view of commissioning is supported by an Audit Commission review, ‘Back office efficiency gains in local government’. Looking at the efficiency gains made during the last Comprehensive Spending Review the Commission noted that, ‘there is no magic bullet... Councils used a portfolio of internal good housekeeping, mutual shared services; and outsourced methods for achieving back office efficiency gains... All councils must be clear about the best combination of methods for [them]’.

Five stages of commissioning



The role of councillors as commissioners is particularly significant in relation to the broader governance responsibilities of local government. Commissioning can assist councils in bringing multi-sector service providers together to ensure maximum public benefit and accountability across a range of public, private and voluntary sector provision. For example, leisure services are provided by all three sectors but only local councils are in a position to coordinate the planning and provision of services to create synergies between them.

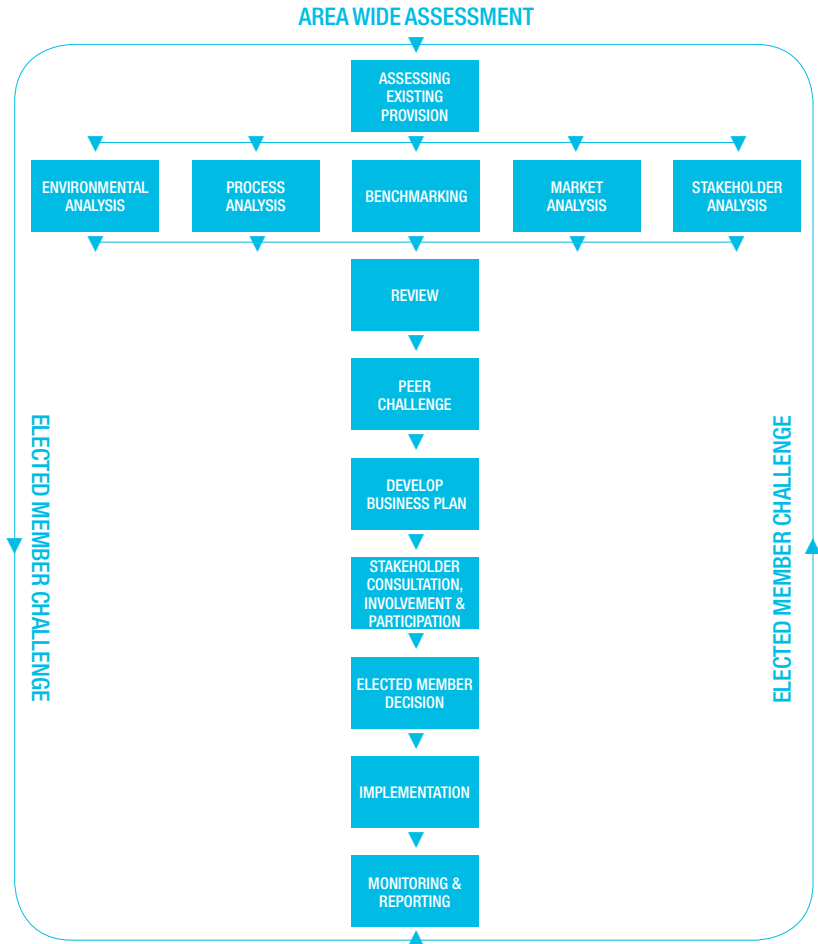
Commissioning by locally elected councils could also be a route to improved responsiveness and accountability of national public bodies such as the NHS. As with the leisure example councils as commissioners are also well placed to create synergies between related services such as health and social services or policing and community development.

Why in-house might be best

Councillors need to recognise that there are many important reasons for making sure that in every commissioning exercise there is full consideration of improvement through an in-house option.

Direct provision of services can make it easier for authorities to implement their Public Sector Equality Duties to actively promote gender, disability and race equality. It also gives greater security to the workforce who are an essential key to raising standards.

Ultimately decisions should be based on detailed, high quality performance and cost information. Members should question any automatic assumption that competitive tendering will be the default option. The diagram on the next page shows how an evidence based approach to service planning and delivery can work.



This model places the emphasis on service deliverers to constantly monitor the services they provide to ensure that they deliver continual improvement

and are competitive. Providers are encouraged to act as if they were operating in a contestable market.

How it can work: the Newcastle experience

The transformation of Newcastle City Services is a prime example of how major efficiencies can be made and services dramatically improved in-house, with the close involvement of the workforce and trade unions. Dramatic savings have been made in information technology and related services, and redistributed to front line services such as care for the elderly. Staff and managers are giving new life to the ideal of serving the public.

In 2000 out-dated IT systems – some from the 1970s – were holding back the council. They were expensive to maintain and embedded routine, rather than focusing on customers. Staffing structures in back office departments were hierarchical and staff innovation was stifled through a culture of deference and a silo mentality. The senior leadership at the time assumed that internal change was impossible and they would have to look to a private company to take over management of the service.

A city-wide trade union campaign against privatisation proposals was run by UNISON, which led to them being involved in the tendering and procurement process, scrutinising bidders, and calling for a serious in-house bid.

The campaign won political commitment to a properly prepared in-house bid that was clearly better value for money than the rival private-sector bid. But the close involvement of UNISON in the process also laid the foundations for a radical process of change based on efficient and publicly delivered services.

The experience shows that, contrary to the presumption of inertia and incompetence in local government, public service managers and staff can drive and lead change, generating innovative ideas and successfully implementing them. Moreover the services are delivered on an agenda set by democratically elected public bodies.

Newcastle council has been visited by numerous other authorities, and a book – *“The Public Sector – but not as we know it!”* details their experience.

Capacity

Many of the issues local authorities deal with as ‘community leaders’ require a high level of co-ordination across the council. In making decisions about commissioning, the importance of sustaining a core capacity to meet complex service needs must be a priority. Councillors need to ask themselves whether a decision to outsource will limit their ability to tackle strategic issues.

The options to redeploy resources to meet changing needs will be limited if a council hasn’t got sufficient in-house capacity. There can be no better illustration of this than councils’ need to reprioritise to deal with the impact of the slide into recession.

Embedding ‘public value’

Everything councillors do should be of ‘value’ to the public. ‘Public value’ is a complex concept, because local authorities are civic institutions with a community leadership role. One of the implications of this is that

commissioning is a political task. It involves making major policy decisions regarding the distribution and rationing of public resources.

Performance management

Ignoring the in-house option as part of any commissioning exercise would be contrary to the principles of performance management.

A definition of ‘performance management’

‘Taking action in response to actual performance to make outcomes for users and the public better than they would otherwise be’

*IDeA & Audit Commission
– a councillor’s guide to
performance Management 2006*

Through their various roles, elected members have a mass of information about the performance of council services. In the case of in-house services this means that councillors can have a direct involvement in reshaping services to meet new priorities and drive up performance. It also means that in any commissioning exercise the council can start by examining how its own services are working and test whether the outcomes it wishes to achieve (a crucial policy role for councillors) can be delivered.

There is the added advantage of being able to explore an improved in-house option with the workforce. Close collaboration between members, management and the workforce, including local authority trades unions, can deliver significant in-house service improvements avoiding the need to externalise services.

The politics of commissioning in the new local services architecture (England only)

English councils are part of a new local services architecture involving Local Strategic Partnerships (LSPs) Local Area Agreements (LAAs) and the new Comprehensive Area Assessments (CAA).

Elected members need to closely monitor developments and decisions around commissioning at this strategic level. Communities and Local Government statutory guidance for 'Creating Strong, Safe and Prosperous Communities' states: 'local authorities will generally be better able to meet their best value duty by adopting a commissioning role...[which] is one in which the authority seeks to secure the best outcomes for their local communities by making all available resources **without regard to whether services are provided in-house, externally or through various forms of partnership**' (our emphasis). In other words the in-house provision should be explored along side other options.

The guidance goes on to describe

the ways in which 'Local authorities should seek to involve service users and local communities at each stage of the commissioning cycle' and involve front-line staff in the commissioning of services, 'making use of their commitment and expertise'.

This new landscape provides a compelling case for looking closely at the benefits of the in-house option first. It would, for example, be difficult to get the most out of engaging the workforce if there is, from the outset, the threat of outsourcing.

Democracy and accountability

While there is an aspiration for citizens and users to be involved at every stage of commissioning, this may be difficult to achieve because extensive outsourcing creates complex service delivery arrangements. Local Strategic Partnerships (promoted as 'strategic commissioners') are a disparate range of bodies, with weak accountability arrangements.

Directly provided services shorten the

lines of accountability and make it easier for councillors to engage with residents about services. This meets the aspirations of the 'empowerment' agenda.

Comprehensive Area Assessments will require councils to ensure people are being well served by local public services. The ability of elected members to drive this agenda reinforces the importance of having a 'critical mass' of directly provided services to give substance to a council's role as community leader.

It is vital that all councillors are engaged in challenging the commissioning process. As well as through scrutiny the issues should be debated within political groups, at member briefings and at the Executive or Cabinet. Assumptions made about commissioning in the council's Corporate Plan and the LSP's Sustainable Community Strategy should also be challenged.

These questions will help councillors get to the heart of the issues:

1. Where are decisions made with regard to commissioning, when and by whom?
2. What processes does the council use to trigger a commissioning process? Does it automatically go to commissioning externally if a service is evaluated as unsatisfactory? Is there scope for adapting and improving an in-house service?
3. What are the political assumptions made by officers when they make decisions about commissioning?
4. How sustainable are long term outsourcing contracts with private companies in the current economic climate?
5. Is scrutiny involved at each stage and as early as possible?
6. Have strategic issues been taken into account alongside service issues in shaping decisions about commissioning services?
7. What strategy is in place to involve users and local communities in the discussion about commissioning options? Is the 2008 statutory guidance from the CLG being followed?

If councillors abdicate their involvement and oversight of commissioning they may be in danger of losing control of important levers of power, threatening their representative role and undermining local democracy.

Key messages

- Commissioning should not be synonymous with ‘outsourcing’. It is a rational process of determining what services are needed and how they should be provided.
- Commissioning for public services is much more than simply securing the supply of services: it is a highly political task and therefore the preserve of elected members.
- It is crucial that elected members are involved at the formative stages of the commissioning process and that continual improvement through in-house service delivery is fully explored
- In making judgements about commissioning, councillors must ensure that at all times the council retains its capacity to meet increasingly complex needs of the communities it serves.
- Extensive outsourcing marginalises the role and power of elected members and undermines local democracy.

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UNISON

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1 Mabledon Place
London WC1H 9AJ
www.unison.org.uk

Association of Public Service Excellence (APSE)

A not for profit local government body working with over 300 councils throughout the UK to promote excellence in public services.

2nd floor, Washbrook House
Lancastrian Office Centre
Talbot Road, Old Trafford
Manchester M32 0FP
www.apse.org.uk

Local Government Information Unit (LGIU)

The leading local democracy think-tank and local government membership organisation
22 Upper Woburn Place, Euston
London WC1H 0TB
www.lgiu.co.uk

To obtain further copies please contact
stockorders@unison.co.uk

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