

[Type text]



Commissioning Framework

[Type text]

Foreword

By Councillor Lakin, Leader

[Type text]

Contents

Foreword

Introduction

What do we mean by commissioning?

What is the purpose of this framework?

Who does this framework apply to?

How does the framework achieve this?

Key Principles of Commissioning

Legal Framework

The Commissioning process

The commissioning cycle

Needs Assessment and the JSNA

Outcomes focused commissioning and appropriate commissioning routes

Sourcing providers

Application of assessment criteria

Awarding of contracts and grants

Contract management and monitoring

Evaluation and Review

Proportionality and Risk Management

Market Management

Decommissioning

Glossary

[Type text]

• **Introduction**

1.1 What do we mean by commissioning?

Commissioning is the whole cycle of assessment of the needs of the local people in the borough and designing services to meet those needs and securing improved outcomes and cost effective services.

Commissioning is flexible to meet the changing needs of a population or group of people. The commissioning process includes reviewing if needs are continuing to be met in the most appropriate way and if the service continues to provide the best outcomes and value for money.

Commissioning is not about the procurement of goods and services or achieving the lowest price, but is about achieving the highest quality of service at the best value.

It is also not micro commissioning where an individual purchases a service to meet their own needs which is then not monitored or managed by the council.

1.2 What is the purpose of this framework?

The intention is to set out a commissioning model that delivers an approach to secure best value for money through positive relationships with partners across the public, voluntary and independent sectors

Enable all to have a shared understanding of the commissioning process and how Rotherham Metropolitan Borough Council (RMBC) will work with colleagues and partners in openness and transparency to achieve best value for money.

1.3 Who does this framework apply to?

This framework applies to all commissioners and commissioning activity in the council, unless for an exceptional reason in that an alternative approach is required because of legislation or to meet specific funding guidelines. Exceptions to this framework will be formally logged and documented.

This framework applies to all commissioning in the council, whether the services commissioned are from the voluntary or independent sector and, in circumstances where the Local Authority or an NHS body has tendered successfully for a service, the public sector.

1.4 How does the framework achieve this?

The commissioning cycle and the supporting processes give clarity for providers and partners and enable consistency, openness and transparency in our commissioning approach.

[Type text]

The framework includes a set of principles to enable better decision making on achieving the benefits for the whole community. The glossary sets out the terms and links to other useful information.

2. Key Principles of Commissioning

2.1 The focus of high quality commissioning is:

- Achieving good outcomes
- Evidence based
- Utilising local knowledge, skills and resources to best effect
- Delivery of Social Value
- Securing continuous improvement through application of
 - Economy
 - Efficiency
 - Effectiveness

The National Audit Office describes these three elements as:

Economy – spending less - through the minimisation of the cost of resources used or required

Efficiency – spending well – the relationship between the output from goods or services and the resources to produce them

Effectiveness – spending wisely – the relationship between the intended and the actual results of public spending in terms of outcomes

When reviewing services and provision the council will seek to maximise the added value created by commissioning through the combination of economy, efficiency and effectiveness aligned with social value.

2.2 The councils focus will be on achieving the right outcomes for citizens, these outcomes may not always be easily measured through recognised techniques of evaluation. Utilisation of alternative methods such as social return on investment (SROI) and long term economic benefits are acceptable.

2.3 The council is committed to working in partnership with providers and our colleagues in other authorities or in the health architecture to progress innovative or new services and achieve best value. The council has a set of principles and values

[Type text]

for joint working with the Rotherham Clinical Commissioning Group (RCCG), these are transferable to any partnership working relationship. The focus is on establishing long term positive working relationships, building strong communications in an environment of mutual trust and support. It is acknowledged that there are significant benefits for the business economy of Rotherham through partnership working with Small and Medium Enterprises(SMEs), the VCS, social enterprises and consortia.

2.4 We will work with providers to keep them informed of our commissioning intentions via the website and other forums. Market Position Statements (MPS) will be used to set out the current position and the direction of travel for specific areas of service. The intention will be to engage early with providers and to consult with them as appropriate through the commissioning stages. We will involve service users, the VCS and businesses at all stages of the commissioning process.

2.5 When the agreed commissioning priorities identify the need to decommission an existing service to achieve the right outcomes for citizens then we will actively engage service users and providers as early as possible and we will assess the impact of such a decision in order to improve redesigned services.

2.6 It is agreed that the Council supports the benefits of the living wage for employees of commissioned services, or of organisations who are receiptants of grants. The living wage is of particular relevance when the funding supports specific posts.

2.7 The Council will have work in line with the standards as set out in '*Commissioning for Better Outcomes*' (2014) and have regard to the '*Principles of Good Commissioning*' (2007):

Good commissioning is:

- Person Centred
- Focused on outcomes and have these at the heart of strategic planning
- Well led
- Promotes a sustainable and diverse market
- Understanding the needs of users and other communities
- Consultation with potential providers well in advance of commissioning of new services
- Mapping of the breadth of potential providers
- Consideration of investment in capacity of providers particularly those working with hard to reach groups

[Type text]

- Ensuring commissioning and contracting is conducted in an open, transparent and fair way
- Consideration of consortia and sub-contracting where appropriate
- Enable economy, efficiency and effectiveness through longer term sustainable commissioning and risk sharing
- Seeking feedback and utilising reflective learning with service users, providers and partners to review the effectiveness of commissioning to meet needs and improve outcomes

3. Legal Framework

3.1 European Union Procurement Rules

- £5,000 but less than £20,000 - Invite a minimum of two quotations in writing.
- £20,000 but less than £50,000 - Invite a minimum of three quotations in writing.
- £50,000 but under £100,000 - Sealed tender process inviting between three to six tenders.
- £100,000 but under £172,514 - Sealed tender process inviting between three to six tenders. (Opened by a Council Member)
- £172,514 and above - Subject to full OJEU procedures and opened by a Council Member.

3.2 Council Standing Orders and Financial Regulations

The council standing orders Part IV sets out the Contract Standing Orders. These include detailed information on:

- General arrangements - eg contract standing orders and financial regulations
- Authorised Officers and approved list of contracts
- Ascertaining value of contracts – eg open completion for contracts
- The tendering process – eg values for tendering
- Miscellaneous provisions – eg suspension of standing orders

3.3 Localism and Social Value Acts

The Localism Act 2011 includes the Community Right to Challenge which gives the right to a “relevant body” to put forward an “Expression of Interest” (EOI) to provide a “relevant service” on behalf of the Local Authority.

The legislation distinguishes between a function within the Council and a service provided by the Council. If a body is interested in delivering a service on behalf of

[Type text]

the Council then it can submit an EOI. The legislation sets out what information an EOI should contain and what “tests” it must pass for a Council to act upon it.

A successful challenge from an organisation would result in the Council conducting a full commissioning and procurement exercise in which the organisation would be able to take part – as would other interested parties.

All services commissioned must be entered onto the contracts register which is a public document managed by the procurement function.

The Public Services (Social Value) Act 2012 applies to contracts and framework contracts for services that meet the threshold for EU and UK procurement legislation. The Act imposes a duty to consider how what is proposed to be procured might improve the economic, social and environmental well-being of the area. Social value can be defined as “a concept which seeks to maximise the additional benefit that can be created by procuring or commissioning goods and services above and beyond the benefit of merely the goods and services themselves.”

The Authority must consider how it might best achieve that improvement through the commissioning and procurement process for example through use of lots, specifications or award criteria.

The Council must also consider whether it should consult on these matters. It is important that these considerations are captured in the paper trail associated with a commissioning or procurement so that the Authority can demonstrate in case of challenge that these considerations have been taken.

3.4 Public Sector Equality Duty

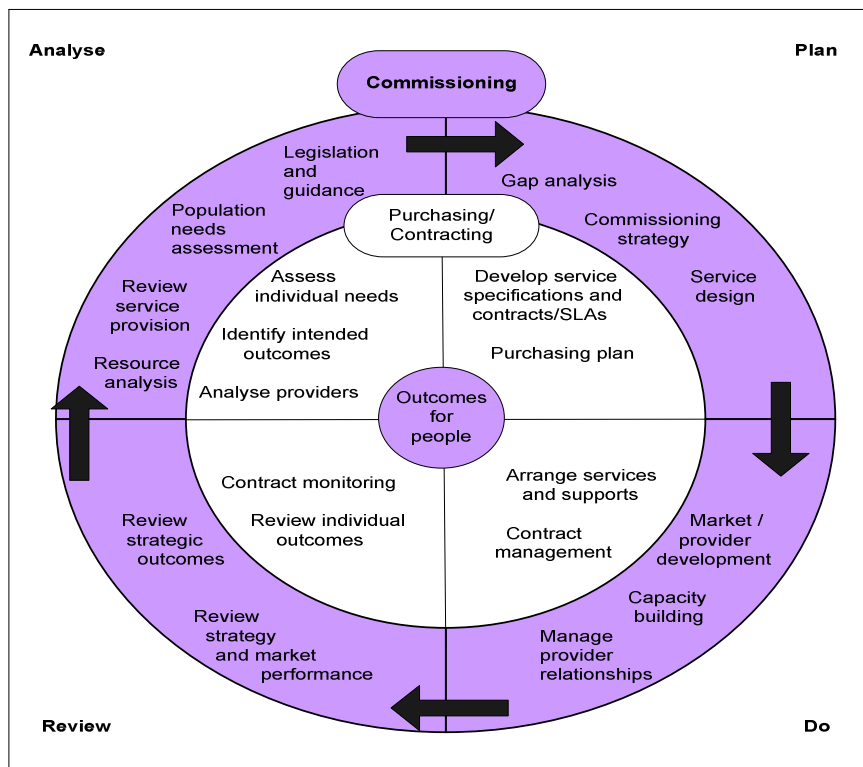
The Public Sector Equality Duty (PSED) under the Equality Act 2010 applies to all commissioning or procurement, whether for services, supplies or works and regardless of whether the value will exceed procurement thresholds. The Duty requires all local authorities to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular with regards to meeting their needs, removing disadvantages, and ensuring fairness of accessibility.

The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation

[Type text]

4. Commissioning Process

4.1 The commissioning cycle



The commissioning cycle can be broken down into a direction through the following stages:

- Needs Analysis
- Identification of required outcomes
- Specification
- Procuring providers to meet specification
- Contract management and monitoring for improved outcomes
- Learning from delivery to inform future commissioning

4.2 Needs Assessment

In order to achieve good commissioning there is a need to have good information and data. The assessment of need is a critical step in the design of services to meet needs and achieve the outcomes required.

The voice of the service user must be at the heart of good commissioning. Understanding from citizens what works for them and how the services can be

[Type text]

improved. The Council will engage service users and local communities in the planning and commissioning of services to meet needs.

We will work with our colleagues in the VCS where appropriate to link with communities and groups, utilising their advocacy role and their knowledge and experience of how services can be redesigned to meet needs.

The Council will seek information and data to feed into needs analysis through:

- Mapping the current models of delivery
- Understanding the satisfaction of service users
- Benchmarking provision against 'best in class'
- Identification and agreement of local priorities
- Qualitative and quantitative data
- Utilising the

We will utilise the Joint Strategic Needs Analysis (JSNA) as the primary data resource for commissioners. The council meets its statutory duty of the Health and Wellbeing Board (HWBB) under the Health Act (2007) for a JSNA which includes an Asset Register that identifies individual people, community resources, groups and physical buildings across Rotherham.

We will ensure that the JSNA is reviewed and revised annually as a minimum.

4.3 Identification of outcomes and designing services

As a commissioning body the council will identify the priorities to meet the needs of the borough. These priorities will be agreed in the statutory bodies of Cabinet, the Rotherham Local Safeguarding Children's Board (LSCB), the Children, the Adults Safeguarding Board and the Health and Wellbeing Board.

The council will involve service users and potential providers including the VCS, independent businesses and SMEs where appropriate to design and review services. It is acknowledged that these organisations have the skills, experiences and abilities to support and strengthen the commissioning process.

For outcomes focused commissioning the outcomes required need to be in balance and are built from:

- Needs analysis
- National and local political steer
- Information and data from service users, independent and VCS organisations
- Identified 'best practise'

[Type text]

4.4 Procurement, Grants and Grants in Aid

There are several routes to market to achieve the required outcomes against the agreed specification. It is a critical decision to decide the most appropriate procurement route.

The council will no longer hold Service Level Agreements (SLAs) for externally commissioned services. There must be legally binding contracts that set out the terms, conditions and sanctions against the specified service.

All in-house provided services should be held to the same high standards of quality as externally commissioned services. There must be in place for each in-house service a specification and performance management framework against which the service is assessed.

The council will give due consideration to the most appropriate commissioning approach be this commissioning in-house delivery, through a partnership, joint commissioning, co-location, virtual/aligned budgets, regional, sub-regional or external provision. Each time the three principles of Economy, Efficiency and Effectiveness must be applied.

The council will commission through Procurement, Grant or Grant in Aid.

Procurement

All procurement will take place via the YorTender system, the intention is to secure goods and services from external providers to meet the councils identified outcomes. Procurement must be conducted in line with legislation as set out earlier in this framework. Procurement results in a formal legally binding contract. Non-compliance by the provider to this contract will result in default or termination and may include retrospective recovery of costs.

Process

- Needs analysis
- Consultation
- Specification
- Advertise opportunity on YorTender
- Panel evaluation against agreed criteria, which may include face to face interviews
- Awarding of contract including terms and conditions, usual timeline of 3 years plus option for further 2 years
- Contract management and monitoring against specification

[Type text]

Grants

Grants are provided to source specific outcomes, the funding is allocated against the outcome. The grant is for a specified period of time. The council supports the approach of the provider to design the service to deliver the required outcomes.

Process

- Application process advertised on YorTender
- Panel evaluation against agreed criteria, which may include face to face interviews
- Negotiation of grant including a Memorandum of Understanding (MOU) setting out the grant conditions
- Performance management against grant required outcomes
- Consideration of proportionality should be given for the evaluation and monitoring of Grants in relation to the value of the Grant

Grants In Aid

Grants in Aid are to fund resources as a contribution to the work of the organisation's core costs or activities. The funding grant is for a specified period of time. Funding may also be to support agreed specific outcomes. The council will give this type of grant where there is a strong relationship with a high level of trust.

Process

- Applicant process is advertised on YorTender.
- Panel evaluation against agreed criteria, which may include face to face interviews
- A Memorandum of Understanding (MOU) will be negotiated setting out the monitoring and evaluation processes
- Consideration of proportionality should be given for the evaluation and monitoring of Grants in relation to the value of the Grant

The council will seek to be innovative in its approach to strategic commissioning of services. New opportunities will be considered when seeking to commission a service and will include, but not be restricted to:

- Social Impact Bonds
- Mutual Trusts
- Co-operatives
- Community Trusts

[Type text]

Proposals to Elected Members setting out the commissioning options must refer to the consideration of the above models.

4.4 Tender assessment and evaluation

The specification will set out clearly what organisational requirements are needed. If these criteria are not met then there will be no further consideration of the tender or grant application. The criteria requirements will include:

- Management - strong evidence of governance to include business planning, annual general meeting and regular board or committee meetings
- Financial Systems – there must be inclusion of three years of accounts, compliance with company or charity law, evidence of strong financial controls
- Insurance – adequate insurance cover for company activities including public liability, employers liability, property and equipment cover. The financial amount of cover required is set out in the specification
- Human Resources – strong evidence of open, transparent HR recruitment and management policies including contract terms and conditions. The council encourages organisations to pay the living wage. All staff working with adults, children and young people must have a current Disclosure and Barring Service (DBS) check
- Equal Opportunities – there must be a written equal opportunities/diversity policy and code of practice
- Protection of Vulnerable Adults – those organisations providing services to vulnerable adults must have in place appropriate training for staff and a protection of vulnerable adults/~Safeguarding policy and procedure
- Safeguarding – organisations working with children and young people must have in place a safeguarding policy and procedure and evidence training in safeguarding for all staff

Additionally the council will require further information::

- Sustainability of the organisations
- Resources available to meet specification or plans how recruitment will take place
- Economic and community knowledge of the borough and how they will contribute to improving the local economy

A panel of officers with the appropriate knowledge will assess the tender bids against the specification, criteria questions and against the principles set out in this framework, particularly Economy, Efficiency and Effectiveness. This is to ensure an objective assessment.

[Type text]

Following evaluation a recommendation will be made to the appropriate delegated powers Cabinet Members meeting to approve the grant funding and the awarding of the contract. In relation to commissioning for services the value of the contract will dictate the decision making level, an officer or Elected Member as set out in the councils standing orders.

4.5 Awarding of contract, grants or grants in aid

The contract or Memorandum of Understanding (MOU) will set out the role and obligations of the provider and the council against the delivery of the specified services, including full terms and conditions.

This will also set out the payment schedule, which may include:

- Payment stages- up front, retrospective, staged or at end of contract
- Payment by results on achievement of against outcomes
- Arrangements for collection of under spent funding
- Fixed regular scheduled payments
- An agreed risk management approach and full cost recovery

Payments will normally be paid in arrears following achievement of agreed terms. Payment can be made in advance to the VCS if there is a clear business case and a risk assessment has been completed.

4.6 Performance Management and Quality Assurance

Performance monitoring and management of a contract or grant or grant in aid is critical to ensure:

- Progress against specification towards achieving outcomes
- Value for Money and utilisation of funding/finances
- Management of risk
- Levels of need against needs analysis
- Early identification of poor performance
- Support of action planning to improve achievement of required outcomes
- Application of sanctions for poor performance including holding payments, default of contract or termination
- Consideration of proportionality should be given for the performance management and quality assurance of Grants and Grants in aid in relation to the value of the Grant

[Type text]

All organisations who are commissioned by the council will be subject to performance monitoring and management. The performance management framework (PMF) and indicators will be set out in the contract or MOU terms and conditions. The relationship between commissioner and provider will be based on open and transparent dialogue.

The PMF will be proportionate and differ according to the value of the commissioned service and the risk involved. The council will seek to apply proportionality to minimise risk and the burden on providers. It is intended that monitoring will be via online based data returns and/or site visits. Performance management meetings will be regularly scheduled, with timing dictated by the level of funding and risk.

Quality assurance methods focus on building intelligence on the providers of commissioned services, this information should be shared with other authorities and commissioning consortium members. Outcomes of the PMF will be reported by exception through the councils governance structures.

Quality Assurance that will be undertaken includes:

- Regulating authority inspection outcomes
- Complaints and compliments monitoring
- Customer satisfaction
- Contracting concerns raised
- Site visits

4.7 Market Management

Market management and facilitation is becoming increasingly important to ensure that the providers are aware of the requirements of the council as a commissioner. Recent Acts such as the Care Act place a duty on the council to ensure that the market is able to meet the needs of the local population and provide a range of diverse, good quality services. Market management is very important in contributing and building the local economy.

It is important that the Council:

- Gathers market intelligence - so it knows what services are available in the borough, maps current provision, what models of provision exist and what type of services users need.
- Conducts market structuring activities - whereby the Council sets processes in place to better engage and conduct business with providers.
- Engages in market intervention – exploring barriers to entry, provide training, support community led organisations, explore funding streams and investment.
- Completes where appropriate Market Position Statements (MPS) that set out the requirements of the council going forward for a particular market. This

[Type text]

MPS is a resource for potential and actual providers to support them in configuring their services to meet the identified needs of the population and to build their business with the council.

4.8 Decommissioning

Decommissioning is an integral element of the commissioning cycle. Decommissioning or termination can take place at any stage of the commissioning cycle post award of contract or MOU, as a result of:

- a change in priorities
- new evidence of how best to meet needs and improve outcomes
- changes to funding or financial frameworks

When considering decommissioning a review will be undertaken of the current services and an impact assessment will be completed on the service ceasing and legal requirement. The council will have regard to the guidance set out in the Best Value Statutory Guidance (2011).

The review will consider:

- Performance against the specification to meet needs and achieve outcomes
- Value for money
- Delivery against the principles of Economy, Efficiency and Effectiveness
- Findings from the Quality Assurance process

As part of the review and as an integral element to decommissioning the council will undertake an Impact Assessment to ascertain the impact on service users, their families, providers and employees.

The notice period of the contract or MOU will normally be adhered to when a decision to decommissioning has been taken, this is usually three months. A phasing out approach could be supported by the council to support the providers in planning for decommissioning. For time limited grants or grants in aid which are time limited as set out in the MOU no notice period will be provided.

In the position of default and termination of the contract or MOU for poor performance there will be no notice period. On occasions the council will support the providers to continue the service until it is recommissioned, this is in order to ensure service continuity for service users. Support will be appropriate to what is required but will not constitute the taking over of the service and all efforts will focus on recommissioning another provider.

GLOSSARY

Term used	What this means
Commissioning	The cycle of assessing the needs of people in a local are, designing services to meet those needs and securing a cost effective service in order to deliver improved outcomes
Evaluation	The assessment of the extent to which the commissioned tender meets the specification
Outcomes	The real life economic, social and/or environmental improvements that are required results/impact of a commissioned service, planned activity or intervention for a community or an individual
Social Enterprises	Businesses trading for social and environmental purposes. The profits made are reinvested towards achieving that purpose
Tender	A written request on the YorTender system to provide information about how the provider would contract to supply goods or services as specified. Successful tenders result in the award of a contract to deliver the goods and services specified
Voluntary and Community Sector (VCS)	Often referred to as the third sector, refers to a wide range of registered charities and not for profit organisations and community groups
Performance Management Framework (PMF)	The process by which the achievement of required outcomes are monitored. This includes measures that are both qualitative on satisfaction and quantitative on metrics

[Type text]

[Type text]