

Commissioning Protocol Draft v.01

1. Introduction

This suite of guidance is designed to ensure effective commissioning of local public services and the best possible range of service providers.

These protocols cover all locally commissioned public services; everything from care services to community safety and open spaces.

Commissioning is the process by which public services identify the needs of the communities they serve, set out intended outcomes, explore solutions that will meet needs, and arrange the best way of meeting those needs. Clear and realistic outcomes set out before any procurement decision is made, forms the backbone of all future public commissioning.

The best public services are delivered where the commissioning process does not begin and end with procurement. Evidence shows that the best local public services are achieved by making sure that local needs are clearly understood and outcomes are clear before procurement takes place.

The principles and processes set out in this suite of guidance can be applied across all commissioning. Where structured models of commissioning such as 'World Class Commissioning' must be used, commissioners can consider these protocols as well. This will help them to apply the most inclusive and effective route to developing outcomes and arranging their delivery.

The Commissioning Agenda

Public service commissioners work in a complex policy and regulatory world; they face a number of challenges, they must :

- align spending with strategic priorities
- meet increasing service user and community needs and aspirations
- apply limited resources and balance competing priorities
- deliver services with environmental, economic and social sustainability
- work with complex and evolving policies and priorities

These challenges require public sector commissioners and providers of services to make the best of working methods and relationships. The future relies on evolving new approaches to commissioning and provider solutions.

Commissioning Principles

Local commissioning partners will apply eight principles designed to improve the quality and experience of commissioning.

Commissioners will:

- Set service outcomes and priorities well in advance of commissioning new services. Commissioning will be based on outcomes.

- Develop an understanding of the needs of users and communities, by engaging openly with potential service providers and local communities; using third sector organisations and local Councils as advocates and sources of specialist knowledge.
- Put outcomes for users at the heart of the commissioning process.
- Engage with the fullest practicable range of providers, to understand the contribution they could make to delivering planned outcomes.
- Invest in the capacity of the provider base, particularly those working with hard-to-reach groups or where innovation is needed.
- Ensure that procurement is transparent and fair; involves the broadest range of providers, and makes possible sub-contracting and consortia.
- Ensure long-term service funding and risk sharing wherever possible to achieve efficiency, effectiveness and sustainability.
- Seek feedback from service users, communities and providers so that the effectiveness of the commissioning process can be understood.

Why have Commissioning Protocols?

Commissioners want to demonstrate "intelligent commissioning " :

- Commissioning outcomes based on a sound understanding of user and community needs.
- Effective understanding, influence and use of provider markets.
- Good procurement practice with :
 - A choice of funding approaches (grant or contract).
 - Clear and transparent process prior to the award of a grant / contract.
 - A sound basis for determining the cost of a service.
- Effective working relationships with funded service providers.

Intelligent commissioning provides us with:

- A sound basis for leading and improving local public services.
- Connection with local needs and aspirations.
- Best use of what resources are available.
- Financial and service planning that is joined up and well informed.
- Commissioners who are ahead of the game, anticipating future needs and expectations rather than reacting to demands.

Commissioners must ensure the widest possible range of provider options :

- Leadership toward a diverse and competitive provider 'market'.
- Use of any and all provider sectors, from the efficiency driven private sector to the distinctive and popular benefits of the third sector.
- Exploration of all possible benefits such as external funding that may only be available to public, private or third sector providers.

- A healthy third sector can make a contribution beyond the delivery of services (to innovation, community engagement and social inclusion).

Intelligent Commissioning benefits providers, who can design better services if commissioning is based on clear analysis of needs and possible solutions. The resulting clarity, transparency and consistency creates a really level playing field. It provides the foundation for capacity building, market development and innovation. The private sector can be more efficient and the third sector can focus on its independence and potential for innovation.

Market Development and a 'Level Playing Field'

Our commissioners will act to develop a diverse supply base which will ensure that statutory, voluntary and private providers all recognise "a level playing field" that recognises sector strengths. More specifically, we recognise that a "level laying field" means taking a number of approaches to arranging services that will deliver intended outcomes, ranging from whole market procurement to grant funding.

The role of the voluntary and community sector

The Island Strategic Partnership recognises that Island communities are strengthened by a thriving and sustainable voluntary and community sector. Accordingly, the partners are particularly keen to facilitate the greater involvement of the sector in clarifying commissioning outcomes and delivering local services. This is clearly described in the Island Strategy for Ensuring a Thriving Third Sector 2009, and supported by the Local Compact 2005 (available at www.eco-island.org.uk/change_island/thirdsectorfundingpilotpage1)

The voluntary and community sector, with its wide range of user-led organisations and ability to advocate, has a clear role in helping commissioners clarify service outcomes and solutions. Commissioners can tap into a wide pool of third sector knowledge and experience, added to public and private sector views and the voices of service users and communities.

Community involvement in commissioning creates 'social capital' by building and maintaining relationships and bridges within communities. Commissioning must build enough 'social capital' to reach disadvantaged communities. The third sector can advocate on behalf of actual or potential service users, offer specialist 'niche' expertise in areas where the public or private sectors tend not to operate. It can involve service users as deliverers of services or in governance, be independent, campaign to influence, be flexible and innovative. It can act as a critical friend, add value over and above that commissioned, and it can also fundraise and access additional funding streams not open to public or private providers.

2. Outcome Based Commissioning

These protocols are intended to provide a good practice framework for outcome based commissioning in three stages.

- Stage 1. Planning and Analysis
- Stage 2. Procurement
- Stage 3. Monitoring and Evaluation

Intelligent Commissioning based on an approach that considers the intended and wider outcomes of the process rather than specifying outputs in all cases, are central to the process set out here.

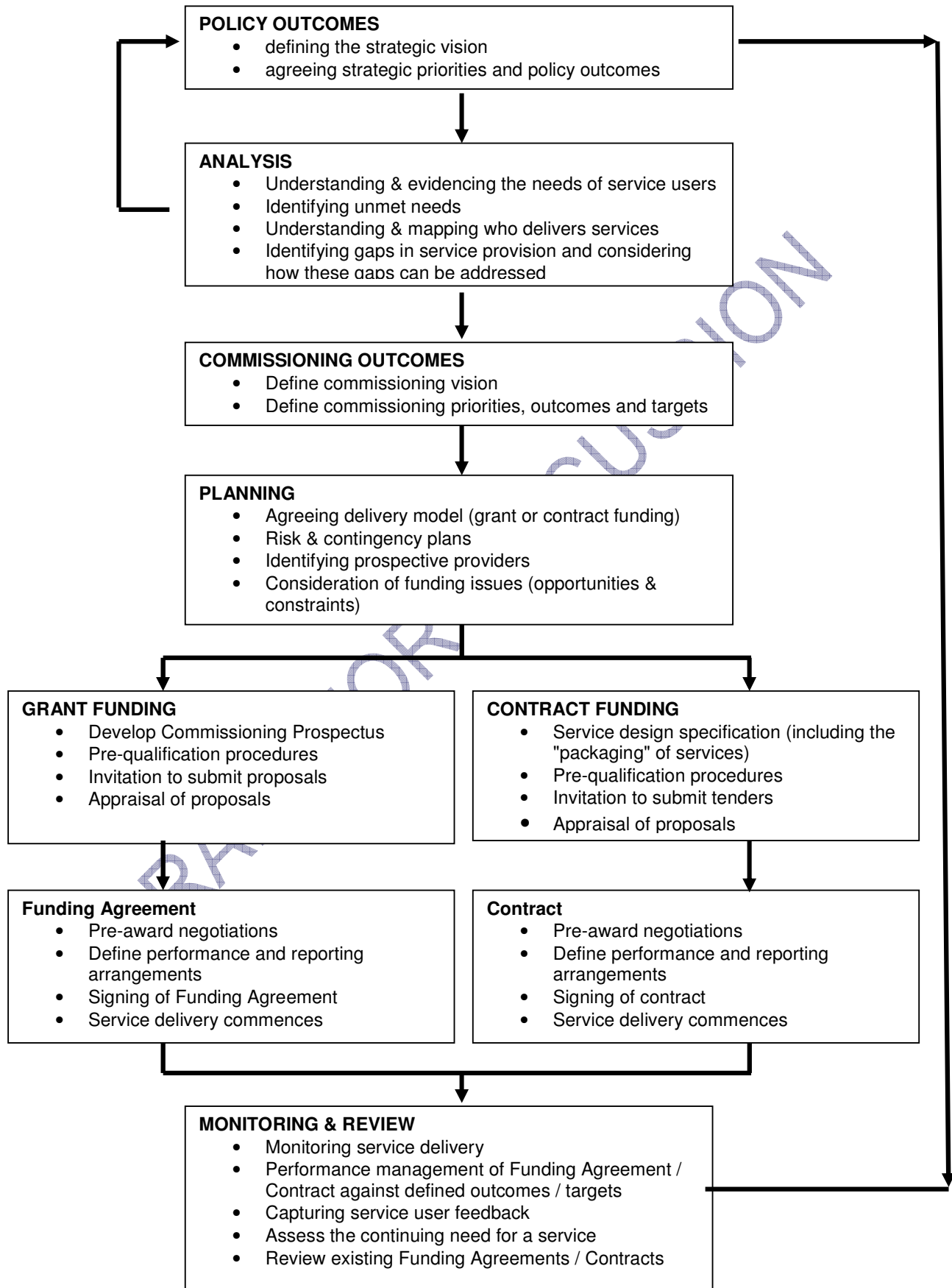
It is the Council's objective that the Island has a diverse and sustainable provider base that will deliver change and local public services that reflect needs and aspirations. This is particularly important when modernising and transforming public services. For this reason, the Council is committed to growing the proportion of local services delivered through voluntary and community organisations in addition to and alongside those provided by the private and public sector.

To deliver this diversity of provision, commissioners must demonstrate in each commission that robust outcomes have been identified and are driving the process, including selection of the best way of arranging services.

The outcome based approach to commissioning is set out in figure 1 (below).

Note: Public bodies work within a complex framework of competition and public procurement law. Nothing in the Commissioning protocols over-rides these obligations and anything arising from this protocol should be used in conjunction with existing standing orders and regulations.

FIGURE 1 : OUTCOME BASED COMMISSIONING



Stage 1. Planning and analysis

Partners to this Code are committed to all commissioning being driven by outcomes based on clear understanding of needs, priorities and resources.

Policy Outcomes

An explicit statement of the strategic vision, policy outcomes and priorities will be developed at the outset. These can be updated later if analysis suggests that they are unrealistic or not aligned with needs or expectations.

Analysis and Consultation

Analysis and consultation involves assembling data that can be shared and discussed with consultees and stakeholders. This helps to quality check information and provide a basis for refining a picture of the needs and aspirations of service users and communities. It also helps to challenge and map out existing provision, identify gaps and begin to shape likely commissioning outcomes and targets.

This process may create new data and information needs that will help to refine commissioning outcomes.

Evidence should be collected that a discussion about and based on shared information has taken place. This can include engagement with service users, communities and prospective providers in an accessible and plain-English way. Voluntary and community groups as well as elected bodies will be an essential part of the process as advocates and service providers.

Commissioning Outcomes

Analysis and consultation will lead to a number of positive and overarching commissioning outcomes being clarified and agreed as widely as possible.

Outcomes should not be expressed as outputs or activities. They describe the difference that will be made as a result of a service being commissioned. They can be supported by a number of high level outcome targets or indicators but highly specified direction on how to achieve outcomes should not be included.

Setting positive commissioning outcomes will create a road-map for potential providers and when evaluated and achieved will be the best indicator that a service has met the value for money (VFM) criteria stipulated by the Treasury.

Commissioners and partners should resist the temptation to over-specify the service needed. Outcomes should invite applicants for funding or contracts to set their own service specification. Applications and tenders will be judged on the likelihood of proposals to meet outcomes.

Action Planning

Planning will take into account the most appropriate procurement model, as preferences for a grant or contract funding may emerge and should be tested during the analysis process.

A decision support tool that gives helpful advice on which procurement route to use and how to evidence the decision is available at www.eco-island.org.uk/documents/pilot%20documents/decision%20making%20tool%20draft%20sept%202009.pdf

There will be an increasingly implicit presumption that grant funding should be considered in all cases - commissioners will need to explain why a particular procurement or delivery route has been adopted.

Constraints and influences must be clearly identified, including funding, regulation and legal issues such as 'State Aid', risks and wider impact.

Gaps in the provider market identified during the outcome-setting phase are a sign that the commissioner should consider market development, for example by commissioning grant funded innovation; not as a sign that outcomes should be compromised.

Commissioning also involves managing a number of risks. These need to be identified during the process from outcome setting to service delivery. Throughout the process, risks should be managed by the party best able to manage them. Each party must accept ownership of risks they are responsible for, that these are clearly identified with action plans for dealing with significant risks.

Some commissions involve known risks being transferred to the provider, who accounts for the risk in their funding arrangements. However, there will be commissions where it will be beneficial to meeting outcomes if the commissioner retains a significant degree of risk. This may be needed where risks may not properly understood, might change or cannot be effectively managed; for example by voluntary or community providers involved in path-finding innovation.

Stage 2. Procurement

The Isle of Wight Council is committed to two forms of procurement of local public services. These are:

Contracts; for where commissioners wish to agree funding arrangements following an open tender process

Funding Agreements; grant funding of not for profit organisations for specific services and activities, one-off projects or longer-term and on-going activities that align with commissioning needs. Grants will be allocated through the Prospectus approach, a Local Compact compliant process.

Contracts or funding agreements set out the objectives of the service provider and the commissioner, how the service will work and any specific targets and

outcomes. Funding will always be subject to standing orders, finance regulations and audit requirements of the commissioning organisation.

Commissioners should consult the decision support tool at www.eco-island.org.uk/documents/pilot%20documents/decision%20making%20tool%20draft%20sept%202009.pdf and take expert advice before procurement action.

Fair and Transparent Access

Choosing the best provider to deliver the required outcomes, whether through grant or contract funding, is central to intelligent outcome-based commissioning. The process should be open, proportionate and based on achieving value for money in its widest sense. In order to ensure a fair and legal procurement process it is necessary for all prospective providers, including third sector bodies, to step back from the close engagement typifying the preceding analysis and planning stages.

The following activities are key to this stage :

- development of a Commissioning Prospectus (for grant funding) or an outcome-based Service Specification (for contract funding)
- pre-qualification procedures and invitation to submit proposals
- appraisal of proposals

All grant-making Prospectus activity is based on a common template to underline consistency and fairness. The process emphasises a proportionate approach to the level of detail required from prospective service providers. Information on developing and awarding a grant using the Prospectus approach to funding agreements is available at www.eco-island.org.uk/prospectus

Service Specifications for contract arrangements will follow the standard procurement model already used by the Council and partners. Information about this process can be found at www.iwight.com/council/procurement

Pre-qualification and application procedures for both procurement routes will be proportionate, concise and jargon-free. Opportunities for service delivery will be publicised, in particular to the voluntary sector using RCC networks.

Clearly specified service outputs and processes may sometimes be included in the outcomes required of an applicant for a tendered contract. For grant applications, potential providers are asked to describe their service and how it will deliver outcomes. Specific outputs and targets will be agreed when drafting a Funding Agreement.

When developing outputs and specifications for a tender for Contract, potential providers or their representative organisations should be consulted in order to create the most viable outcome-based specification.

Appraisal

All procurement Appraisal Panels will conform to prevailing regulations and guidelines. They will where possible include representation from service users, carers, or the voluntary and community sector. If necessary, and to avoid any conflict of interest, such representation may be sought from off-Island organisations.

Delivering Outcomes and Best Value

To ensure that proposals are assessed against outcomes, funding will be awarded on the basis of evidence submitted by potential providers against pre-arranged assessment criteria.

Whether a Funding Agreement or Contract model is adopted there will be a requirement for commissioners to base their procurement decisions on "whole life costing." This includes an assessment of the sustainability of a bid in the widest sense.

Achieving value for money (VFM) in service delivery is not about the lowest price. VFM is the optimum combination of real costs and benefits to meet the user's requirement. We seek quality, sustainability and suitability, understanding of long-term implications and whole-of-life costs, and an appreciation of the wider outcomes of the commission on the community. Of particular interest are the wider social benefits and outcomes that prospective service providers can deliver in support of Eco island objectives and priorities.

To grow the role of the voluntary sector in local public service delivery, it will be necessary to improve levels of knowledge and understanding about the skills and abilities of local voluntary groups. A Voluntary Sector Supplier Database will be developed to support this process.

All procurement arrangements must be as accessible as possible to voluntary sector organisations. The existence of grant funding does not mean that the third sector should be subject to processes that may exclude it from applying for contracts to deliver local services on grounds of cost or complexity.

The European Union's procurement regime is not a barrier to effective procurement from the voluntary and community sector. Most services delivered by the voluntary sector are likely to be in the field of social care, 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. Many other funding opportunities may have Block Exemption.

Where the EC Directives apply in full, they serve only to reinforce existing Government policy about securing VFM and competition in the procurement process. They normally require advertising of contracts across Europe and set out detailed rules for specifications, selection of tenderers and award of contracts. They should be seen not as a barrier, but rather as a benefit to all organisations, large or small, voluntary or private sector, seeking to engage in public service delivery.

Stage 3. Monitoring and Evaluation

The commissioning cycle will continue throughout the life of a service, with scope for improvement through intelligent and proportionate performance monitoring and change. Guidance and practical help on this is available at www.eco-island.org.uk/documents/pilot%20documents/intelligent%20monitoring%20paper%20draft%20sept%202009.pdf

Effective monitoring enables commissioners to be assured that service providers deliver value for money and intended outcomes. It also contributes to the improvement of services and future commissioning processes.

Pre-agreed monitoring arrangements, written into Contracts and Funding Agreements are vital. Once in place they should only be changed with the full agreement of all parties.

As a minimum, commissioners will require monitoring of service delivery and how well outcomes and targets are being met. Also important is the capture of service user feedback, information on service needs and gaps and continuing review of Contracts or Funding Agreements.

Monitoring arrangements will be proportionate to the value and complexity of the Funding Agreement or Contract and any risks. Monitoring must be focussed on the intended outcomes. Commissioners must ensure that required output measures relate to the outcomes, are measurable, and can be collected efficiently and cost-effectively.

Commissioners will appoint a named individual as the Contract or Funding Agreement contact. This person will monitor performance. Regular project review meetings will be held between this person and the service provider. For larger Contracts or Funding Agreements, commissioning organisations may also undertake a 360 degree review of the project at the end of each financial year which will take into account the views of service users, partner organisations and other stakeholders.

Changes to the Funding Agreement / Contract should only be made with the agreement of all parties, and should be based on evidence that vital circumstances have changed. Changes and variations to Contracts or Funding Agreements may also be made in the event of a significant change to the commissioning organisations resources, with the agreement of all parties.

Appendix 1

Our Commitments and Undertakings with the Third Sector

Commissioners

Planning and Analysis; Commissioners will....

- Develop open, fair and proportionate processes that provide a consistent outcome-led approach to commissioning and procurement.
- Commission service from those best placed to meet intended outcomes.
- Support the development of a thriving economy and a sustainable voluntary and community sector on the Island; regard lack of capacity to meet service requirements as a need for support, rather than a reason not to commission or to suspend an effective service.
- Invest in the capacity of third sector bodies where there is an identified gap between the capacity of current markets or providers and required outcomes.
- Adopt a shared approach to risk management with providers that starts with the design of appropriate pre-qualification procedures.
- Actively engage third sector groups at an early stage in understanding service user and community needs, and developing the strategic vision, priorities and outcomes to be achieved.
- Together with the third sector, adopt a variety of ways of maximising public and service user involvement. Particular use will be made of the third sector networks supported by the RCC.
- Consider commissioning third sector organisations to undertake research and consultation work.
- Match developments in the private sector with a Voluntary Sector Supplier Database detailing the areas of service delivery to which Island voluntary sector groups can contribute and create an opportunity for relevant groups to develop and submit proposals.
- All service delivery opportunities advertised through RCC networks.
- Give particular consideration to the role grants can play in meeting service outcomes. For example, where a highly specialised service is required a grant may be more appropriate than competitive tendering.

- Base Commissioning Prospectus' and Contract specifications on "whole life costing" to deliver sustainable procurement and value.
- Incorporate provision for full cost recovery by third sector bodies within Commissioning Prospectus' and contract specifications.
- Package funding in such a way as to allow smaller providers to bid on equal terms. Where value for money considerations do not allow this, commissioners will give consideration to incentivising prime contractors to work in partnership with local third sector bodies.

Procurement; Commissioners will....

- Use RCC networks and run open days / meet the buyer events to advertise all opportunities to deliver services.
- Make every effort to use plain English in all aspects of the sourcing process and avoid the use of acronyms and jargon.
- Use a Commissioning Prospectus' model for all grant funding which will be applied using a standard template.
- Ensure that contract specifications focus on outcomes and the outputs that help to deliver them.
- Ensure the majority of Funding Agreements / Contracts are for a minimum of 3 years. One year renewed contracts will not be the norm.
- Reduce barriers to market entry by third sector bodies through the development and use of standardised documentation for all aspects of the sourcing process.
- Ensure that, where applied, pre-qualification questionnaires (PQQ) are simple, proportionate and user-friendly. The Council will work towards a shared standard PQQ, collecting information only once.
- Provide clear guidance as to the scoring and appraisal process to be used in assessing bids and proposals.
- For grant funding, an independent third sector representative will be participate in the appraisal process. Appraisal models will explicitly acknowledge the wider social benefits of third sector providers.
- Award grants / contracts on the basis of the Treasury definition of value for money: quality, whole-life cost, wider social outcomes and price.
- Promote the inclusion of "social clauses" and "sustainability" in commissioning plans to achieve broader community outcomes.

- Provide feedback to organisations unsuccessful with funding proposals.
- Nominate a lead body where joint commissioning takes place.
- Issue Funding Agreements / Contracts before work commences and ensure prompt payment (usually within 14 days of receipt of an invoice) in accordance with the agreed payment schedule, with payment in advance where at all possible.

Monitoring and Evaluation; Commissioners will....

- Develop monitoring arrangements that are proportionate to the value of funding awarded, the level of risk, and on outcomes not outputs.
- Details of all monitoring requirements will be clearly set out in Funding Agreements / Contracts and not changed without agreement.
- Where monitoring identifies poor performance or a change in priorities, providers will be given a minimum of 3 months notice of the termination or reduction in value of a funding agreement / contract.
- Provide realistic timescales for changes to contracts.

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Voluntary and Community Sector

Planning and Analysis; the sector will....

- Actively work with public sector commissioners, and within the Island voluntary sector, to support the development of outcome-led commissioning and procurement for service delivery.
- Recognise the statutory responsibilities of public bodies and their duty to balance the needs of local residents and work within resources.
- Support the delivery of quality public services that deliver value for money with accountability to both commissioners and service users.
- Engage with commissioners in the process of analysing and understanding service user needs and defining strategic vision, priorities and the commissioning outcomes to be achieved.
- Focus on the needs of service users and communities rather than the organisation.
- Recognise that working in partnership to analyse and plan services will not guarantee award of a Funding Agreement or Contract for delivery.
- Where appropriate, organisations will declare a conflict of interest if, for example, they are an existing service provider.
- Support a Voluntary Sector Supplier Database.
- Support the development of capacity building initiatives.
- Consider joint working and consortia bids to create economies of scale and the capacity to bid for larger contracts or grants where appropriate.
- Ensure that, prior to submitting bids and proposals, they meet the commissioners requirements for quality standards, diversity and sustainability, etc.
- Support a shared approach to risk management.

Procurement; the sector will....

- Publicise service delivery opportunities through third sector networks.
- Work with public service commissioners to develop standardised user-friendly documentation and sourcing procedures.
- Work to recognised quality standards and the development of the highest quality management and financial control procedures.

- Have clear lines of accountability when preparing / delivering joint / consortia proposals. A lead body will be nominated for all joint commissioning partnerships.

Monitoring and Evaluation; the sector will....

- Support and comply with all agreed monitoring and review arrangements.
- Ensure that effective performance management and financial control systems are in place to manage service delivery and account for the public funding awarded.
- Recognise that monitoring and service review activities may result in de-commissioning as well as re-commissioning.

Discussion draft Oct 2009

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