



AGENDA

SELECT COMMITTEE - COMMISSIONING

Friday, 7th February, 2014, at 10.00 am

Ask for: **Denise Fitch**

**Wantsum Room, Sessions House, County Hall,
Maidstone**

Telephone **01622 694269**

Tea/Coffee will be available 15 minutes before the start of the meeting in the meeting room

Membership

Mr M J Angell (Chairman), Mr M Baldock, Mr M A C Balfour, Mr H Birkby, Mr N J D Chard, Mr G Cowan, Mr T Gates, Mr C R Pearman and Mr M J Vye

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

- 1 Declarations of Interests by Members in items on the Agenda for this meeting.
- 2 Questions/themes that the Committee are investigating as agreed in the Terms of Reference (16/12/13) (Pages 3 - 6)
- 3 **10.00am** - Christy Holden, Head of Strategic Commissioning (Accommodation Solutions) (Pages 7 - 8)
- 4 **11.00am** - Kent Care Homes Panel (Pages 9 - 14)

(1) Adrian Adams, Chief Operating Officer, Kent & Medway Care Association & Research Fellow at University of Kent

(2) Gill Gibb, Kent Care Homes Association / Chief Executive officer, Canterbury Oast Trust (Learning Disability)

(3) Ann Taylor Chief Executive, Kent and Medway Care Alliance

(4) Clare Swan, Board Member, Kent Community Care Association

5 **12.00 noon** - consideration of written evidence (Pages 15 - 40)

- (1) KCC Commissioners and a selection of organisations from across Kent
- (2) Action with Communities in Rural Kent - additional written evidence paper
- (3) Governance and Law - implications / Issues (i.e. procurement law / HR implications / TUPE)

6 Wrap up/key points

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services
(01622) 694002

Thursday, 30 January 2014

KCC Commissioning and Procurement Select Committee Themes

The questions/themes that the Committee are investigating as agreed in the Terms of Reference (16/12/13) are:-

What do we (KCC) need to do next to become a better commissioning authority – with a particular focus on removing barriers to entry for the provision of KCC services from new providers, particularly small to medium sized enterprises (SMEs) and members of the voluntary, community and social enterprise sector (VCSE).

Is KCC using its commissioning processes to ensure it meets its duties under the Social Value Act?

How, in becoming a commissioning authority can the voluntary, community and social enterprise sector (VCSE) play a more important role in the provision of KCC services.

The issues to be explored are

- a) the strategic context and our role as a commissioning organisation
- b) the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers
- c) how any barriers to entry for new providers might be mitigated or removed
- d) the extent to which KCC decommissions and re-commissions services based on provider performance
- e) How KCC can best discharge its responsibilities through the Social Value Act
- f) the type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships)
- g) the extent that social value requirements be sought throughout the KCC supply chain

Themes in detail: This is intended to give a flavour of the issues that the Committee might wish to explore through their Hearings, it is not intended to be prescriptive or relate to a specific witness and is to aid thinking.

a) Role as Commissioning Organisation and Strategic Context

- What is Commissioning?
- Do we understand as an organisation what we want or are trying to achieve? Are we sufficiently focused? Are we a provider or commissioning organisation?
- Do we have a clear understanding of our role as a commissioning organisation?
- What is our commissioning strategy?
- Are there any strategic barriers to achieving the transformation Kent needs through commissioning? How might we mitigate these?
- Is there clarity around budgets & commissioners ability to enact the strategic direction?
- What does successful commissioning look like? What do we do well and what can we improve? Are we an intelligent client? Do we know what we want and don't want?
- How do we balance our service requirements and budget of council and using the VCSE sector?
- Where can County Council Members add most benefit within a commissioning organisation?

b) Market Development - What are the costs of entry into KCC commissioning and procurement exercises and do these costs present a significant barrier to new providers?

- What are the costs of entry into KCC commissioning? Is access to the market equitable?
- How does this affect the sectors? Business return/profit?
- What does this mean from a provider perspective?

c) Market Development - How might any barriers to entry for new providers be mitigated or removed?

- What are the barriers for providers? How might these be mitigated? e.g. costs of insurance, contract length, capacity, skills, Legal/Tupe)
- How proportionate is paperwork to spend/contract value? What have we/can we do online to reduce burdens?
- How much of our provision is with VCSE, SME's? What are our targets/guidelines for procuring Kent business? Services from VCSE? SMEs?
- How are we supporting VCSE? How can the VCSE play a more important role in the provision of KCC services as we become a commissioning authority? What else might we do?
- How do we work with SME's? What else might we do?
- What are the implications of subcontracting? What are the learning points about large suppliers using SME's/VCS's? What might we do to support large private suppliers and VCS sector working together?
- How is Kent actively shaping and developing the market, what else might we do?
- What part does the construction of the proposal and contract type chosen influence which providers tender?
- Can VCSE sector and SME's build own capacity? Maintain rate of growth?

d) Commissioning/Contract Management –

Do we decommission / re-commission services based on performance?

- Why is re-commissioning/de-commissioning important? Are the processes clear?
- Do we have a clear picture of what we are spending and with whom?
- How are we developing the market through decommissioning and re-commissioning? What are the benefits of particular procurement models (e.g. Dynamic purchasing model)?
- How is decommissioning influenced by nature of service and market?
- Contract monitoring – What are the realities of outcome focused commissioning? How successfully are we monitoring outcome focused contracts? Are the outcomes specified the right ones for contract – activity or outcome based? Do we understand model procuring into/service pathways and key part supplier plays, interdependencies and specific attributable outcomes? What can we learn?
- How do we reward providers for past performance? Do we assess past experience of providers in procurement process? How can we build previous experience of providers into procurement process?
- What is our approach to managing contracts, in particular poorly performing providers? What do we need to get better at?

- Is there clarity of roles between commissioner and provider/supply? Do we understand our role as a commissioning organisation and have the skills to support this? Are we good commissioners?
- How can the right commissioning and contract management help meet KCC's savings targets? In managing contracts what do we do well, what should we do better? How might we modernise our approach? Do contracts include good specifications and the necessary levers? How have other LA's approached this e.g. Essex?
- How should we balance the need for contracts that give time for innovation, companies to make a return and enable Kent to decommission and ensure good market development? Within our contracts is there capacity through length of contract for service re-design and innovation?
- What are our relationships like with suppliers – how could these be better?
- What impact does length of contract have on providers entering the market, performance managing a provider on outcomes, provider gain and added social value?

e) How can KCC best discharge its responsibilities through the Social Value Act

f) What type of social benefits should be sought through commissioning and procurement?

- Are we meeting the duties of the social value act?
- How can we use commissioning to ensure meet duties under social value act?
- How have we worked with providers to achieve social value? (e.g. apprenticeships, waste)
- Do our procurement systems allow wider public value judgements to be included in the assessment of tenders so that the added value of the voluntary and community sectors can be recognised in the decision about procuring our goods and services?
- How does the nature of the added social value depend on the procurement model, sector or individual provider?
- To what extent should social value requirements be sought throughout the KCC supply chain?

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From: Christy Holden – Head of Strategic Commissioning – Accommodation Solutions

To: Select Committee – Commissioning – 7 February 2014

Subject: **Commissioning for Accommodation Solutions**

Classification: Unrestricted

Background:

The new Commissioning Structure in Families and Social Care was established in October 2012 with three distinct teams; Children's commissioning, Adult Community Support and Adult Accommodation Solutions.

This report covers the commissioning function for Adult Accommodation Solutions which covers residential and nursing care provided in regulated care homes across all adult client groups; Older People, People with Physical Disabilities, People with Learning Disabilities and People with Mental Health needs. The Accommodation Solutions team are developing an Accommodation Strategy which will determine the amount and type of registered care home and supported housing units that will be required in future. The commissioning of care services into extra care housing for older people and supported accommodation is undertaken by the Community Support team.

Current Position:

Kent County Council spends £180m on residential care services for adults across all client groups. This is by far the highest proportion of spend for Families and Social Care. The contracts were last let between 2002 and 2004 and are in need of re-letting to bring up to date the terms and conditions and to introduce regular performance monitoring.

The Care Bill, currently going through Parliament, poses major change to the sector and the approach to Commissioning is an important factor as individuals not previously known to Kent County Council will have rights to assessments and funding. This means that KCC has to understand the market, set clear messages through a Market Position Statement and provide a range of accommodation choices to individuals who may previously have only been given the option to living in residential care.

Kent County Council owns and manages nine care homes for older people and X for learning disability. The care provided in these facilities is by KCC employed staff and, in the integrated care centres, some health staff. The Older Person's care homes are under review as part of Phase One of Facing the Challenge, market engagement and service review. These services are being reviewed in line with the Accommodation Strategy that will consider other services that are delivered in the areas surrounding the care homes. The outcomes will be presented to the Facing the Challenge Transformation Team by the end of March 2014.

Kent County Council has previously considered expressions of interest from Community Interest Companies in the running of KCC care homes and needs to further support this sector, and current employees, in progressing any interest through to Procurement under the Community Right to Challenge process. This would promote local employment opportunities. However, more work with business/economic development partners would be required and the sharing of commissioning strategies to identify these opportunities would be necessary.

Commissioning and Procurement Activity:

KCC will be re-letting its residential and nursing care contracts through 2014 and work has commenced on the design of the Older Person's residential and nursing care home process.

The costs for providers to tender for commissioned activity would be through staff resource. This would be for staff to understand what is required and complete the tender documentation. KCC will be holding a number of events to walk providers through the process and answer any questions prior to the formal tender process starting where all communication is channelled through the IT system. Some smaller providers may not have easy access to IT and therefore we have directed them to their Trade Agency or asked them to contact us so we can identify different options.

KCC is considering the best way to contract with providers that allow new providers to enter the Kent market to make sure that we are also able to contract with new care home providers through the duration of the contract. This supports the work taking place with the Accommodation Strategy whereby new services may be required and may be built through the contract period.

KCC is also devising the evaluation criteria for the tender. Included will be reference to the Social Value Act and consideration of social return on investment. Commissioning and procurement activity will make sure that cost and quality are considered in evaluation together as the lowest price in care provision could result in greater activity by all stakeholders in monitoring.

KCC has not previously had regular monitoring of performance indicators in the residential care contracts and this is being introduced through this re-let. KCC has always monitored quality through the contract and supported the Care Quality Commission and Safeguarding alerts to protect adults at risk. Contracts have been terminated where there has been serious risk and CQC have removed their registration. However there are greater challenges where the contracted provision is also someone's home and people can exercise choice through the Choice of Accommodation Directive LAC (2004) 20.

KCC are considering how service users and stakeholders are included in the development of the specification and evaluation of the tenders as the commissioning and procurement activity is designed. The Social Value Act is an important factor in all commissioning activity and KCC are in the early stages of developing a Toolkit for Commissioners and/or a Charter for Providers.

Through the development of the Accommodation Strategy KCC will be promoting the use of sustainable materials in new-build projects and redevelopments and would expect providers to be promoting environmentally friendly ways for undertaking their business, travelling and recycling. Capital projects that have or could be commissioned have included criteria for evaluation on the use of apprenticeships and local employment

KCC will encourage larger organisations to utilise the services of SME's and volunteers through the supply chain.

Christy Holden

Head of Strategic Commissioning – Accommodation Solutions

Families and Social Care

17 January 2014

External Witness Biographies – 7th February 2014

External Panel: Kent Care Homes Association

Kent Care Homes Association is a non-profit making organisation whose aim is *“to Support all members and provide a great service”*.

Kent Care Homes Association is an independent organisation founded by like-minded providers to promote a level of care based on quality the service user can trust. The Association was founded in 1980 and has grown significantly over the past thirty years supporting members across Kent and the surrounding areas.

KCHA primary function is to support our members and to provide a range of wider services including:

- DBS Disclosure Service
- Information on training opportunities
- Quality Assurance guidance for care providers
- Legal helpline provided by Brachers Solicitors in Maidstone
- Financial workshops in association with Lloyds TSB

KCHA, along with Kent Community Care Association (KCCA) and Kent and Medway Care Alliance (KMCA) disseminate information to the sector.

Attending the Select Committee today are:

1. Adrian Adams, Research Fellow at University of Kent,
2. Gill Gibb, Kent Care Homes Association & Chief Executive, Canterbury Oast Trust (Learning Disability)
3. Ann Taylor, Chief Executive, Kent and Medway Care Alliance
4. Clare Swan, Board Member, Kent Community Care Association

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Briefing Paper for the Kent Care Homes Panel for the Select Committee Commissioning & Procurement 7th February 2014

Introduction

This paper is presented on behalf of the Kent Care Homes Association (KCHA), in partnership with the Kent Community Care Association (KCCA) and the Kent and Medway Care Alliance (KCMA). The KCHA is an independent organisation founded by like-minded providers to promote a level of care based on quality the service user can trust. The Association was founded in 1980 and has grown significantly over the past thirty years supporting a current membership of 130 care homes across Kent and the surrounding areas.

Since 2009, the KCHA, whilst continuing to represent the interests of its membership, has worked in collaboration with the KCCA and KMCA to ensure that it is strategically engaged with the transformational change in adult health and social services across Kent, by informing and promoting innovation and improvement in the quality of care and support services to vulnerable adults. As such the KCHA was instrumental in establishing and representing the sector on the Kent Adult Social Care Stakeholder Transformation Board, the aims of which include:

1. To facilitate a strategic, inclusive and consistent partnership between council and providers to deliver the Kent County Council (KCC) Adult Social Care Transformation Programme and
2. To, where appropriate, co-design adult social care services in Kent

Currently, the KCHA is working with its partners to promote a combined alliance of SME service providers in Kent, that alongside its commitment to maintaining its members benefits and interests will also:

1. Create a unified voice to promote social care providers in Kent.
2. Support the sector to build capacity and strategic influence in partnership with key stakeholders (e.g. Local authority, national associations, skills councils, Care Quality Commission, Health Education boards)
3. Contribute at a strategic level to key challenges in social care transformation including service specification, quality improvement and workforce development and redesign.

Within this context of its purpose and operations, the KCHA has had considerable engagement with and experience of KCC Commissioning and Procurement.

Facing the Challenge

If the challenge facing the local authority of transforming adult social care is to be addressed, then KCC must invest in a programme of building locally valued and responsive services with regard to two key and interrelated dimensions, cost and organisation:

1. As, for the foreseeable future, the local authority is significantly constrained with regard to the resources it can commit to health & social care, then it should work in partnership with existing business in Kent (the SME supply side) to identify and plan for cost effective outcome driven services. Implementation of the Social Care Bill requires cost capping of residential and home care fees, personalised / individual budget holding for direct purchasing of services and private financial investment. The funding changes under the Care Bill will expose the current gap between the rates paid to homes by councils and the typically higher fees paid by self-funders.

“This change is likely to put significant pressure on the income of care providers, who will in turn seek higher fees – an increase in the ‘usual cost’ rate – from their local authorities,.....Given residential care providers have already absorbed downward pressure on fees in recent years...it is likely that to avoid forcing residential care providers into bankruptcy, local authorities will in fact have to increase their ‘usual cost’ rates.”

A new approach is now required to identify and meet the real costs of services, i.e. one that drives out waste, drives down costs and drives up value through better use of available public funding, (e.g. Attendance Allowance, Housing benefits, Joint LA and NHS funding) and alternative private sources of investment.

2. Public service reform, transformation, integration and commissioning and procurement for outcome driven services, require significant change at the system, organisation and workforce levels. The KCHA recognises the need for

SME social care providers to work together and be represented at a strategic level to generate a continuum of cost effective, flexible, responsive, integrated and community facing services. However achieving this is dependent upon the capacity, trust and appetite of not only suppliers but also KCC for collaborative working arrangements. To date, in our experience, there is limited evidence of any real desire to have a partnership between commissioners and providers. Culturally this needs addressing and local authority staff attitudes need changing through training and coaching. There is a new reality now that (with some exceptions) is not evident on the ground from KCC staff. What is required is open, timely communications so providers can plan and work as effectively and efficiently as possible when tendering. At present there appears to be a disconnect within KCC between Commissioning, Operations and Procurement – This is frustrating for Providers, who after extensive negotiations and attempts at co-production with commissioners are then faced with tenders that do not represent the understandings they believe to have been and developed in the run up to the process. It should be recognised that commissioning is on top of the day job for providers and SMEs and VCSES run with no fat.

Recommendations:

1. KCHA has long campaigned for outcome orientation and long term solutions. Experience from the recent Domiciliary Care Re-tendering procedure suggests that the process has been experienced more as a blunt instrument to achieve de-commissioning, rather than a reshaping of the market to delivery outcome driven personalised services. The SIS tender did not focus on quality outcomes and the current 1 year domiciliary care tender remains focused on the lowest cost for a time and task oriented service. In Learning Disability it can take several years of dedication and care to develop someone to be more independent and suitable for supported living – this needs recognising.
2. There are real concerns amongst KCHA and its partner organisations representing the supply side that Prime Integration Providers will come to dominate the care market at the expense of Service Delivery Providers, as the focus on quality and outcomes is delayed for 12 months, by when many

existing SME providers will have been driven out of the market by loss leader bids from national providers. Going forward this may leave the authority vulnerable to price hikes from monopoly providers. The experience from other Local Authorities who have used this model should be sought.

3. KCC should invest now in an approach that will generate the necessary innovation across the independent care sector to drive up standards and drive down costs in services by building strategic 'whole systems' thinking across the service supply side. The KCHA have proposed a model of Locally Based Networks of Supply, that would utilise the 'co-creation of value' approach to drive out redundancy from the system and remodel services that are innovative, capable of continuous improvement, responsive to local and changing needs and integrated with other independent and public services. The Local Authority should also encourage collaboration and facilitate workshops to upskill VCSE's and recognise that in some circumstances grant funding still has a role for capacity building.

Sources and References:

CHARGING for RESIDENTIAL ACCOMMODATION GUIDE (CRAG) in support of The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977) UPDATE 2011
DoH Commissioning for Personalisation: A Framework for Local Authority Commissioners Gateway

<http://www.thinklocalactpersonal.org.uk/Browse/commissioning/developing/?parent=8567&child=8161>

Grant Thornton (2011). *The Migration of Public Services For the people, by the people? The role of civil society in devolved public services*

Independent Age (2013). *Short changed: The Care Bill, top-ups and the emerging crisis in residential care funding.*

Local Government Association (2013) *The general power of competence – empowering councils to make a difference* http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10180/4072955/PUBLICATION#sthash.0TSwWajT.dpuf

Local Government Information Unit (2012) *CARE NOW AND FOR THE FUTURE AN INQUIRY INTO ADULT SOCIAL CARE* www.lgiu.org.uk

Milbourne, L. And Cushman, M. (2010). *Enabling or Constraining Innovation: Trust, Risk and Control*

in Third Sector / State Relations, Working paper 181 LSE

Personal Social Services Research Unit PSSRU Discussion paper 2811/2 (2011), *REPORT OF RESEARCH FOR THE COMMISSION ON FUNDING OF CARE AND SUPPORT, Projections of Demand for and Costs of Social Care for Older People in England, 2010 to 2030, under Current and Alternative Funding Systems*, www.pssru.ac.uk

Public Services (Social Value) Act (2012) and Procurement Policy Note – The Public Services (Social Value) Act 2012 – advice for commissioners and procurers

Written Evidence: KCC Commissioners and A Selection of Organisations From Across Kent

“How KCC can become a better commissioning authority – in particular removing barriers too small to medium businesses, voluntary agencies and the social enterprise sector?”

To complement the evidence heard by Members of this Select Committee during their witness hearings; KCC Commissioners from across the Directorates and a selection of organisations from across Kent were invited to submit their views regarding *“How KCC can become a better commissioning authority – in particular removing barriers too small to medium businesses, voluntary agencies and the social enterprise sector?”* for the final session on written evidence, Friday 7th February.

The organisations from across Kent invited to comment were:

1. A range of Voluntary Agencies and Social Enterprises: both providers and infrastructure organisations;
2. Contracted Youth Services providers;
3. Organisations who had been both successful and unsuccessful in procuring KCC contracts.

All the organisations and KCC staff were assured anonymity. The ensuing data provides all the comments received, it is collated in accordance with 1 to 3 above and finally the observations received from KCC commissioning staff.

Evidence Received From Five Voluntary Agencies & Social Enterprises:

VCSE Respondee No. 1

“Personally, I have given up trying to work with KCC and it saddens me as I know my service would be of tremendous benefit to improve physical and mental health and wellbeing for children, young people and adults in our county.

The process of going through the SE Business Portal is a complete and utter disaster. I am not allowed to talk with anyone prior to completing a tender application as otherwise it is seen as unfair! Some of the tenders take so long to complete and it becomes unviable. We are a small CIC and don't have the time required to spend on ITT's only to find it wasn't suitable for us, or we didn't get any success in our application.

What I want, is for someone to come and visit me from the commissioning team, to see where my provision can fit in to KCC services offered. To talk and discuss with me – you know, the old fashioned way!!! Someone to act as the gatekeeper so to speak and signpost me to where my provision could be of interest.

I would avidly support any possibility of removing the electronic commissioning process and go back to talking and meeting with people.

Please do keep me informed as I would like to know myself, how I could enter the current realms of KCC as a small specialist and niche nature based education/experience provision.”

VCSE Respondee No.2

“ 'passed the test' to register on the website and apply for commissioned projects, BUT the time involved to wade through the processes are disproportionate for a small organisation. We have not get a full time administrator. Every hour spent on computer time is time lessened in front line delivery. The true cost has not been recognised and we have agreed not to go ahead with trying to secure commissioned services as a result. However, there is still a need for the work to be done and we are still recognised as being able to do it.

The upshot is that we have been approached by statutory services to provide a service, to do visits, to provide data, to join a think tank etc. but all such activities are to be done for free. This is clearly not sustainable. We are not alone in saying that the Commissioning is top-heavy on admin and this knocks out the small organisations despite their flexibility and excellent front line knowledge.

I appreciate that this is partly intentional. It is costly to deal with a number of small providers. Arguably, the 'bigger organisations' have a more efficient base. Certainly they have greater leverage to negotiate a contract but they do not necessarily provide a more efficient service!

I hope this helps your discussions. I am aware that commissioners have spent many hours on trying to get the language right and cut down vast amounts of legal jargon but the process is still unwieldy in my view. If it was more efficient and easier, there would be more small organisations taking part but we have only to look around and see that these organisations are not taking part in the commissioning process in large numbers, squeezed out by the bigger groups. (Small and local still has a useful presence if allowed to survive!) Big and powerful does not equal better necessarily! We are aware that some organisations have been successful in gaining a contract and then been unable to deliver as contracted. This means that the service is unavailable for the most vulnerable people who are to be supported. There is no service where it should exist. In that instance the commissioning has not worked well at all. Those with the least ability to express their needs may remain those hardest hit, unable to access services where they are needed.

Challenge this with Commissioners? Well there is a sense of battle fatigue. There has been so much change, for so many, that those in post are just glad that they have a job. This is not good for moral at any level. KCC can become a better commissioning authority by taking account of the work they have done and the knowledge they have gained and acting on it rather than asking for more mapping or trying to redesign what is already working. The only people who get rich from these strategies are the 'advisors', but the services remain hard pressed!”

VCSE Respondee No. 3

“Thank you for facilitating the opportunity to feedback on our tendering experiences. We recently entered into the tendering process with KCC, reaching the invitation to tender stage having successfully met the PQQ. We are a small Community Interest Company employing less than 30 members of staff and covering East Kent area. There were two main reasons we felt we could not proceed to tender:

First, we were not able to see detailed historical income and expenditure for the projects. To take over a project responsibly and seamlessly, we would need to be fully confident that we can maintain full cost recovery within budget from the outset. This is not possible without access to a detailed breakdown of regular operational costs and historic ad-hoc capital spending.

Second, our ethos of co-producing and personalising services means we begin by working alongside people closely to shape the direction a service takes. This reflects Valuing People Now, which we noted is the policy context for outsourcing the services. We recognised that the service specifications were prepared with contributions from people currently being supported. However, without being able to visit the services to meet people face-to-face, listen to their views and see what happens first-hand, we felt we could not prepare a tender of the quality expected and that was true to our principles.

Other barriers to entering into the tender:

- The financial costs that we would incur in seeking external advice on contract law. We do not have this expertise in house.
- The transfer of TUPE would create inequality in our workforce as we are currently unable to meet public sector pension benefits. This was one of the deciding factors not to tender as we are not prepared to award some members of staff these benefits and not others. We are also not in the financial position to take these costs on.
- The short time frame in which to prepare a tender - the projects we were looking at tendering for had a timescale of 3 weeks for the Invitation to Tender stage. Small organisations such as us have limited personnel capacity to mobilise for the task

The particular tender we were looking at was for 4 separate projects. The possibility of tendering for just one of these projects without being disadvantaged, and not being obliged to tender for all four, was helpful and encouraging for us. We felt that this was also in line with Valuing People Now, as each service/project was very different, even though all four were set up to support adults with learning disabilities.²

VCSE Respondee No.4

What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers?

The main cost is time - the tendering process from providers information events, to PQQ, ITT and interview can be burdensome, particularly for those smaller orgs with few staff members. Please also give sufficient time for mobilisation – recruiting staff safely takes time – we were lucky to be able to deploy existing staff temporarily to help with set-up, but this should not exclude new providers from the marketplace.

How any barriers to entry for new providers might be mitigated or removed?

Clear ITTs play a vital role in a swift commissioning process as unclear parameters lead to a protracted submission process, and later if successful, difficulty in achieving the strategic aim of the contract due to lack of clarity.

- Responsible and fair scoring matrices need to be used, in particular, in relation to price. A scoring matrix that is weighted mostly on price may lead to short term savings, but not very often long term value for money, sustainability, or quality services. Such an approach should also serve to prevent later exit from the market and subsequent market disruption.
- Payment by Results while serving to increase quality and competitive services in the market place may also act as a barrier to access to smaller organisations. Particularly when the PBR period crosses to a new financial year, the uncertain financial income may automatically eliminate smaller and newly established providers from entering the process.
- New providers often suffer from the ‘chicken and egg’ scenario – they can’t win tenders as they do not have references from previous providers. Perhaps eligibility onto smaller contracts such as Frameworks may be won on a ‘provisional’ basis to allow new providers to ‘prove’ themselves.
- It would be helpful for both commissioners and providers to better understand concepts behind commissioning strategies such as OBA. This would allow commissioners to write clearer, more efficient specifications and for suppliers to provide better quality submissions and later services. Cross sector training would help in this area.

How the voluntary and social enterprise sector can play a more important role in the provision of KCC services? More openness from Health commissioners – they view both public and private sector organisations as ‘providers’ to be precluded from important strategic discussions. Core Assets in particular is much more interested in being viewed as a strategic partner, believing that co-production between the sectors and including service users leads to much more meaningful services.

How KCC can best discharge its responsibilities through the Social Value Act?

At the most basic level, the authority must be engaged with the community it serves to achieve real social value – what are the local issues that need to be resolved? Meaningful consultation with communities would allow for real and significant specifications to be added to ITTs and other procurement activities. End service users’ feedback should actively be sought (from the council) on their experience of services to allow decommissioning of ineffective services, therefore a more dynamic

market place. Equally engagement with service providers is essential in truly understanding what the sector is capable of.

The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships). Shared staff training/clinical supervision pathways, recruitment of local staff, input into community resources, use of venues, shared back office functions etc.

VCSE Respondee No.5

I'd like to preface my comments by noting that there is a good deal of understanding and sympathy in the VCSE sector towards the challenges faced by KCC. KCC commissioners currently have good relationships with much of the sector, and have been very active in engagement, frequently attending events and leading on consultations. This is very much appreciated by the sector, especially when everyone knows that KCC staff have been going through difficult times themselves, with a lot of uncertainty.

Costs of entry: Most established VCSE organisations are used to applying for grants, and working on tenders on the KCC Portal is not as onerous as a Lottery application. The shift towards contracts, and better outcome monitoring, is accepted, and in many cases is a welcome improvement in raising standards of delivery. Bringing in measures of quality and outcomes will be an additional cost for many organisations, but is needed for many funding bids nowadays, not just KCC, and the sector will need to become more investment-ready to be able to compete.

There is however concern that Payment by Results, if brought in too aggressively as has happened on some contracts elsewhere in the country, effectively bars everyone but the national private (and some VCSE)organisations from tendering due to the risk to income and cash flow that this brings. Charities especially have a legal duty to safeguard their assets and activities, and are traditionally very risk-averse.

Engagement on a set of standard processes and tools for outcome monitoring would be welcome, in advance of contracts being tendered. Even those VCSE organisations which do currently measure outcomes may have their own tools for doing so – as there are many different measures available. As tenders usually have a 30-day turnaround, this does not allow smaller VCSE organisations to train or develop new outcome monitoring tools which may be the ones favoured by KCC (eg asset mapping experience). This also tends to favour national VCSE organisations which can easily source these skills, especially for the purposes of writing a good bid.

Barriers for new providers: The main issue for new providers is the same as for existing small providers – the challenge in delivering services at a volume which is efficient for KCC to manage. As many of the contracts being tendered are either district, CCG-wide or county wide, this bars many smaller, or specialist, providers from participating. Whilst the sector is now starting to form partnerships, these would take a minimum of 3 months to achieve, and more normally, even in the private sector, around 12-18 months. For charities, run by part-time volunteer trustees without Mergers and Acquisitions expertise, who do not know if they will survive the

next 6 months, these partnership discussions can seem a luxury and less of a priority until a tender suddenly appears and they have 30 days to complete the bid.

Barriers for new providers are especially tough for start-up social enterprises, where there is little funding available, very little advice or support, and the lack of a track record makes loans and grants hard to draw down. Many social enterprises will never achieve high growth status as they are often, by their nature, community-based projects focused on a single stakeholder group, niche service or product. On the other hand, some newly formed organisations appear to have been able to win work through personal connections at KCC, and there is anecdotal evidence that some of the formal procurement processes are still ignored or bypassed on the ground by KCC staff when managing services.

How the VCSE sector can play a more important role in the provision of KCC services: KCC has a very good reputation for supporting the VCSE sector in Kent.

But the budget pressures mean that efficiencies need to be made, and the sector recognises that it is not KCC's job to preserve the existence of Kent charities or social enterprises. However there are many effective small charities which provide vital local services to marginalised groups, and which need some additional support to survive, especially if they are supporting less media-friendly groups where finding other sources of income (eg donations, legacies etc.) may be difficult. Whilst many charities are still considering how to set up social enterprise trading arms, the lack of funded support in this area, and set up support in the way of small loans, means that most ideas never get off the ground. The funding which is available requires a lot of work in completing the paperwork, success rates are low, and so charities stick to grants and statutory sources of income as these are more familiar.

The VCSE sector must partner in KCC's plans. Local VCSE organisations share the commitment to having strong communities, local people in skilled jobs, reduced crime and social isolation. They have "skin in the game" as their activities, and futures, are in Kent.

Working with the sector, KCC could support the development of methods to assess the effectiveness of charities in different sectors and localities. These could involve outputs and outcomes, Social Return on Investment etc.

There is a concern in the sector that KCC will commission via prime providers in the future. Whether national private or national VCSE organisations, experience has shown that many smaller VCSE entities are used as "bid candy" and do not benefit from subcontracting via the prime at all, being offered only the hardest cases, or those which are not profitable for any organisation. Whilst subcontracting can work, this still needs to be monitored by KCC, certainly in the early stages, with clear rules on the quality and amounts of subcontracting expected to different organisations, and acceptable levels of management fees to be charged. It is important that KCC recognises that national VCSEs have a different focus than local VCSEs.

How KCC can best discharge its responsibilities through the Social Value Act:

In many ways, social value is key to the success of KCC's vision – in having strong and safe communities, a skilled and employed local workforce, good quality of life for Kent citizens whatever their age or health. However this does not appear to be embedded in the Transformation programme as yet. Recent tenders have not asked about wage levels or aspirations, about the % of skilled management posts which

will be located in Kent for example. Some have not even mentioned Social Value at all. Whilst unfortunately this area will ultimately become another easy one for larger companies to pay lip service to, KCC can ensure at least some minimum criteria which will benefit Kent citizens are adhered to. Minimum proposals here would include ensuring a high profile of Social Value throughout the tender documentation; including a mention of KCC's own priority of Social Value in commissioning (eg through skilled local jobs, improving wages etc.); and mentioning a commitment to a diversity of providers (subject to the usual legal limitations in tenders) to include national and local organisations, charities etc.

Type of social benefits that should be sought through commissioning/procurement practices:

- skilled training, including apprenticeships - include specific targets based on the sector (link into LEP objectives)
- % management posts located in Kent
- commitment to employee welfare, eg Investors in People, level of training budget per head, etc.
- average wage levels (eg some companies only employ under-21s in several jobs as minimum wage is less);
- environmental measures and commitments
- % of local suppliers used by those tendering in their existing business, and proposed in the specified tender, or reasons why local suppliers have not been used
- commitment to fair payment terms in KCC contract terms, and by any prime providers
- other indications of community benefits, eg support for volunteering in the workforce, charitable donations etc.

Evidence Received From Two Contracted Youth Service Providers:

Youth Services Respondee No.1

Before answering the specific questions set out below, as a charitable organisation that has been successful in securing commissioned services from Kent County Council I would observe that the voluntary and community sector in Kent is very diverse covering a range of organisations. I would say the sector is not that cohesive, this is in part due to the wide range of providers and partly because my observation is that the capacity building umbrella groups in the county have morphed into being providers themselves creating a difficult atmosphere of competition and conflict of interest at times.

In the variety of providers there are a clear small group of larger charities which have significant core resources or are subsidiaries of larger organisations which gives them the stability to bid for new work and grow. These are more business orientated organisations with clear social aims and charitable outcomes. Alongside this there are a multitude of small charities with no core funding strength and no capacity to adapt to a tendering environment.

What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers?

The main costs are having the capacity to be able to monitor and respond to opportunities as they arise, the IT structure to be able to use the system and the ability to handle abortive costs of exploring opportunities that don't fit, and spending time developing bids that aren't successful. Our estimate is that we spend around £20,000k per annum in staff time monitoring, exploring and developing bids. While successful bids include some management costs this cost of being active in the tender process can't be recovered. This capacity is beyond the reach of most smaller voluntary sector organisations.

Even when volunteers are used the speed of turnaround of commissioned work often means it would not be practicable for small organisations to get the information together and build appropriate partnerships through volunteer effort.

The use of a three year commissioning framework at early stages of commissioning protected existing providers but blocked all new entrants including charities and voluntary sector organisation in Kent.

In many cases where we have been successful in bids they have been partnership arrangements and these take time to manage successfully. This is real a capacity building cost that the lead body incurs to support the other organisations to develop and deliver.

How any barriers to entry for new providers might be mitigated or removed?

The easiest way to alleviate some of the pressure is to have longer periods in which bids can be put together and submitted to allow local partnerships to be formed and give smaller organisations a fighting chance.

A forward plan of services to be tendered in the coming 6-12 months would also allow smaller organisations to properly plan and respond to opportunities or join consortia.

How the voluntary and social enterprise sector can play a more important role in the provision of KCC services?

The voluntary sector are, in my experience, great innovators, used to identifying need and defining creative solutions to plug the gaps in other services. They are often flexible and agile in their solutions and good at measuring the qualitative impact of the services they provide. The whole tendering environment often negates all of this quality and expertise by providing a framework of services that has to be provided in a set way or with a an artificial financial ceiling. We often see tenders where a little more spent on the administration of the service would make savings in its delivery and therefore be cheaper overall but this is never taken into account. Tenders are often specified in their outcomes by quantitative metrics that provide an quick and easy way to see the scale of a service but do nothing to understand the impact of service. We have long been advocating the

need for evaluation to include qualitative measures but this would need a sea change in commissioning mind-set.

Overall I believe that Kent County Council would get better value from the community sector if it consulted on the nature of services ahead of tender of designed tenders that allowed service innovation and overall service cost comparison not just administration cost as its key measure.

How KCC can best discharge its responsibilities through the Social Value Act?

Primarily by shifting the focus more to quality and outcomes. Part of this should be a preference for local so either organisations located in Kent or with a history of delivering services in Kent so that any money spent on commissioning in Kent supports the Kent economy as fully as possible so that not just front line staff but management and offices are retained in the county to support a vibrant Kent economy. This would help mitigate a marketization of the sector and over use of large national providers unless they can offer real value and differentiation from the local economy.

We would like to see a commitment to employment both for apprenticeships and trainees but also for volunteers and organisations that encourage people to get into the sector. We'd also like to see support for part time jobs up to 16 hours a week to support families and individuals dealing with the benefit cap.

We'd like to see a greater emphasis on outcomes and qualitative impact and less stringent service outlines that allow organisations to be innovative and create value beyond the services originally envisaged by the person of team writing the tender specification.

The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships). Apprenticeships, volunteering and training for people of all backgrounds, but especially at the moment young people, those aged over 55 and those affected by the benefit changes. Also a focus on the quality of an apprenticeship, a basic apprenticeship is a million miles away from the additional resources that third sector organisations often put into them.

Environmental both in terms of the design of a service but also on practices around securing local goods and services and employing local staff.

Youth Services Respondee No. 2

What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers?

The costs will vary, depending upon the size of the organization and the changes that may be needed to fit the commissioning requirements. However, I would suggest for a new small organization around £1,000 would be the cost of entry. This does not include start-up costs, which would sum around £5,000.

How any barriers to entry for new providers might be mitigated or removed?

Although the process seeks to commission more local based projects, the questions asked could sometimes seem daunting. If the process started with an easier and simpler questionnaire, this may remove barriers. Also, one to one sessions and

training supporting organisations through the process, could also help.

Also, as the commissioning of youth services is new to the council, a guide price would be helpful to some organisations. This could go as far as providing a price range for each available lot. And then, to make the process fairer, when organisations bid on a similar price, and interview could be conducted instead of taking the cheaper option.

How the voluntary and social enterprise sector can play a more important role in the provision of KCC services? The voluntary and social enterprise sector would play a more important role if more funds were available to ensure young people's needs can be met effectively.

How KCC can best discharge its responsibilities through the Social Value Act? Providing the best possible support for the people / organisations you would want to take over these services. This includes taking into consideration the overheads and start up costs required, particularly for small local community groups, who may not already have this in place.

The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships):

- Work with young people not in Not in Education, Employment or Training
- Traineeships
- Placements
- Apprenticeships
- Programmes dealing with youth issues

Evidence Received From Two Organisations Who Have Been Both Successful & Unsuccessful In Procuring KCC Contracts

Organisations Respondee No. 1

What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers? Time commitments are significant and, potentially costly, when completing PQQs and ITTs in particular. This could potentially act as a barrier to involvement, particularly for smaller organisations that may not have a large staff resource.

How any barriers to entry for new providers might be mitigated or removed? Potential solutions to mitigate against barriers such as the above, could be to use a grant process wherever possible. Where the PQQ / ITT process is necessary, perhaps having a Framework or a preferred suppliers list so that sets of key organisational information are only submitted once could be a way around this.

Well publicised and regular information or marketplace events to highlight and explain opportunities are important and a useful way to get local stakeholders together. They also help to facilitate partnership opportunities i.e. whilst smaller specialist organisations may not be able to deliver all of a tender specification they could become an important specialist delivery partner as part of a wider partnership or consortia.

Following on from the above, longer lead-in times for funding opportunities would also help to ensure the involvement of a wide a range of providers as possible. This would help in terms of potential barriers such as limited staff resources, lack of bid-writing experience (therefore a need to allow more time for clarification questions etc.) or in allowing time for organisations to come together to submit bids in partnership.

How the voluntary and social enterprise sector can play a more important role in the provision of KCC services? This could be achieved in a number of ways including recognising the social value of the VCS and the role that they can play in working with the council to discharge its responsibilities through the Social Value Act.

Other mechanisms could include involving the sector in co-designing projects where the expertise lies within the VCS. Examples of this could include social inclusion projects or projects which are focused on specific target groups such as young people, and would help to ensure that needs and outcomes are designed in partnership .

The VCS can also bring significant value through things such as match funding, volunteer time.

How KCC can best discharge its responsibilities through the Social Value Act?

A clear and widely published definition of the Social Value Act across the local area (perhaps through local information/ briefing events) will maximise awareness of the new legislation and will be helpful in ensuring that local stakeholders are fully aware of potential opportunities available to them to help Kent County Council meet its responsibilities.

This Charity would welcome a conversation with Kent County Council about how we can work together to help the Council achieve its responsibilities. We have attached a copy of our Social Value prospectus which details how we can help you demonstrate your commitment to developing jobs and skills within a local authority area. This includes details of our:

Partnerships: This Charity has established a wide network of partners who add value to our programmes, through providing referrals, programme delivery, work experience, education, training opportunities and provide specialist support for young people where additional needs are identified. This Charity also works with a vast number of local authorities and government commissioners using the Social Value Act. We are therefore well placed to support Kent County Council in developing their own Social Value commissioning strategy.

Quality Provision: This Charity has quality rigorous quality systems, effective monitoring and evaluation systems

Volunteers: We are able to draw on the support of our volunteer mentors who either provide office support, fundraising or use their knowledge and expertise to help move young people into positive progression.

The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships)? The development of key life skills is very important, and helps to provide a solid foundation for progression into positive outcomes which, crucially, are both sustainable and transferable.

As an example, many of This Charity's target group of disadvantaged young people who are not in education, employment or training require significant support towards achieving confidence, motivation and resilience before moving into 'harder' outcomes such as education, training and employment.

Supporting the development of key life skills and harder outcomes in disadvantaged young people not only delivers a social benefit but economic benefit as well. In addition to improving life chances and wellbeing, commissioning services that address these issues will bring a clear economic gain to Kent County Council through an increase in economic activity and a decrease in welfare claims.

Organisations Respondee No. 2

We are certainly interested in giving our opinions regarding the Commissioning and Procurement process. We have endeavoured to highlight our key points in response to the issues being discussed by the Select committee:

A: The costs of entry into KCC commissioning, has historically been very high for our social enterprise in terms of staff hours spent completing incredibly long winded applications. Many days and weeks of completing tender paperwork, have still resulted in no work or contracts. For example we were successful in securing a place on two frameworks with KCC- 1. The Multiple Supplier Framework for the Purchase of Early Intervention and 2. Prevention services for Children, Young People and their families and the Professional Development, Training and Consultancy Framework yet have never received any notifications of mini-competitions or any other opportunities arising from being on these frameworks. We have been successful in securing work through KCC (eg Globalcamp with KCC Youth Work, and the Young Arts Ambassadors programme, through the Kent Arts Development Unit) which were commissioned as open competitions yet the process was much clearer, easier, direct and as a result cheaper to complete.

One of the main issues we found when dealing with the KCC commissioning process is a great lack of communication or any clarity about how and when we should expect to hear from anyone in relation to the frameworks we sit on. This is not the same with other LA's we work with. For example, we have contracts with West

Sussex, Hampshire, Derbyshire, Sunderland etc., and are always given clear guidance as to how and when we will hear about opportunities arising from the framework/contract.

B: Barriers could be removed by greater opportunities to communicate with and build professional relationships between KCC commissioners and providers. This could be through provider meetings (which we attend with other local authorities) or email updates about local needs/plans/ issues - at the moment there is no effective communication between KCC and providers, apart from a few larger organisations who have always held 'service level agreements' or been grant funded for years and have the ear of a KCC member. Other examples of barriers are through previous experiences where we have bid for work, attended an interview at KCC and not been informed of an outcome. When we queried this we were told priorities had changed and the planned project was not now taking place, but no one bothered to let us know. This lack of communication has made us very nervous about spending hours on bids (which have not appeared to be available anyway).

C: SMEs and VCSE can play a more important role if, as in B, they are involved in 2 way communication with KCC. At the moment opportunities seem to be delivered by a select/favourite few providers. An independent engagement forum, such as could be provided by an independent organisation like KentCAN, would be very helpful. As KentCAN is an organisation set up purely to channel information about funding and opportunities through to the VCS and 'not-for-profit' and they do not compete for funding against other Kent-based organisation, they are ideally positioned to provide this role for the sector which would be transparent and non-competing. Our experience of the current KCC VCSE Engagement Forum is that it includes a small number of the 'same old faces' and that they are very much about representing their own organisation rather than sharing and communicating with the sector as a whole.

D: Like many VCSEs, we place social value at the heart of what we do but are not given the opportunity to make this clear to KCC. Whilst we regularly receive tender opportunities from other local authorities, we very rarely if ever receive any opportunities from KCC - in particular in relation to the two frameworks we already sit on as mentioned in part A.

E: Social benefits which can be sought through clearer procurement could include:

- Employability skills
- Enterprise Skills
- Early Years training and Consultancy
- External interventions to raise standards in schools
- Parenting Courses
- Wellbeing/Mental Health community engagement programmes

I hope the above points give a snapshot of our experience of the commissioning process within KCC and suggestions we have for improving the process. As you can tell, we have been very frustrated by the process so far and as a social enterprise organisation based in the heart of Kent, providing high quality, high impact interventions for children, young people and their communities, we would welcome the opportunity to provide services and programmes in partnership with KCC. Given more time, we could provide a clearer, more detailed opinion/feedback if this would be of value to the Select Committee.

Members please note: KentCAN, the organisation referred to in the above submission ceases operation from 31st January 2014. KentCAN statement *"We have passionately pursued the independent representation and support of the VCS without competing for service delivery funds, hence the need for the recent move to subscriptions. Sadly we have not attracted sufficient levels of subscriptions in time to sustain our activities and have reluctantly decided to cease operation from 31st January 2014 "*.

Evidence Received From Three KCC Commissioning staff:

KCC Commissioning Respondee No. 1

- a) **The strategic context and our role as a commissioning organisation – what do we do well? – What can we do better?** Within Strategic Commissioning we commission and procure services in line with legal requirements. The processes we use though are at times too rigid – which is totally appropriate for procurement of tangible items (pens, paper, paperclips, etc) but do not allow for the softer side that is needed for services delivered to and for our customer. We need to allow and explore less rigid procurement routes (especially in high volume contracts) that allow providers of services to be more creative and suggest to us solutions based on their expertise and experience. We could be less “arrogant” and recognise that we are not experts in everything and trust those who are experts in their given field and industry. We need to enable flexible conversations and negotiations that link KCC who has needs and albeit limited resources with people and organizations with solutions and services. Consider the Negotiated route of procurement. To realise the outcomes that the residents of Kent value, we need to involve them in designing and delivering the activities which are intended to achieve them. In specific departments and business units we tend to focus on specific services, or outcomes, without necessarily considering the wider set of priorities that exist across the one council brand.
- b) **What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers?** Costs include time and the development of expertise in order to compete in a tender process. The complexities of bidding are recognised by

large providers and they will have the infrastructure that allows them to participate. The same cannot be said for smaller providers. Financial arrangements, insurances or other thresholds being set at an unnecessarily high level within specifications etc. can deter new providers.

- c) **How any barriers to entry for new providers might be mitigated or removed.** Engagement days are usually held but these can be intimidating for SME's when surrounded by large corporate entities. We can hold separate days depending on the size of the organisation. KCC could commission Bid writing/preparation training for SME's etc. prior to any large procurement/commissioning exercise. Within advertisements promote and encourage the creation of Consortia and partnerships to deliver services. Less reliance on electronic advertisements and bid submission through the Kent Business Portal. Whilst cumbersome we should welcome the "paper and file" versions that may be the preferred method for the SME's who may not have the infrastructure and experience. Consider splitting or disaggregating contracts.
- d) **The extent to which KCC decommissions and re-commissions services based on provider performance?** Historically performance has not been routinely monitored. Rather than contracts being monitored at the point of service failure or high risk in future the KPI data will show early indicators of service failure and there will be a more proactive monitoring process. We should include social value in KPI's i.e. number of volunteers employed, number of training opportunities created, number of jobs created etc. Let providers tell us the social value that they can provide that is meaningful and incorporate this into KPI information we collect. This should involve the collection of qualitative data as well as quantitative
- e) **How KCC can best discharge its responsibilities through the Social Value Act?** Make sure we value Social Value and SROI in commissioning. Something is valuable only if someone is willing to pay for it! Scoring criteria should not just be about cost – as value for money is not necessarily about lowest unit cost but is subjective. – make sure it is included as evaluation criteria with an appropriate score. Inviting service users/tax payers to be part of the specification development process and evaluation groups to explore what is valuable to them in a particular commissioning activity. We need to co-produce. We should forget that social value is objective, fixed, and stable, when in fact it is subjective, malleable, and variable. We cannot have a generic approach to all commissioning and procurement activity. Do we have a social value framework? The Competitive Dialogue procedure of procurement offers more flexibility during the dialogue stage to discuss the fulfilment of social benefit objectives as a two-way dialogue matching KCC's aspirations with each bidder's although I recognise that this can only be used for certain types of commissioning activity.
- f) **The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships)?** Jobs growth & productivity, to look at the number of local people employed. Use of sustainable materials in buildings and redevelopments, energy use etc. Environmental friendly ways of

working, recycling, waste management, travel etc. Sourcing of locally produced products, reduced hospital admissions, social inclusion.

- g) **The extent that social value requirements be sought throughout the KCC supply chain?** Make sure that larger organisations utilise the services of SME's and volunteers and include numbers in KPI's. Use of sustainable materials in buildings and developments, ensure high scores in the Considerate Constructors scheme, Environmentally friendly ways of working, living wage paid, targeted recruitment.

KCC Commissioning Respondee No. 2

What we (KCC) need to do next to become a better commissioning authority – with a particular focus on removing barriers to entry for the provision of KCC services from new providers, particularly small to medium sized enterprises (SMEs) and members of the voluntary, community and social enterprise sector (VCSE):

- 1) Put in place a grant scheme for SME's that are contributing to KCC's work but that do not have the infrastructure or experience to bid for larger contracts. This would be about recognition of social and community value.
- 2) Commission or provide support for SME's around:
 - a. Consortia arrangements
 - b. Developing and flexing business models
 - c. Demonstration of performance and evaluation
 - d. Understanding outcomes and how to evidence them
 - e. Understand the need for developing infrastructure to increase funding
 - f. Better understand the cost to providers for attending meetings and representing client groups
- 3) There is an argument for using some of the VCS who have nationally proven to be successful in high need areas across the country to come and work in Kent and help develop our sector. We think there may be some vulnerabilities in the market around evidence based practice with needy families.
- 4) Seek joint funding opportunities with the private sector.

Is KCC using its commissioning processes to ensure it meets its duties under the Social Value Act? Some of it has been addressed through looking for added value in tender submissions, but it needs to be embedded more in service design – particularly around whether we opt for cheaper “county” contracts (which can save on management guides)

How, in becoming a commissioning authority can the voluntary, community and social enterprise sector (VCSE) play a more important role in the provision of KCC services? Developing person to person mentoring through volunteers (children, young people and adults):

1. Early help provision and non-statutory services
2. Apprenticeships and recruitment of service users as part of package of support when appropriate
3. Consultation and significant engagement with service users to feed into in house and service design
4. Develop multiagency service hubs with commissioned services included e.g. Childrens centres

KCC Commissioning Respondee No. 3

a) The strategic context and our role as a commissioning organisation – what do we do well? – What can we do better?

- Use of meet the markets and stakeholder workshops are working well and beneficial
- The use of market position statements would help give the market time to prepare to respond and evolve if needed. If done annually this would help inform planning process and help ensure tenders for which the same providers may apply, are spread out.
- We could provide more training and support to help voluntary sector organisations understand the commissioning process and the develop the skills needed to write bids.
- We can offer “lots” within big contracts so that smaller organisations have the opportunity to bid
- Consortiums may require further support if they are to successfully merge and staff within them with the mix of skills to stay within the new organisation or consortium.

b) What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers

- If tenders are too long or do not allow enough time to respond this will make it hard for smaller organisations to put in a response. The staff time needed has costs for the organisations and offering a support package alongside tenders may prove beneficial. (The cultural arts tender around wellbeing festivals and interventions is a recent example of this approach)
- There are also significant costs to KCC in staff time and this needs to be factored in when decision is to outsource
- Some smaller organisations will not have signed up to the business portal – we may need to find other means to make them aware of opportunities e.g. via umbrella organisations

c) How any barriers to entry for new providers might be mitigated or removed

- Financial checks need to ensure that companies that are new or have a low income are not prevented from applying
- Avoid asking for X years experience
- Planning and careful timing and better market communication
- Umbrella organisations may apply and sub-contract which may prevent the smaller organisations from bidding. *Do we want them to encourage and support? Or offer to do it on their behalf?*

d) the extent to which KCC decommissions and re-commissions services based on provider performance

- We are becoming better at holding providers to account for poor performance and better contracting in the future and targets should allow us to do this.

e) How KCC can best discharge its responsibilities through the Social Value Act

- Provide support to social enterprises and CIC's to help them set up, apply for funding, understand business planning and finance processes and find sustainable models
- Higher weighting can be given to organisations that have added value, additional funding or are a social enterprises. Currently I don't feel this is something that is reflected in the way bids are scored.
- We can ensure tender processes so not penalise smaller organisations

f) The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships)

- Organisations should actively promote the health and wellbeing of their staff and sign up / engage with Public health initiatives. (e.g. They could sign up to the workplace charter, allow commissioned providers to run healthy weight or stop smoking classes in the workplace, provide breast friendly feeding space etc.
- Apprenticeships work experience,
- Creating jobs in Kent
- Have certain environmental standards - recycling, lift sharing etc.
- Would be beneficial to carry out a consultation with residents to find out what they would value. Also with the market to see what else they maybe able to provide and how this would best work

g) The extent that social value requirements be sought throughout the KCC supply chain

We can ask organisations to sign up to certain standards such as social benefits but this would be hard to enforce. It would be a good thing to cover in

an initial contract/mobilisation meeting as many of the things we would be asking them to do, KCC can offer support on. We would also want to make it proportionate and fits round the needs of their staff and business. Therefore through discussion this could be agreed and they may see the social benefits (mentioned in F) as a as a benefit to their organisation rather than a burden.

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**Written Evidence: Governance and Law Implications / Issues
(i.e. procurement law / HR implications / TUPE)**

What KCC needs to do next to become a better commissioning authority – with a particular focus on removing barriers to entry for the provision of KCC services from new providers, particularly small to medium sized enterprises (SMEs) and members of the voluntary, community and social enterprise sector (VCSE).

a) The strategic context and our role as a commissioning organisation – what do we do well? – What can we do better?

Legal Services advise only very rarely on commissioning and, since the new Procurement Team was launched, usually only at their request. Client Directorates are no longer likely to come to Legal for advice before beginning a procurement. From our observations over the years, commissioning needs to be planned more carefully - enough time needs to be built in to the process to allow for the procurement to be carried out correctly. On larger procurements, more consideration should be given to employment (TUPE) and pensions matters.

KCC used to run a "Procurement Forum" where all the contracts officers for the different Directorates, together with Legal, Finance and Procurement, would meet monthly to discuss current issues and planned future procurements. We suggest a forum of this nature be reinstated. As KCC becomes more of a commissioning body it is essential that appropriately qualified staff are involved fully at the beginning of the process and this would include lawyers, commissioners, procurement specialists, and contract managers. This will ensure that there is effective sharing of information and learning at the outset. It will be easier then to establish when expertise is required and long term efficiencies would be created.

b) What are the costs of entry into KCC commissioning and procurement exercises, and if these costs present a significant barrier to new providers

Bidding for a contract with KCC can be of significant cost to contractors, with no guarantee of success. It should be made very clear to bidders (P&IS are good at this) that there is no guarantee of work if they are successful in gaining access to a Framework Agreement. Many of the other large P&IS contracts specifically exclude guaranteed work for the contractor. Once potential bidders know these limitations, they can weigh up whether it is worth them taking part in the procurement exercise. New providers may see the costs as a barrier but KCC must follow the Public Procurement Regulations and its own Constitution. Legal Services have had a meeting, together with Procurement, with the representative of Kent small businesses to discuss such problems. One of the possible agreed solutions was the reintroduction of bidder training days which used to be hosted by KCC to provide help to Kent businesses on how to complete tender documentation.

c) How any barriers to entry for new providers might be mitigated or removed

KCC is bound by the Public Procurement Regulations and its own Constitution and cannot unilaterally mitigate or remove barriers set by them. Legal, Finance and Procurement have met to discuss how the financial barriers might be eased and have adopted a more flexible system recently. This system still recognises that KCC must protect public money and is under a duty to get the best deal for its council tax payers that it can. Broadly speaking, new providers are a riskier proposition than established entities and KCC has to recognise that - we cannot support new businesses at the expense of a more robust deal we could get with another provider.

A set of principles to be applied by all public bodies in their procurements to make public sector contracts more accessible for Small-Medium Enterprises (SMEs) will implement changes and remove some of the barriers that SMEs face when bidding for public contracts.

On 7 December 2013, the government published "Small Business: GREAT Ambition" which sets out the actions that the government will take to assist SMEs to grow and have access to these contracts. The government intends to legislate in 2014 to action the principles coming out of the consultation and provide SMEs with simpler and more direct access to the annual public sector spending in England. This will include:

Pre-Qualification Questionnaires

- Abolishing Pre-Qualification Questionnaires (PQQs) for low value contracts.
- Mandating the use of a standardised core PQQ for high-value contracts to reduce the complexity and cost in the process.

The design process of the core PQQ will take into account the needs and resources of SMEs. Where a public body does not use the core PQQ then they would be expected to explain why they had used an alternative route.

Contracts Finder

- Making contract opportunities easier to find by having them on a single online portal (for example, the existing Contracts Finder portal).

There was a consensus in the response to the consultation that the threshold for publishing contract opportunities should be increased from £10,000 so that, for very low value contacts, public bodies would retain the flexibility to carry out their own informal process, reducing bureaucracy and costs.

Payment terms

- Requiring prompt payment terms all the way down a public procurement supply chain.

This will ensure that SMEs have access to money when it is due. SMEs do not have the same access to credit that larger companies do and can be unfairly prejudiced currently when payments are not made within a reasonable period as this can impact on the company's cash flow.

Transparency

- Requiring all public bodies to report their procurement spend with small businesses.
- Developing a new rating service for small firms to judge public bodies on their procurement processes. Public bodies would also have the opportunity to rate their suppliers so that small businesses that win contracts can start to build up their reputations.
- Launching a new service "Solutions Exchange", to help public sector organisations go the market to ask for ideas and solutions to problems before they commence the formal procurement process. This would provide an opportunity for SMEs to pitch new proposals to public bodies and have the opportunity to understand what contracts the public bodies were considering procuring in the short to medium term.
- Extending the reach of the Mystery Shopper scheme so that it spot-checks public bodies, to make sure that their procurement is small business friendly. This scheme currently only investigates reports of unfair treatment.

d) The extent to which KCC decommissions and re-commissions services based on provider performance

Legal Services are not currently involved in provider performance although we have always advised that the monitoring of performance should be built in to contracts and that contract management should always be taken very seriously and evidence kept so that action can be taken if necessary. Where performance is below the expected and contracted level, Legal Services can help find solutions to the problem often to back up the commercial negotiations that no doubt will take place.

e) How KCC can best discharge its responsibilities through the Social Value Act

The Public Services (Social Value) Act 2012 ("PSSVA") came into force on 31 January 2013. The introduction of new statutory duties mean that, before a procurement goes ahead, KCC must consider its Social Value Duties e.g. how

the thing to be procured might improve the economic, social and environmental well-being of the KCC area; and how, in conducting the procurement process, KCC might act to secure such improvement.

Before the Act came into effect, Legal Services recommended to Senior Officers that the following actions be undertaken:

Amend Financial Standing Orders; and

Instruct and train officers involved in procurement – particularly in relation to social services commissioning - to give consideration to the Social Value Duties in the course of developing the business case for a procurement, and to document this process: and

Amend stakeholder/service user impact or engagement forms to include the Social Value Duties.

Legal Services provided training to Procurement on 25 January 2013.

The Act imposes a number of new statutory duties on local authorities in connection with the procurement of certain public contracts. These duties must be complied with before starting the process of procurement (section 1(1)). Specifically, where they apply, the new duties will require relevant authorities to:

1. "consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area" - section 1(3)(a);
2. "consider how, in conducting the process of procurement, [the authority] might act with a view to securing that improvement" - section 1(3)(b); and
3. "consider whether to undertake any consultation as to the matters that fall to be considered under subsection (3)" - clause 1(7).("the Social Value Duties")

The Act applies in respect to "public services contracts" only - not the procurement of works or supplies. It does not apply to below threshold contracts. However, they will apply to Part B services contracts and to the letting of a framework agreement (for the procurement of services), but not to individual call-off contracts under that framework.

What must KCC do to discharge the Social Value Duties?

The first two duties require us to consider:

1. how the thing to be procured might improve the economic, social and environmental well-being of the authority's area; and

2. how, in conducting the procurement process, the authority might act to secure such improvement.

In both cases the duty is only to "consider". So on the face of it, as long as the authority consciously and genuinely considers these issues, there should be little difficulty in establishing that these duties have been discharged. The danger with these provisions is likely to come if they are ignored or overlooked completely.

It is also noted that, in considering how to conduct the procurement process so as to secure improvement to the economic, social or environmental well-being of the area (Duty 2), the authority must consider "only matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account" - clause 1(6). Therefore an authority is only required to change the way it would otherwise carry out an improvement to meet its obligations in connection with the first duty, where it would be proportionate to do so.

The third duty requires an authority to consider whether to undertake a consultation as to matters relevant to the other two duties. Again, the duty is only to consider whether to consult and as long as that decision is taken fairly and reasonably there should be no difficulty.

It seems probable that such a duty is more likely to arise where one or more of the following factors are present:

1. The decision about whether to let a contract is likely to affect the interests of one or more external stakeholders (eg. service users, members of the public, voluntary sector organisations);
2. The severe nature and impact of the decision on those affected.
3. Stakeholders could reasonably have been expected to have been consulted on the decision for instance, because there has been a past practice of consultation and collaboration between the authority and the stakeholders on similar procurement decisions;
4. A duty to consult is unlikely to arise where the procurement decision is simply one that affects the authority and no outside interests are affected (eg: the procurement of a new software system to allow the authority to carry out its functions more efficiently).

Public sector bodies which are subject to the PSSVA will continue to be subject to the Public Procurement Regulations. The new legislation will impose extra duties at the pre- procurement stage to those imposed under the Regulations.

The Regulations require a contracting authority to take into account social and environmental characteristics in evaluation, but only if they are “linked to the subject matter of the contract” (Regulation 30(2)). This provision is permissive in nature. The PSSVA goes further, in that it actually requires a relevant authority to consider whether and how to implement the Social Value Duties. There is a tension here between the Act and the Regulations and in seeking to comply with the PSSVA, care should be taken to ensure that considerations relating to social value are only taken into account where they are linked to the subject matter of the contract, as required by the Regulations. This is reflected in section 1(6) of the PSSVA, which requires that when considering how, in conducting the procurement, the authority might act with a view to secure economic, social or environmental improvement, the authority may only consider the extent to which it is proportionate to take such matters into account.

Consequences of failing to comply

Although, the Social Value Duties are unlikely to be difficult to comply with in practice, problems may arise where they are ignored or overlooked altogether. If this happens, potentially aggrieved parties may be able to challenge the procurement process by way of judicial review. This could lead to the procurement having to be abandoned and restarted.

f) The type of social benefits that should be sought through commissioning /procurement practices (e.g. apprenticeships)

KCC needs to decide what benefits it requires and whether these are compatible with the Public Procurement Regulations - there can be no discrimination based on Kent businesses or people. Legal Services can advise as to whether any KCC proposals would be in line with the Regulations or would place KCC at high risk of successful challenge.

g) The extent that social value requirements be sought throughout the KCC supply chain

Again, any requirements must be compatible with the Public Procurement Regulations and Legal Services can advise on any KCC proposals made.