

# Findings of the Commissioning Select Committee

## “Better Outcomes, Changing Lives, Adding Social Value”

The Commissioning Select Committee Report, which examines how KCC could become better at commissioning public services for better outcomes with a focus on the VCS and SME sector.

FINAL REPORT





## **FOREWORD TO THE SELECT COMMITTEE REPORT ON COMMISSIONING**

The subject is very complex and the witnesses have given evidence in a way that has shown that they desire to help in developing improvements to the commissioning of services.

The Social Value element has been difficult to quantify but the report does show that much can be achieved by way of inclusion in contracts.

Some important issues are member involvement in oversight, simplification of process and relationship with providers. The latter point emphasises that service provision by sources outside the County Council is an extension of the Council's determination to provide high standards of service to our residents.

I hope that you enjoy reading the report and I look forward to receiving the action plan.

In presenting this report I thank the Members of the Committee for their time and commitment. Altogether the Members of the Committee have participated with energy and addressed the task in an example of cross party collaboration. I would like to thank the research team headed by Philippa Cracknell and assisted by Jude Sage. In addition Democratic Services have been very helpful in taking minutes and giving guidance with the process.

Mr Mike Angell (Chairman)



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## Glossary and Acknowledgements

Activities	what an organisation does with its inputs in order to achieve its missions
Impact	any change resulting from an activity, project or organisation. It includes intended as well as unintended effects, negative as well as positive, and long term as well as short term
Inputs	resources that contribute to a programme or activity including income, staff, volunteers and equipment
IPC	Institute of Public Care
ITT	Invitation to Tender
NCVO	National Council of Voluntary Organisations
Outcomes	benefit or changes for participants or intended beneficiaries
Outputs	countable units and direct products of a programme or organisation's activities
PIN	Prior Information Notice
PQQ	Pre Qualification Questionnaire
PBR	Payment by results contracts
IFG	Institute for government
CGF	Calouste Gulbenkian Foundation
VCSE	voluntary, community and social enterprise sector

Comments or quotations within the report are from comments made at evidence sessions held by the Select Committee or from written evidence received.

### **The Select Committee would like to thank ...**

the external witnesses, organisations and KCC Officers who gave up their time to give evidence to assist with this review by attending hearings, submitting written evidence, or taking part in informal consultation or advice-giving.

All the information received, whether or not it has been included in the final report, has contributed to the Select Committee's knowledge and appreciation of the issues.

Our thanks go to our Research Officers, Philippa Cracknell and Jude Sage whose patient toil to inform views and opinions with evidence underpins all that follows, and to Democratic Services for their support.





## Executive Summary

This report examines how KCC can improve the commissioning of KCC services, with a particular focus on removing barriers to entry for the provision of KCC services, particularly for small to medium sized enterprises (SMEs) and members of the voluntary, community and social enterprise sector (VCSE); how the voluntary, community and social enterprise sector (VCSE) can play a more important role in the provision of KCC services and considers if the authority is using its commissioning processes to ensure it meets its duties under the Social Value Act.

The issues considered include

- the strategic context and our role as a commissioning organisation,
- the costs of entry into KCC commissioning and procurement exercises,
- how any barriers to entry for new providers might be mitigated or removed,
- the extent to which KCC decommissions and re-commissions services based on provider performance,
- how KCC can best discharge its responsibilities through the Social Value Act and the extent that social value requirements be sought throughout the KCC supply chain

### **Commissioning and the Key Challenges:**

A successful commissioning approach can be used to redesign services, join up resources to focus on outcomes in the most efficient and effective way; taking a whole-system approach and totality of resources to consider different ways of achieving improved outcomes. It has been identified as an area for corporate improvement that KCC actively improves its skills and approach to commissioning, increasingly undertaking both market shaping and market development activity. KCC needs to become better at commissioning, optimising and targeting resources, choosing the right mechanism to best achieve desired outcomes, ensuring open and fair competition for public sector contracts, across sectors, and removing barriers from entry to the market.

The key challenges for Kent are:

- Commissioning strategically, ensuring equitable services are available across Kent
- Ensuring KCC has a firm grip on cost and quality
- Ensuring KCC embeds a culture of performance management with all providers
- Developing a better understanding/evidence base regarding return on investment, including how to monitor preventative services for their impact in demand management and prevention,
- Promoting and supporting 'whole systems thinking'; collaboration and joint working with providers across sectors, developing 'circles' of support networks to support independence and reduce crisis situations.

## **The Commissioning Landscape in Kent and a blended approach**

There is a range and breadth of commissioning activity across KCC in established service areas (e.g. Social care) and new service areas (e.g. public health). There are a large number of VCSE organisations and businesses in Kent, delivering services related to KCC's core business. There is no guarantee, that a) there are always VCSE organisations or SMEs available to deliver services in any particular area of business or b) that organisations have the capacity to deliver.

The drive is to get the best possible service for service users, with a focus on outcomes for individuals, within the budget set by the County Council and to seek additional social value. It is about choosing the right mechanism and best provider to deliver the services, whether in-house, private, VCSE or SME. It is not an automatic link between commissioning and outsourcing, or especially outsourcing problems, but using commissioning as a common base to commission both internally and externally delivered services. The key is linking the right service capability to the right objectives, and securing that capability.

The evidence encapsulated three things:

- commissioning is a very dynamic and changing process
- there is a big difference in commissioning a service and commissioning a product so need different approaches in recognition of this
- SMEs and the third sector are highly valued and bring significant added social value, but should be recognised that all sectors have a place and value to add, and as such there should be a balanced mixed economy of providers (private, VCS, SME and in-house), a blended approach.

There remains a tension between the need to aggregate demand in the market to achieve economies of scale, and the desire to promote local economic growth by focusing significant spending locally, and a balance to be found between larger long term contracts and SME and local supplier support, and a need to maximise added value.

However, either across the county or in individual localities VCSE and SME organisations COULD potentially provide the best value service and bring additional social value.

The potential of public sector spending to support added social value and local economic development is widely recognised, and KCC procurement has the potential to create significant business and growth opportunities through increased participation by small and medium sized businesses (SMEs), as well as improving access to their creativity and innovation. It is recognised that the Voluntary Sector makes key contributions for example to reducing crime, to the environment and has become a powerful agent for social inclusion and enhancing community capacity, breaking barriers, reaching families, building greater self-reliance and social mobility. The sector has enhanced knowledge and information about what is happening locally and insight into local needs; the ability to adapt to changing needs and innovate, and is especially adept at developing connections and relationships.

Nationally small and medium sized business and VCS organisations have found that bidding for public sector contracts can be over bureaucratic, time-consuming and expensive. This has been recognised most recently by Lord Young's report, *Growing Your Business*, published in May 2013, and by Lord Heseltine's report *No Stone Unturned* which was published in March 2013. Although there is much good practice evident, small business and VSCE organisations still face hurdles to competing with larger firms for public sector contracts – therefore missing out on opportunities for business while the public sector misses opportunities for potential growth and innovation, (HM Govt.) and is an issue reflected in Kent.

The Committee, aware of the economic and social value voluntary, community not-for-profit organisations and SMEs provide, would like to maximise where appropriate the use of these organisations with the capacity and skills needed to achieve the outcomes KCC has determined to be important.

### **What is successful commissioning?**

There is an increasingly complex commissioning environment with challenges and opportunities for commissioners and providers, not least in how to join up services better at a local level and meet needs in an integrated, holistic and transformative way that delivers results over the long term. Complex commissioning seeks to create integrated services that are co-designed with service users and take a more collaborative approach. The 'Beyond Big Contracts' (ISS and CGF) report emphasised this could include for instance more personalised support, co-designed cross-sector services with service users, providers, cross sector commissioners and agencies working together; an integrated front line and more flexible services.

There is need for an approach that builds 'whole systems' thinking, networks of supply and can utilise 'co-creation of value – ensuring services are innovative, have capacity to improve and be responsive and are integrated. To commission services successfully KCC will need to be outcomes focussed from needs assessment through to monitoring of contracts; joined up; excellent at specifying services with complex outcomes; and create space and environment for innovation and social value.

To take advantage of commissioning, KCC needs to explore how communities can define and shape their own outcomes; maximise the potential of the Social Value Act, and build skills and capacity.

### **Next Steps**

The Select Committee heard evidence of the range and breadth of commissioning activity across KCC service areas and engagement to improve our commissioning practices and support providers including VCSE and SMEs – with examples of good practice, partnership, innovation and steps being taken to improve how KCC commission. There is much to be acknowledged but there is still a journey to make. To be an intelligent client and commissioner, KCC has to adopt a number of different roles such as shaping markets, enabling social capital of local communities and promoting enterprise as well as procuring and providing services; linking the right source of capability (e.g. user led group, SME,

VCSE, private provider or in-house service) for a particular objective and use the right mechanism to secure it (e.g. grant funding, commissioning model, contract).

Three significant themes emerged during the review – to promote opportunities, to remove barriers, and to build capacity.

VCSE and SMEs consistently highlighted a need for measures focused on process simplification, better promotion of opportunities, creating room for innovation, breaking down of contracts into smaller lots where feasible and their early and positive engagement.

As an organisation there is a need for us to focus on:

### **Clearly defining our Commissioning Policy/Strategy, Roles and Responsibilities**

- defining our strategy and establishing the hierarchy of priorities and importance of social value,
- setting clear roles and responsibilities in the commissioning and procurement cycle and tasks to be undertaken
- becoming more complex in what we do, taking a cross-department approach to activities – looking at joined up commissioning and thinking across KCC
- strengthening the role for Member oversight within Contract management and Commissioning
- skills and behaviours are a concurrent theme that runs behind the key issues in this report – Market engagement, relationships, communication, contract management.

### **Excellent, appropriate and timely communication**

- keeping providers informed and raising levels of awareness, and promotion of opportunities to engage SMEs, VCSE
- enabling planning and positive networking to build stronger bids by giving earlier notification and information to organisations regarding services authority wanting to commission

### **Excellent engagement and Market development**

- building better working relationships between commissioning and providers, and culture of collaboration, encouraging partnership working with providers.
- greater understanding of capabilities of service sector, informed service design and improving quality of specifications, to ensure can commission intelligently and are an intelligent client, with excellent pre-market engagement and Co – design and Co –production of services and outcomes
- building capacity ahead of opportunities becoming available
- enabling of innovation (through market engagement, development of specifications, the choice of commissioning models and contract types)

- to support market development and improve the capability, skills and capacity of organisations to tender, and ensure have initiatives to support and develop potential of SMEs and VCSE
- seeking to use and promote VCSE and SMEs wherever possible but maintain mixed economy/ a blended approach

### **Simplifying and standardising procurement processes further**

- removing existing barriers to both VCSE and SME and ensuring processes are proportionate, (adopting a standardised shorter PQQ; simplifying processes for smaller procurements/low value contracts; streamlining financial appraisal; adopting a 'lot' approach where possible; e-tendering easily navigable and simple to use)
- availability of opportunities for VCSE and increasing SME participation in procurement
- making it easier to enter into new markets
- taking greater account of social value in evaluation of tenders /services

### **Embedding outcome focus and excellent Contract management**

- outcomes that are measureable, achievable yet challenging
- capabilities to contract manage with robust performance management, clear responsibilities, supportive and clear targets for improvement if needed
- work to get the personality processes right for collaboration internally and externally and to support culture change
- need to take some level of risk and be risk aware not risk averse

### **Maximising Social Value**

- important to incorporate and recognise social value in our commissioning and procurement of services
- recognise that quantifying all social value can be difficult
- clarify the social value or social benefits KCC are looking for and importance of community influence and in deciding social value

## The Recommendations of the Committee:

Our challenge to the whole of KCC and to the sectors involved is to work more collaboratively to shift culture and deliver better outcomes through a mixed economy.

The recommendations from this report seek to improve how KCC commissions services and mitigate some of the barriers for VCSE and SME Providers.

In the spirit of challenge to officers to drive improvement in our commissioning the evidence points directly to 6 key points:

- We can improve our commissioning
- Can develop a mixed economy – eclectic, using both big and small providers from all sectors and KCC in-house provider units, with key role for VCSE and SMEs
- Can further support and encourage VCSE and SMEs to provide services directly or as part of the supply chain.
- Can support social and micro enterprises to grow and deliver outcomes
- Can improve contract monitoring and contract management
- Can take more account of social value

### **Commissioning Landscape**

**1:** Support the development of a balanced and mixed economy of potential service providers, balancing cost and maximising where appropriate the use of VCSE and SME organisations with the capacity and skills needed to achieve the outcomes required.

### **KCC as an excellent Commissioner**

**2:** Clarify KCC Commissioning objectives and approach, and develop a KCC Commissioning Strategy.

**3:** Define roles, responsibilities and relationships in the commissioning cycle, agree who is best placed to carry out the different tasks and decide when and how legal advice should be considered in the procurement cycle.

**4:** Develop the culture of commissioning and contract management, with an ethos of collaborative relationships.

**5:** Extend the Kent Compact or similar agreement to include private sector providers working with VCSE organisations.

**6:** Invest time defining the desired outcomes and measures (quantitative and qualitative), ensuring these are user and communities focused and evaluate impacts (not outputs), using Co-production of outcomes and measures where appropriate.

**7:** Improve how we join up commissioning across the authority. There is a need for better collaboration and partnership building across silos and with providers.

## **Engagement and Communication**

**8:** Provide more opportunities to co-design and co-produce services where appropriate, to capture the value of what organisations are already doing, and ideas to innovate.

**9:** Need to ensure that specifications are 'fit for purpose' - reflect market engagement, identify level of need and desired outcomes, allow innovation and flexibility leading to better contracts.

**10:** Actively consider how service users and stakeholders can have greater input and influence in the specification, and service users in the evaluation of tenders.

**11:** Ensure appropriate and timely communication throughout the market engagement and tendering processes – about timeliness, communicating reasons for changes, levels of awareness.

**12:** Promote contracting opportunities to VCSE and SMEs and Better or enhanced promotion of the Kent Business Portal to increase awareness (including with small and micro enterprises), and for the Portal to be more easily navigable.

**13:** Extend the use of the portal to enable other local Authorities to promote contract and subcontracting opportunities, broadening potential access for VCSE and SMEs.

## **Procurement Process**

**14:** Strengthen our processes to access and utilize knowledge of Commissioners and potential providers - KCC should consider within the current tendering process and complying with procurement law how KCC can strengthen our understanding of the local knowledge and experience of organisations, for example by incorporating

- visits to existing services of potential providers
- reflecting knowledge of past performance/experience of working with a provider, both good and not so good.

**15:** Simplify and standardise procurement processes further to remove or minimise procurement process barriers by:

- introducing reduced and less onerous requirements for low value contracts (e.g. financial evidence - self certification/documentation for low risk/low value followed by a more detailed analysis if proceed to award stage, proportionate pre qualification)
- simplifying and standardising the core and online PQQ, retaining the flexibility to add additional questions for more complex service areas
- having better co-ordination of Commissioning and co-ordinating the diary of tenders across KCC where possible and introducing a plan of tenders
- Giving earlier notice of intention to put contract out to tender and more time for the completion and submission of tenders.

**16:** Promote opportunities to VCSE and SMEs through publication of lower value contracts (i.e. £5K) and greater transparency regarding low value contracts that are available.

**17:** Reflect Social Value sufficiently in our procurement decisions – need to actively consider how much of each procurement decision should be assigned to Social Value, and not only between price and quality.

### **Support to develop the Market and build capacity**

**18:** Actively consider how best to support the development of the market and build capacity, particularly how best to provide support to VCSE and to SMEs.

### **Contracts and Grants**

**19:** Break down larger contracts into smaller lots, wherever practical.

**20:** Requirement for prompt payment terms all the way down our procurement supply chain continues to be built into contracts; and improve monitoring of this requirement to ensure compliance.

**21:** Recognise there is a clear role for ‘smart’ grants that are innovative and outcome based. Need to ensure that their use is transparent and are time and task specific, and monitored / evaluated for success.

**22:** Improve the capabilities to performance manage contracts; and ensure the capacity to monitor and evaluate performance and support improvement when appropriate.

**23:** Stipulate that all contracts have clearly scheduled performance reviews and evaluate outcomes/outcome evaluations – for instance ensure contracts have schedule of reviews

**24:** Complete the Contracts register to include all contracts over 50k – and include details of the named contract manager, and Lead Director.

**25:** Manage internally provided Services with as much rigour for outcomes, and performance management as other providers.

### **Member Role**

**26:** Further work is undertaken to the member role and what mechanism would best strengthen member oversight of commissioning, procurement and contract management; and member involvement earlier in the process and pre market engagement; and members are supported through training.

### **Social Value**

**27:** To maximise and give greater recognition to Social Value, incorporate consideration of social value questions in tender evaluation criteria and procurement decisions where possible, and develop a Social Value Charter.



# 1 Background

## 1.1 The Select Committee Membership (Conservative 5, UKIP 2, Lab 1, Lib Dem 1)



Mike Angell



Matthew Balfour



Nick Chard



Tom Gates



Clive Pearman



Mike Baldock



Hod Birkby



Gordon Cowan



Martin Vye

## **1.2 Terms of Reference and Scope of the Select Committee**

The Select Committee on Commissioning and Procurement was established by the Scrutiny Committee on 12 November 2013 to make recommendations to KCC to support the improvement in commissioning KCC services.

The terms of reference agreed by the Select Committee on 16<sup>th</sup> December 2013 were:

- a) to determine what KCC needs to do 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).
- b) to consider if the authority is using its commissioning processes to ensure it meets its duties under the Social Value Act
- c) to examine how, in becoming a commissioning authority the voluntary, community and social enterprise sector (VCSE) can play a more important role in the provision of KCC services
- d) to make recommendations around the role of KCC as a commissioning authority and the programme of activity through Facing the Challenge that will move the authority to have a commissioning focus and improve how we do commissioning.

The issues to explore are given in summary below and are expanded in Appendix 1 for reference:

- 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

## **1.3 Methodology**

The review commenced by looking at existing research and national papers. The committee gathered evidence during January and early February 2014, through hearings, briefing papers and written evidence from providers including VCSE and SME, Infrastructure Organisations, representative bodies, and Officers with Commissioning or procurement roles.

A list of those who took part or were invited to submit written evidence is detailed in Appendix 2.

## 2 Introduction – Context and Overview

### 2.1 Definitions of Commissioning

- 2.1.1 There is no singular, overarching definition of commissioning and there are many associated terms such as ‘procurement’, ‘purchasing’ and ‘contracting’. Some popular definitions are

*“Commissioning is the cycle of assessing the needs of people in an area, designing and then achieving appropriate outcomes. The service may be delivered by the public, private or civil society sectors.”  
(Modernising Commissioning Green paper 2011)*

*“Assessing the needs of the population in an area, designing then securing the delivery of services” (Cabinet Office. LGA July 2013)*

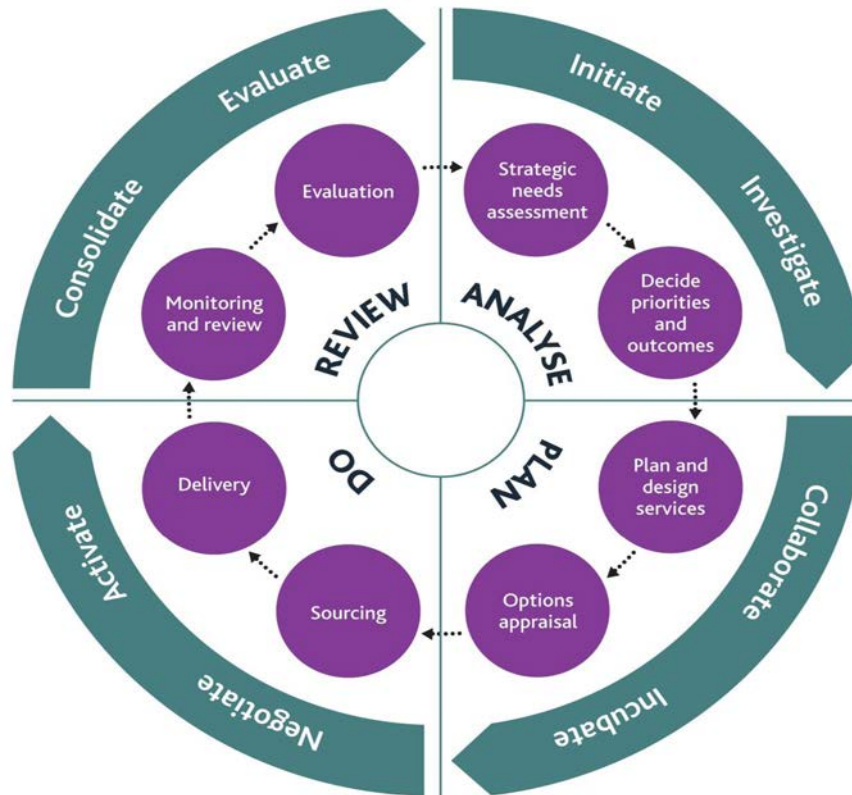
- 2.1.2 Commissioning describes the strategic process of designing services and choosing delivery agents. It is often described as a cycle of activities including assessment of needs, securing services, contract management and evaluating outcomes. Procurement is the means by which you secure the services needed.

*“Procurement is the process of acquiring goods, works and services from third parties... the aim is to achieve best value for money, taking into account social value and ensuring quality of procurement decisions taking account of quality and cost” (LGA 2013)*

Figure 1 shows a graphical representation of a commissioning cycle.

- 2.1.3 The term ‘Complex Commissioning’, signifies a change in the commissioning environment, driven by social, economic and operational shifts and refers to the emergence of collaborative arrangements that respond more effectively to a range of interrelated user needs – thinking across service boundaries to address the root causes of demand, such as family breakdown. (ISS CGF Beyond Big Contracts). The traditional ‘commissioning cycle’ is a more simple view of the complex commissioning process. Associated concepts are co-production, asset based approaches, market management, outcome based commissioning, social value, decommissioning. (CLLR June 13).

**Figure 1:** A graphical representation of a commissioning cycle



Source: CGF, ISS. Beyond Big Contracts

## 2.2 The Social Value Act and definition of Social Value

2.2.1 The Government has published the [revised Statutory 'Duty of Best Value'](#) and the '*Public Services (Social Value) Act*' which both see more recognition of 'Social Value' in commissioning & procurement processes. The Act legislates to give charities, social enterprises and employee-led mutuals a better chance of competing for contracts, as there is a requirement for all public sector contracts to give consideration during the pre-procurement stage for provisions relating to social outcomes and 'Social Value'. However in doing this it does not exclude businesses - allowing small for-profit businesses run by local entrepreneurs and private sector companies who take their corporate social responsibility seriously and could be considered as undertaking a social role, to compete fairly, equitably and transparently for contracts in accordance with EU procurement rules.

2.2.2 The *Public Services (Social Value) Act*'s legislates that at the pre-procurement stage of the commissioning process local Authorities must consider:

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")

2.2.3 'Social Value' is really the added value received when a supplier, as part of fulfilling a contract, also contributes to the public good in ways that go beyond simply meeting the basic contract terms. To use an analogy – it is the additional value gained from each £1 invested, a form of 'planning gain'. Some examples of 'Social Value' in practice might be sourcing food locally with impacts both on local employment and the environment; a transport company that tenders to run bus services and offers to provide added value through the delivery of a dial-a-ride service, or a housing management company which wins a contract to undertake property maintenance work and provides 'Social Value' by committing to employ local apprentices, quantified as for the interests of a community. The 'Social Value' outcomes desired may differ on a case by case basis.

2.2.4 The following definitions were offered by a 2009 NHS commissioned project into 'Social Value':

*" 'Social Value' is the additional benefit to the community from a commissioning/procurement process over and above the direct purchasing of goods and services'."*

*"Social value can be distinguished from the wider notion of public value or the narrower concept of individual value. It represents delivery of the collective desired needs of individuals who share common expectations through increased social capital, citizen well-being and entrepreneurialism."*

## **2.3 Local Context:**

2.3.1 Public Service models are changing nationally. Local Authorities are facing reductions in public spending, future significant increase in demand for services and increased public expectation about quality of services.

2.3.2 It is a time of transformational change and redesign of services, new partnerships and ways of working, to potentially have better services in terms of results, value for money and efficiency.

2.3.3 Commissioning is fundamentally linked to the core themes of 'Bold Steps' and KCC's policy framework – to help the Kent economy grow (developing a mixed market economy, commissioning and procurement supporting Kent businesses and not for profit organisations by tendering in ways that allow them to be competitive and deliver value), to put the citizen in control by understanding needs and needs reflected in service (enabling communities to be more resilient, designing services) and to tackle disadvantage through commissioned services and social value, such as apprenticeships.

- 2.3.4 A successful commissioning approach can be used to redesign services, join up resources to focus on outcomes in the most efficient and effective way; taking a whole-system approach and totality of resources to consider different ways of achieving improved outcomes.
- 2.3.5 In meeting Facing the Challenge and Whole Council Transformation KCC is commissioning more of its services. The fundamental objective of the approach is to ensure KCC becomes an outcome focussed organisation – affecting how KCC undertakes service redesign, strategic planning and manage performance effectively. It has been identified as an area for Corporate improvement that KCC actively improves its skills and approach to commissioning, increasingly undertaking both market shaping and market development activity. Facing the Challenge proposes the establishment of a professional corporate team with a specific role to embed commissioning arrangements, ensure robust internal challenge, consider how to improve capacity to do market development and shaping activities, define skills required for staff engaged in commissioning activity, identify opportunities for joint commissioning across the authority (and with partner organisations) and develop a mechanism to monitor the effectiveness of our commissioning activity.
- 2.3.6 KCC needs to become better at commissioning, optimising and targeting resources, choosing the right mechanism to best achieve desired outcomes, ensuring open and fair competition for public sector contracts, across sectors, removing barriers from entry to the market for the provision of KCC services, particularly for small to medium sized enterprises (SMEs) and members of the voluntary, community and social enterprise sector (VCSE) who play a vital role in supplying goods and services. In October 2012 the new commissioning structure for Families and Social Care was established with three distinct teams; Children’s commissioning, Adult Community Support and Adult Accommodation Solutions.
- 2.3.7 The key challenges for Kent include
- Commissioning strategically to end the postcode lottery and ensure equitable services are available across Kent
  - Ensuring have firm grip on cost and quality
  - Ensuring embed a culture of performance management with all providers
  - Developing a better understanding/evidence base regarding return on investment, including how to monitor preventative services for their impact in demand management and prevention, ensuring evaluation criteria includes social value and social return on investment.
  - Promoting and supporting ‘whole systems thinking’, collaboration and joint working with providers across sectors, developing ‘circles’ of support networks to support independence and reduce crisis situations.
  - Considering the best way to contract with providers that allow new providers to enter the Kent market, through duration of contract, including from Community Interest companies

# Key Findings

## 3 The Commissioning Landscape

### **3.1 The Commissioning Landscape in Kent and a blended approach**

- 3.1.1 There is a range and breadth of commissioning activity across KCC in established service areas (e.g. Social care) and new service areas (e.g. public health). There are a large number of VCSE organisations and businesses in Kent, delivering services related to KCC's core business.
- 3.1.2 There is no guarantee, that a) there are always VCSE organisations or SMEs available to deliver services in any particular area of business or b) that organisations have the capacity to deliver. The drive is to get the best possible service for service users, with a focus on outcomes for individuals, within the budget set by the County Council and to seek additional social value.
- 3.1.3 The evidence gathered by the Select Committee encapsulated three things:
- commissioning is a very dynamic and changing process,
  - there is a big difference in commissioning a service and commissioning a product so need different approaches in recognition of this,
  - SMEs and the third sector are highly valued and bring significant added social value, but should be recognised that all sectors have a place and value they can add. There should be a balanced mixed economy of private, VCSE, SME and in-house commissions, or blended approach, and a place for contracts and robustly monitored time and task specific grants.

There is a balance to be found between larger long term contracts and SME and local supplier support, and remains a tension between the need to aggregate demand in the market to achieve economies of scale, and the desire to promote local economic growth by focusing significant spending locally.

- 3.1.4 However, either across the county or in individual localities VCSE/SME organisations COULD potentially provide the best value service and bring additional social value.
- 3.1.5 The public sector in the UK spends £230 billion a year on the goods, services and works it needs to deliver public services (HM Govt). The potential of public sector spending to support local economic development is widely recognised. Public sector procurement has the potential to create significant business and growth opportunities through increased participation by small and medium sized businesses (SMEs), as well as improving the public sector's access to their creativity and innovation. SMEs are an important engine for growth, both nationally and for the Kent economy.

- 3.1.6 There are many examples of small suppliers delivering significant benefits to the public sector through greater innovation, at comparatively lower cost base than larger businesses. Recent data from the Office of National Statistics Annual Business Survey 2012 shows that, on average, SMEs create around £34 of gross value added to the UK economy for every £100 of turnover, while the comparative figure for large businesses is £27. Similarly research looking at effect of local spend found that every £1 spent by a local authority with local SMEs generated an additional 63p benefit for their local economy compared to 40p for larger firms. (Centre for Local Economic Strategies for the FSB.)
- 3.1.7 The voluntary sector is not a homogenous group and it should be recognised that there are considerable differences in their sizes and resources and levels of reliance on public funds. NCVO's 2013 almanac focuses on the 'voluntary sector,' comprising of 162,177 voluntary organisations, over half of which are micro-organisations with an income of less than £10,000, compared to 0.3% of the sector comprised of 507 major organisations with multi-million pound turnovers that generate 47% of its income (ISS Beyond Big Contracts report.)
- 3.1.8 The voluntary sector makes key contributions for example to reducing crime, to social inclusion, to the environment and has become a powerful agent for social inclusion and enhancing community capacity, breaking barriers, reaching families, building greater self-reliance and social mobility. The sector has enhanced knowledge and information about what is happening locally and insight into local needs; ability to adapt to changing needs and innovate and is especially adept at developing connections and relationships. It was reported that for some voluntary sector organisations that for every £1 spent there is match funding of £10 (Action with Communities in Rural Kent).

*"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."*

*"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."*

- 3.1.9 Nationally the main barriers recognised include the
- Capacity and skills to bid for and deliver contracts effectively
  - Awareness of potential procurement opportunities
  - Lack of understanding or knowledge of operation of local government
  - Bureaucratic nature of local procurement practices



- Lack of awareness and understanding of SMEs , and how to engage with them and what they could offer
- Need for procurers to achieve economies of scale in their procurement practices

(FSB summary)

- 3.1.10 Small and medium sized business and VCSE organisations have found that bidding for public sector contracts can be over bureaucratic, time-consuming and expensive. This has been recognised most recently by Lord Young’s report, *Growing Your Business*, published in May 2013, and by Lord Heseltine’s report *No Stone Unturned* which was published in March 2013. Although there is much good practice evident, small business and VSCE organisations still face hurdles to competing with larger firms for public sector contracts – therefore missing out on opportunities for business while the public sector misses opportunities for potential growth and innovation, (HM Govt.) and is an issue reflected in Kent. Significantly if organisations are unable to win tenders and therefore not gain income from contracts their sustainability may be threatened.
- 3.1.11 The Committee, aware of the economic and social value voluntary and community not-for-profit organisations and SME provide, would like to maximise where appropriate the use of these organisations with the capacity and skills needed to achieve the outcomes KCC has determined to be important.

**Recommendation 1:**

Support the development of a balanced and mixed economy of potential service providers, balancing cost and maximising where appropriate the use of VCSE and SME organisations with the capacity and skills needed to achieve the outcomes required.

**3.2 What is successful commissioning?**

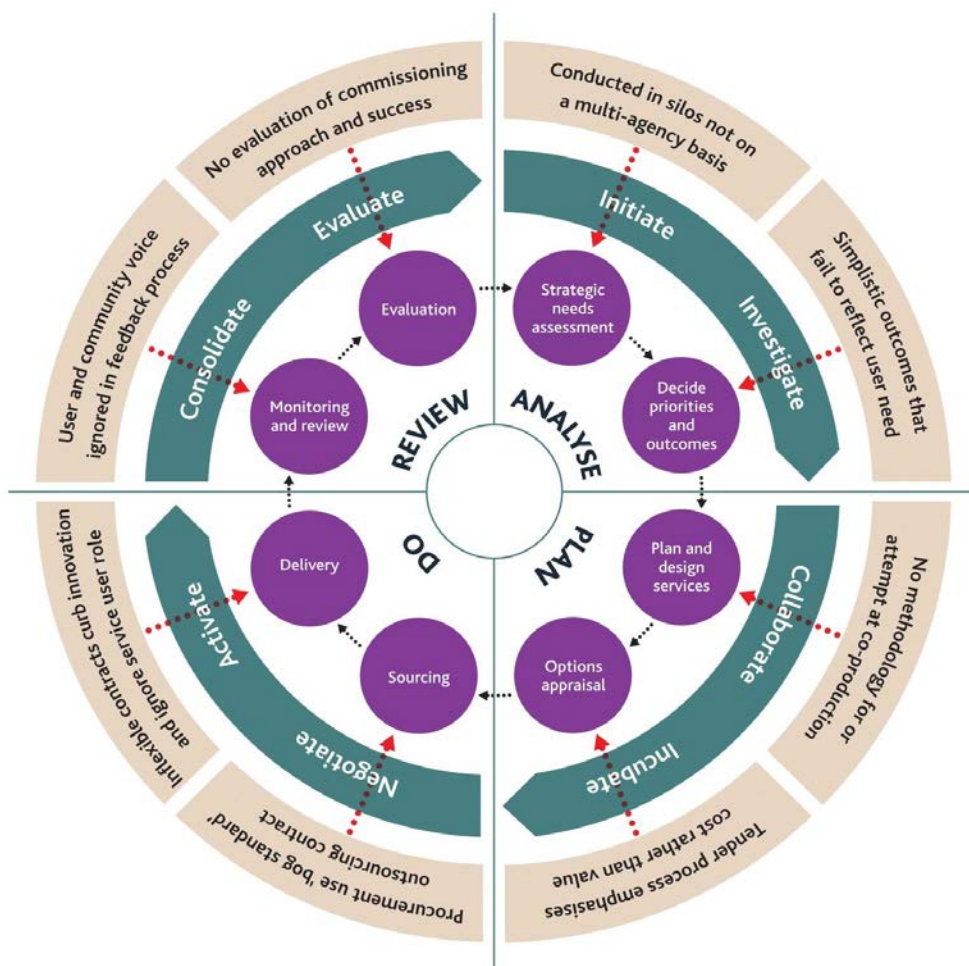
- 3.2.1 Successful commissioning ultimately means commissioning public services for better outcomes - delivering the right outcomes at the right cost. At the heart of which it is vital that the needs of service users and communities are put first and foremost.
- 3.2.2 There is an increasingly complex commissioning environment with challenges and opportunities for commissioners and providers, not least in how to join up services better at a local level and meet needs in an integrated, holistic and transformative way that delivers results over the long term. Complex commissioning seeks to create integrated service that are co-designed with service users and take a more collaborative approach. The ‘Beyond Big Contracts’ (ISS and CGF) report emphasised this could include for instance more personalised support, co-designed

cross-sector services with service users, providers, cross sector commissioners and agencies working together; an integrated front line and more flexible services.

3.2.3 There is need for an approach that builds ‘whole systems’ thinking, networks of supply and can utilise ‘co-creation of value – ensuring services are innovative, have capacity to improve and be responsive and are integrated. To commission successfully KCC needs to be outcomes focussed from needs assessment through to monitoring of contracts; joined up; excellent at specifying services with complex outcomes; and create space and environment for innovation and social value. To take advantage of commissioning KCC need to explore how communities can define and shape their own outcomes (see market engagement), maximise the potential of the Social Value Act, and build skills and capacity.

Are KCC and the markets ready for a complex commissioning environment?

Figure 2: Structural weaknesses in the complex commissioning environment.



Source: Collaborate: CGF, IFG. Beyond Big Contracts. 2014

## 4 Making sure KCC is an Excellent Commissioner

### 4.1 Emerging themes

4.1.1 The Select Committee heard evidence of the range and breadth of commissioning activity across KCC service areas and engagement to improve our commissioning practices and support providers including VCSE and SMEs – with examples of good practice, partnership, innovation and steps being taken to improve how KCC commissions, for example:

- improved performance management - introduction of performance monitoring for some contracts through re-let, and re-let of inherited contracts; and financial reclaim for poor performance/non delivery of contract
- growth of new social enterprises and support to grow business, e.g. The Community Chef
- support to providers to understand the commissioning process
- introduction of the Kent online Business Portal
- shift to being outcome focused and improvement in raising standards of delivery
- drive and commitment of officers
- innovation from providers e.g. protecting gullies from theft, using tablets to share information directly.

4.1.2 There is much to be acknowledged but there is still a considerable journey to take. Three significant themes emerged during the review – to promote opportunities, to remove barriers, and to build capacity. VCSE and SMEs consistently highlighted a need for measures focused on process simplification, better promotion of opportunities, creating room for innovation, breaking down of contracts into smaller lots where feasible and early and positive engagement of VCSE and SMEs.

In summary as an organisation there is a need to

- bring up to date the terms and conditions and to introduce regular performance monitoring for some contracts (e.g. Accommodation Solutions)
- clearly define our commissioning strategy and hierarchy of priorities
- clarify roles and responsibilities in the commissioning and procurement cycle
- further mitigate existing barriers to both VCSE and SME (e.g. proportionate requirements to value of contract –PQQ, insurances, financial evidence)
- give flexibility and allow room for innovation within specifications
- improve joining-up of commissioning and thinking across KCC
- build better working relationships between commissioning and providers, and culture of collaboration
- ensure contract management is robust, and has the capacity to performance manage and evaluate services
- use frameworks in a more sophisticated way
- consider the role of members and Member oversight

- support market development and improve the capability, skills and capacity of organisations to tender, and consider how best to support and provide training for VCSE and SMEs
- improve communication, timeliness
- mitigate barriers of time, cost of legal advice and additional costs associated with TUPE, pensions, financial risk where possible

## 4.2 KCC's Commissioning Direction

4.2.1 Although KCC's key documents set out a path of transformation for KCC there is not enough clarity as an organisation about what KCC is trying to achieve through commissioning and the hierarchy of priorities, for example is it value for money, improved outcomes, budget delivery, local, using the voluntary sector and SME organisations; and whether KCC has clarity on local choices in service delivery being different to other areas in Kent.

4.2.2 Clarifying KCC's strategy will make it easier for officers to deliver the intended goal. A strategy could set out KCC's commissioning direction, objectives and commitment to excellent commissioning and core aims of KCC's commissioning approach; provide clarity around what KCC means by commissioning, procurement and contract management; outline basic principles of approach and the types of relationships wanted with providers. e.g. the London Borough of Croydon Strategy.

### **Recommendation 2:**

Clarify KCC Commissioning objectives and approach, and develop a KCC Commissioning Strategy.

## 4.3 Roles, Responsibilities and Skills

4.3.1 There are some excellent commissioners in Kent, but this can vary. Commissioners have a clear mix of skills, some have expertise in contract management, some in needs analysis and service design. There is a lack of clarity and clear definition around roles and responsibilities of staff in the commissioning cycle, and it has been identified as an area for corporate improvement that KCC actively improves its skills and approach to commissioning and ensures capability to deliver excellent commissioning. The key points are:

- 'muddying' of commissioner/operations role. There is a tendency for some commissioners to be involved very closely undertaking a role more similar to that of a service manager, rather than a contract manager who gives support to a contracted provider.
- lack of clarity in roles and responsibilities for commissioning/procurement officers, and who is best placed to undertake which tasks in the cycle.
- unclear about when and how legal advice should be sought in the commissioning cycle

- difference in core goals for commissioning and procurement, although potentially a shared goal of best value. The perception is procurement are often driven by the need to procure service for the best price, with key drivers to save money, manage risk, and support Kent business.
- better reach of procurement to challenge and advise commissioners on risk, and generally good working relationships.
- an identified need to improve commissioning skills and capabilities to deliver excellent commissioning/contract cycle activities
- skills and behaviours is a concurrent theme that runs behind the key issues in this report – Market engagement, relationships, communication, contract management.

4.3.2 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. It was suggested 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.”*

4.3.3 It is recognised that the social care commissioning function needs to modernise and transform, that roles are clearly defined and staff are supported to develop skills and capabilities for our evolving commissioning environment. There is a clear commitment to develop the necessary skills and capabilities within social care through a programme of training and development, based on the Institute of Public Care Certificate of Credit in Commissioning and Purchasing for Public Care (IPC).

4.3.4 IPC are supporting KCC Families and Social Care to:

*‘ ... develop and adopt a Strategic Commissioning Operating Framework, based on best practice, to standardise commissioning arrangements across the Directorate and within localities.*

*This includes commissioning arrangements for both adults and children’s services, but also specific operational teams such as Older People’s and Physical Disabilities, and Learning Disabilities and Mental Health commissioner ... and to develop*

- *a Strategic Commissioning Operating Framework*
- *a Strategic Commissioning Roles and Responsibilities diagram*

- *a Strategic Commissioning Skills Framework and Self-Assessment and analysis*
- *a programme of support and development, both generic to the whole group and specific to teams.*

*Core to which is to*

- *Ensure a common understanding of the principles and language of strategic commissioning*
- *Support and adopt good commissioning practice at every level and across every group*
- *Embed the Strategic Commissioning Operating Framework across the Directorate, and*
- *Encourage commissioning behaviours which actively support and facilitate the development of good quality care across Kent.'*

### **Recommendation 3:**

Define roles, responsibilities and relationships in commissioning cycle, agree who is best placed to carry out the different tasks, and decide when and how legal advice should be considered in the procurement cycle.

## **4.4 Relationships**

4.4.1 Relationships are changing, being broken and reformed, and are important throughout commissioning, from pre-market engagement to contract management. Social sector organisations are encouraged to collaborate and there is an increase in subcontracting through use of larger contracts. There is a concern that this growth in sub-contracting arrangements and provider consortia will lead to commissioners becoming less connected to smaller and social sector providers. Commissioners and providers need to work together to improve service co-ordination and outcomes, so collaborative relationships are key. It can take time to build trust.

4.4.2 It is evident that there is an awareness of what constitutes good practice, and evidence of that being realised in certain aspects of pre-market engagement, but evident there is

- a disconnect between commissioners and providers;
- much is dependent on capacity, trust and appetite for collaborative arrangements

- often no partnership between commissioners and providers , for example at tender stage specifications not always reflect the pre-procurement engagement and co-design that has taken place. (see market engagement)
- require open, timely communications so providers can plan and work as effectively and efficiently as possible when tendering

4.4.3 It is good practice in managing a contract that a good relationship between KCC and the contractor is built. ‘Good’ here means: insistent on delivering to contract, evidencing outcomes, but supportive at the same time. The relationships with and approaches of contract managers/commissioners are variable. Some were referred to more like a ‘head teacher/pupil relationship’, with monitoring meetings akin to ‘a police interview’, and low morale.

*“with some commissioners there is a real sense of battle fatigue from so much change. This is not good for moral at any level”*

4.4.4 It is not a partnership and need targets and outcomes but there is a balance, and those monitoring contracts need to have particular attitudes and skills. There is a need for better collaboration and partnership building. It is about the kind of culture KCC wants and needs as the backbone to its commissioning cycle and how KCC can challenge ‘the human effect’ and the issue that may have some officers who ‘cannot communicate effectively or are rude’. It is paramount that work to get the personality processes right for collaboration internally and externally and support culture change.

*“.. recognise 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, and integrated and community facing services. However 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 attitudes need changing through training and coaching.” (A Provider Association).*

4.4.5 Relationships are also changing within the voluntary sector. Some organisations are forming consortia, retaining their individuality but having a stronger market position and capability to tender and deliver contracts; others are not, some becoming lead organisations. It was reported commissioning to some extent is restricting the informal sharing of ideas that used to happen with other organisations as **they** are now ‘competitors’.



*“It is also stops organisations sharing information and best practice, as those who might benefit are usually business rivals.”*

4.4.6 With a growth in subcontracting arrangements, organisations can be more reliant on winning tenders from large contracted partners. Commissioners encourage larger organisations to utilise the services of SMEs and VCSE through the supply chain, and opportunities are advertised on the Kent Business Portal. The Kent Compact is an agreement between KCC and the voluntary sector and how they will work together. With the changing relationships and more sub-contracting it is perhaps time to invite the private sector to come to the ‘Compact Table’ so can reflect the Compact in subcontracting arrangements. For example

- Hampshire County Council has a small business friendly concordat - a voluntary non-statutory code of practice to make it easier for Small and Medium Sized Enterprises (SMEs) to do business.
- Herefordshire has a compact and makes it clear this does not apply to the private sector (p4) but there is an expectation that private contractors wishing to deliver public services will adhere to the Compact.

4.4.7 With regards to National providers there is a fear and perception of them having the resources to place ‘loss leader bids’ to gain control or take a foothold in the market. There is a concern of KCC commissioning via prime providers (whether national private or national VCSE organisations) and that smaller VCSE entities do not benefit from subcontracting, being offered only the hardest cases or those which are not profitable. Subcontracting can work, but needs monitoring in early stages with regard to quality and amounts expected for different organisations, and that management fees are reasonable.

**Recommendation 4:**

Develop the culture of commissioning and contract management, with an ethos of collaborative relationships.

**Recommendation 5:**

Extend the Kent Compact or similar agreement to include private sector providers working with the VCSE organisations.



## 4.5 Outcome Focused

4.5.1 There is a genuine shift and embedding of outcomes focus through outcomes-based contracts. However, there are still concerns about some being more output focused; and the ability to measure and difficulties in tracking provider impact.

4.5.2 Difficulties with measuring outcomes and impacts include for example:

- the causal issues are not straightforward
- it takes scarce time to undertake
- it takes time before some results are apparent
- it's difficult to measure prevention

Evaluation is nevertheless important to understand the impacts services have, identifying the contribution to build resilience and manage demand.

4.5.3 It was reported that often when evaluating or monitoring there is a tendency to look at outcomes by quantitative metrics that look at scale rather than impact of service. Evaluation needs to include qualitative measures and impact of service. It is a culture change.

*'targets need to be achievable but be challenging, clear and agree how it is going to be measured' (Provider)*

*"The tender did not focus on quality outcomes ... and current 1 year .. tender remains focused on the lowest cost for a time and task orientated service" (Provider Association)*

Also targets can work both ways, especially in collaborative relationships and showing that as a client we are equally committed.

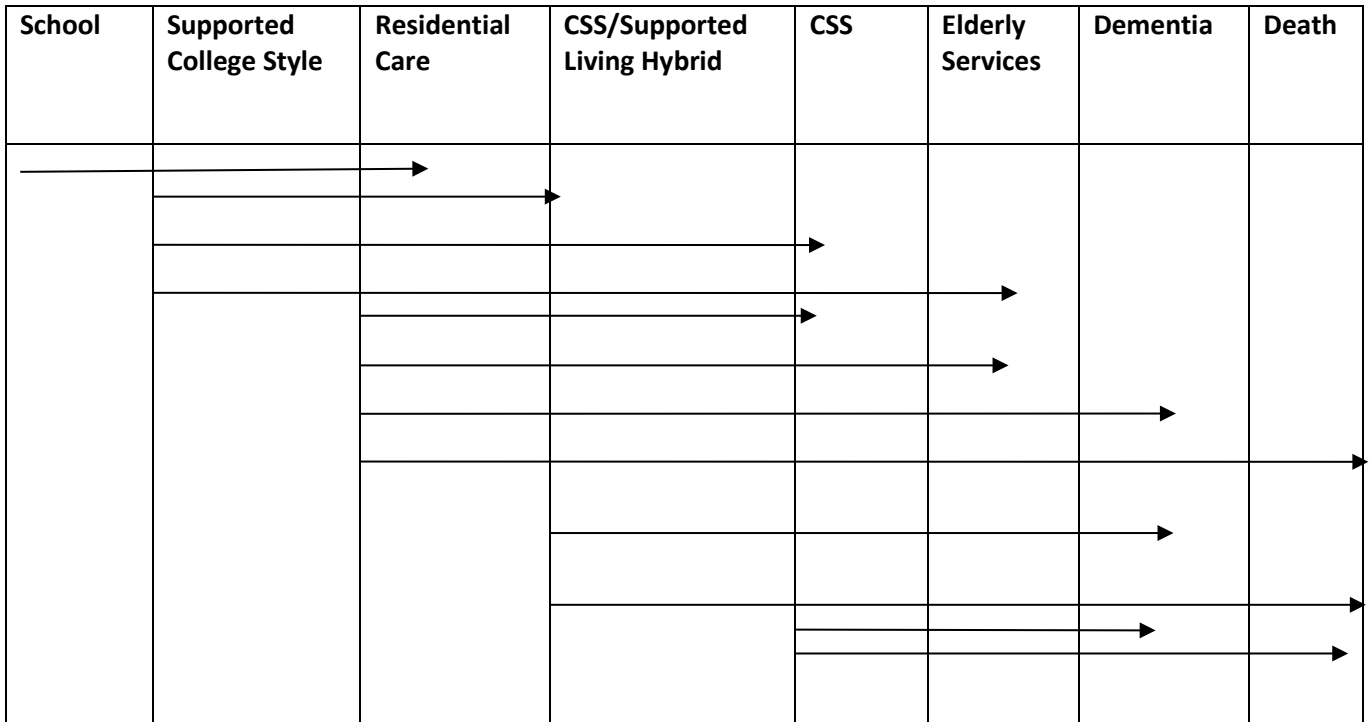
*'in spirit of partnership included target measures for KCC as a client – accuracy of details, information' (Amey Contract)*

4.5.4 Understanding the community needs and defining the outcomes is critical for specifying and securing the right services to achieve them. The outcomes need to be defined through insight, and understanding communities, taking account of community needs, provider models, community assets and resources to give more user-focused commissioning. There is a move nationally towards the co-production of outcomes.

4.5.5 In responding around the tender for Supporting Independence a case study outlined the care and opportunities a provider could offer to support independence as a continuum of services that can be accessed by individuals as appropriate to changing needs and circumstances over the course of their life cycle, or as a journey (Figure 3). The case study exemplifies the case for longer-term commissioning, and may mean taking some risks and looking at longer term outcomes.

**Figure 3: WHOLE OF LIFE CARE CYCLE**

Age 18 - ?? transition



Source: a provider case study, submitted as additional information. February 2014.

4.5.6 The key messages to ensure we define the right outcomes and secure the right services are to

- invest time in understanding the community, gathering insights and knowledge including from providers;
- recognize it can take several years of dedication and care to develop someone to be more independent and needs recognising;
- working to co-produce outcomes, involving service users and communities in defining outcomes;
- to look longer term and at continuum of services for an individual.

**Recommendation 6:**  
 Invest time defining the desired outcomes and measures (quantitative and qualitative), ensuring these are user and communities focused and evaluate impacts (not outputs), using Co-production of outcomes and measures where appropriate.

4.6 Joined up Commissioning

- 4.6.1 A more complex commissioning environment requires an approach that responds effectively to a range of interrelated user needs – thinking across service boundaries, creating integrated services that are co-designed, are more collaborative and join up the commissioning of services. ‘Facing the Challenge’ reflects the importance of joined-up commissioning as part of KCCs’ transformation.
- 4.6.2 Strategic Commissioners and a recent contract review identified a number of examples where providers were delivering the same or very similar work commissioned by Directorates across the Authority, and some different. There is a current lack of joined up thinking, and an opportunity to avoid duplication of services by looking across the Authority. It is about being person centred and ensuring commissioning strategies focus on the client and bridge across directorates, so no silo working and better linkages.
- 4.6.3 There is a need to improve how we join up commissioning across the Authority, with agreed outcomes and metrics, and one Lead to monitor performance. It is not only about linking up across directorates but how KCC could effectively pool funds with partners to join up across sectors to achieve outcomes. It was highlighted that as commissioning becomes more sophisticated and community-led there are opportunities to consider what else a provider can do when while they are with a particular client, group or in an area. There is potential to work more collaboratively, pool budgets, resources and expertise in pursuit of improved services and outcomes.

**Recommendation 7:**

Improve how we join up commissioning across the authority. There is a need for better collaboration and partnership building across silos and with providers.



## 5 Engagement & Communication

### 5.1 Market Engagement

5.1.1 The importance of engagement with providers and service users is critical.

Embedding community engagement and influence and engaging with the market are essential in order to understand needs, capabilities and improve services.

Through a better understanding of needs, and capabilities of the sector

Commissioners can secure the most appropriate, effective and efficient outcomes.

Providers and VCSE particularly play a key role in the knowledge they have and understanding of localities and local needs, and in shaping services to improve outcomes.

5.1.2 Engagement with potential suppliers is carried out on a project by project basis. Supplier engagement or 'Meet the Market' events are undertaken for all major procurement activity, and SMEs and social enterprises are invited to attend so that where appropriate businesses can be encouraged to work together in consortia. This pre-procurement market sounding also provides an important opportunity to engage with potential suppliers on the jobs and skills, training issues and supply chain opportunities.

5.1.3 'Meet the Market' events are used to engage with the market, encourage networking, and importantly to gather ideas to inform specifications. They provide a useful walk through for providers of the process to follow, and are a useful mechanism through which to encourage VCSE and SMEs to register an interest in providing a service. Equally engagement with the Market and potential service providers is essential in truly understanding what the sector is capable of.

### 5.2 Engagement for better commissioning

5.2.1 Better commissioning through better understanding of needs and better specifications will mean the right services are commissioned and procured – need this right before procure services. Pre market engagement is vital in designing and commissioning excellent services and having real and meaningful pre engagement with providers including the VCSE and SME sector is important for service design ahead of tender, and the detail and quality of specifications to allow service innovation and added social value.

5.2.2 It was reported that

Final specifications that come out for tender often

- do not reflect the pre-market discussions
- are too rigid, imposing ideas, limiting the room for innovation and additional value to be added.

and

- Market Events although useful are not as inclusive as perhaps they could be, inviting those known to services and not advertised or communicated widely,

giving rise to a concern that SMEs and smaller organisations may miss opportunities.

- there is a reluctance to share innovative ideas in open forum with ‘competitors present’ as these may be a unique selling point for a service, and is an issue acknowledged by providers and commissioners

*“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 developed in the run up to the process”*

*“It is also stops organisations sharing information and best practice, as those who might benefit are usually business rivals.”*

*One of the “main reasons could not proceed to tender ... our ethos of co-producing and personalising services means we begin by working alongside people closely to shape the direction a service takes. 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 views ... felt could not prepare a tender of the quality expected and that was true to our principles”*

- 5.2.3 It is essential that we have real and meaningful engagement between commissioners and providers. Pre-market engagement and importantly, listening to service users adds real benefit in the designing of services and outcomes prior to specifications being published. Understanding needs and engaging to inform specifications is imperative, as providers commented service commissioners often are not clear what service is wanted moving forward. Specifications should have a good level of need and outcomes identified and not be too rigid as need to allow innovation and flexibility, leading to better contracts with the right specifications, flexibility and leverages.
- 5.2.4 With regard to greater transparency and service design the possibility of 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 was highlighted. 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.
- 5.2.5 A different approach through greater co-design and co production: Co-production and co-creation are a key component part to a successful commissioning approach.

The focus should not be about whether the service is public, private or social but about how design service and secure services and obtain maximum benefit, hold providers to account on performance and how innovation is supported to deliver improved social outcomes. (CGF, IFG).

5.2.6 It is evident in both research literature and through experience that it is essential to consider how service users and stakeholders are included in the development of the intended service and specification. The best solutions potentially come from the people who are closest to the issue; this could be service users, residents, or frontline staff/providers. In developing the best possible specifications and services in Kent, community consultation and provider engagement could potentially go further to actively involve people in the design of services that they are going to use or deliver.

5.2.7 Within Adult Community Support co-production is at the heart of their ethos:

*'seek to work with wide range of stakeholders to understand need and ensure that services are developed to reflect what people need to live independent lives.*

*... working with providers and people using services to develop our commissioning strategies, service specifications and evaluation criteria.*

*In recent commissioning activities people using our services formed part of the evaluation process with their perspective being weighted and used as part of the overall scoring.'*

5.2.8 The work of the KCC Social Innovation Lab (SILK) supports this approach, and the SILK methodology for example provides creative and innovative ways to engage with people and approach projects, and enables a collective ownership and responsibility for project design, delivery and outcomes for projects. SILK and the Strategic Commissioning Unit in Families and Social Care are using a person-centred co-production method to develop Kent as a Dementia Friendly Community. This programme is working across Kent from which it is anticipated a range of collaborative service design and sustainable community projects will emerge cutting across education, health, care, housing, voluntary, arts and leisure, faith, business, community and family. (see Appendix 3: further details about the SILK methodology).

5.2.9 If KCC wishes to capture the value of what organisations are already doing, and ideas to innovate then it should and needs to offer more opportunities to co-design services. Using a different model of engagement such as a Co-design method of commissioning would utilize the full potential and skills of the market including VCSE and SMEs and the insights of service users in co-production.

**Recommendation 8:**

Provide more opportunities to co-design and co-produce services where appropriate, to capture the value of what organisations are already doing, and ideas to innovate.

**Recommendation 9:**

Need to ensure that specifications are 'fit for purpose' and reflect market engagement, identify level of need and desired outcomes, allow innovation and flexibility, leading to better contracts.

**Recommendation 10:**

Actively consider how service users and stakeholders can have greater input and influence in the specification, and service users in the evaluation of tenders.

### 5.3 Improving Communication

5.3.1 Good communications between KCC and providers is vital, and important whether for instance to invite them to attend an event or feedback on a recent tender. The evidence highlighted a need:

- for appropriate communication about changes to process or withdrawing contract tender, especially after providers have written tender submissions
- to raise levels of awareness to potential providers in the VCSE and SME community.
- for timeliness of communications, for example giving early notification of tenders coming out, timely feedback

5.3.2 The need for excellent, appropriate and timely communication and engagement is vital to

- **Keep providers informed** of changes to process or reasons for withdrawal of contract tender after providers have spent time writing submissions
- **Raise level of awareness** to potential providers in VCSE/SME community, and give early notification and information to organisations regarding services wanting to commission, and to **promote opportunities** to VCSE and SMEs.
- to ensure pre market engagement allows **greater understanding of the potential** of the service sector, informs service design and quality of specifications and allows room for innovation.

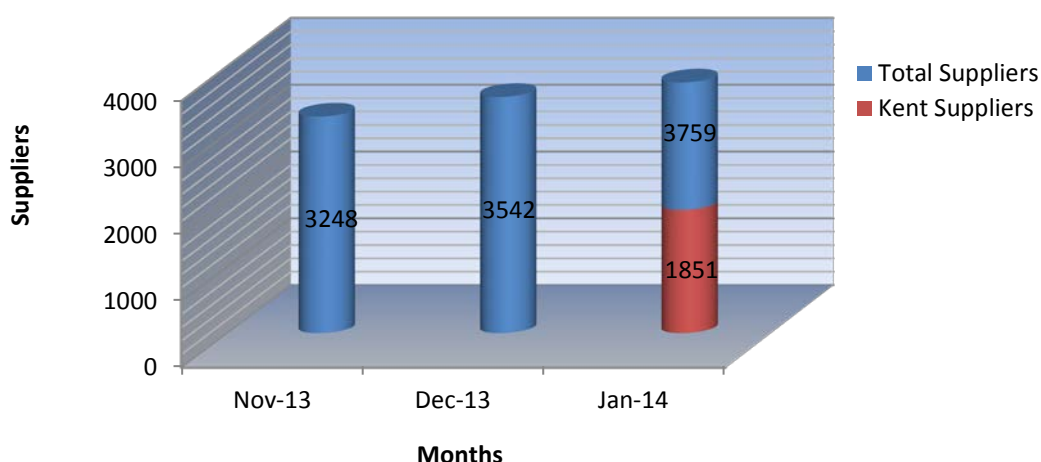


### 5.3.3 Advertising Tenders and e-Communication

The 'Kent Business portal' ([www.kentbusinessportal.org.uk](http://www.kentbusinessportal.org.uk)) was developed to advertise tender opportunities with not only KCC but also several of Kent District Councils, Medway Council and the Kent Fire and Rescue Service. KCCs main contractors can now also advertise sub-contract opportunities, and this allows both VCSE organisations and SMEs to see sub-contract opportunities on larger projects that might otherwise be out of their reach.

5.3.4 There has been a steady increase in the number of suppliers registering on the portal. (Figure 3).

**Figure 3: Number of Suppliers on the Kent Business Portal**



5.3.5 It is important that potential service providers of all sizes and from all sectors of the market are aware of the Kent portal, and that KCC continues to promote it. For example KCC Economic Development sponsored the Kent Construction Expo in November 2013 in association with the Kent Invicta Chamber of Commerce. One of the main highlights of the Expo event was the showcasing of the developing Business Portal and an opportunity for small businesses to have face to face meetings with most of the major companies that have recently secured large contracts with the County Council.

### 5.3.6 Making it easier to engage, find opportunities & use the Kent Business Portal

Although the picture of numbers of businesses registering on the portal is a positive one it remains a concern that some of those the Committee spoke with (both SME and VCSE providers) were unaware of the Kent business portal and generally referred to the SE portal. There is a concern that many of the smaller and micro social enterprises are not 'hooked' in to this and are therefore potentially missing opportunities for their businesses.

- 5.3.7 Despite the positive figures there was a lack of awareness of the Kent Business portal and also confusion evident around the SE portal and Kent Business portal. It was also reportedly difficult to navigate. Promoting opportunities by extending the use of the portal, allowing registered organisations to advertise their sub-contracting opportunities to other suppliers is a positive step. Work to develop and extend the use of the Kent portal further should be supported.
- 5.3.8 Currently all Kent County Council opportunities with a life value of £50,000 or above are advertised online via the Kent Business Portal. The Committee deliberated whether there should be a consideration of the value of contracts to be included in the portal and tendering, and whether the level should remain the same or be raised leaving the flexibility to the Local Authority to find solutions for low value contracts through informal processes to reduce bureaucracy and costs. Currently for transactions valued at more than £8,000 but less than £50,000 at least 3 written quotations must be sought). However as reflected previously to assist Small and organisations and micro enterprises there is also a need for publication of lower value contracts (i.e. £5K) and greater transparency regarding low value contracts that are available.

**Recommendation 11:**

Ensure appropriate and timely communication throughout the market engagement and tendering processes – about timeliness, communicating reasons for changes, levels of awareness.

**Recommendation 12:**

Promote contracting opportunities to VCSE and SMEs and Better or enhanced promotion of the Kent Business Portal to increase awareness (including with small and micro enterprises), and for the Portal to be more easily navigable.

**Recommendation 13:**

Extend the use of the portal to enable other local Authorities to promote contract and subcontracting opportunities, broadening potential access for VCSE and SMEs.

## 6 KCC's approach to procuring goods, services and works

### 6.1 Our procurement processes

6.1.1 The County Council's procurement processes have a key focus on supporting Kent businesses. Procurement recognise the need to be open, transparent and proportionate in order to reduce barriers to entry for small and medium sized businesses and social enterprises. Procurements three drivers are firstly to save money, then to manage risk, and then support Kent business. Following its recent report, *Local procurement: making the most of small businesses*, the FSB produced a charter designed to promote positive procurement between small businesses and local authorities. The charter sets out 15 best practice recommendations to encourage a better procurement process for local small firms. It was reported that the approach to procurement taken by the County Council is consistent with the charter's recommendations.

6.1.2 For all procurements over £50,000 in value, it is a County Council requirement that a procurement plan must be prepared. The plan has a wide ranging check list of requirements that include Social Value and how the procurement will support Kent businesses.

6.1.3 The County Council has a target of 60% for contract expenditure with first and second tier Kent businesses (where second tier comprises sub-contractors or suppliers to the main contractor that KCC is paying directly). In 2012-13 for example, KCC's expenditure with Kent suppliers (first tier) was £571million, which represents about 58% of contract expenditure, and increases through use of sub-contractors or local suppliers in the second tier.

6.1.4 The two figures below illustrate spend by business size and sector.

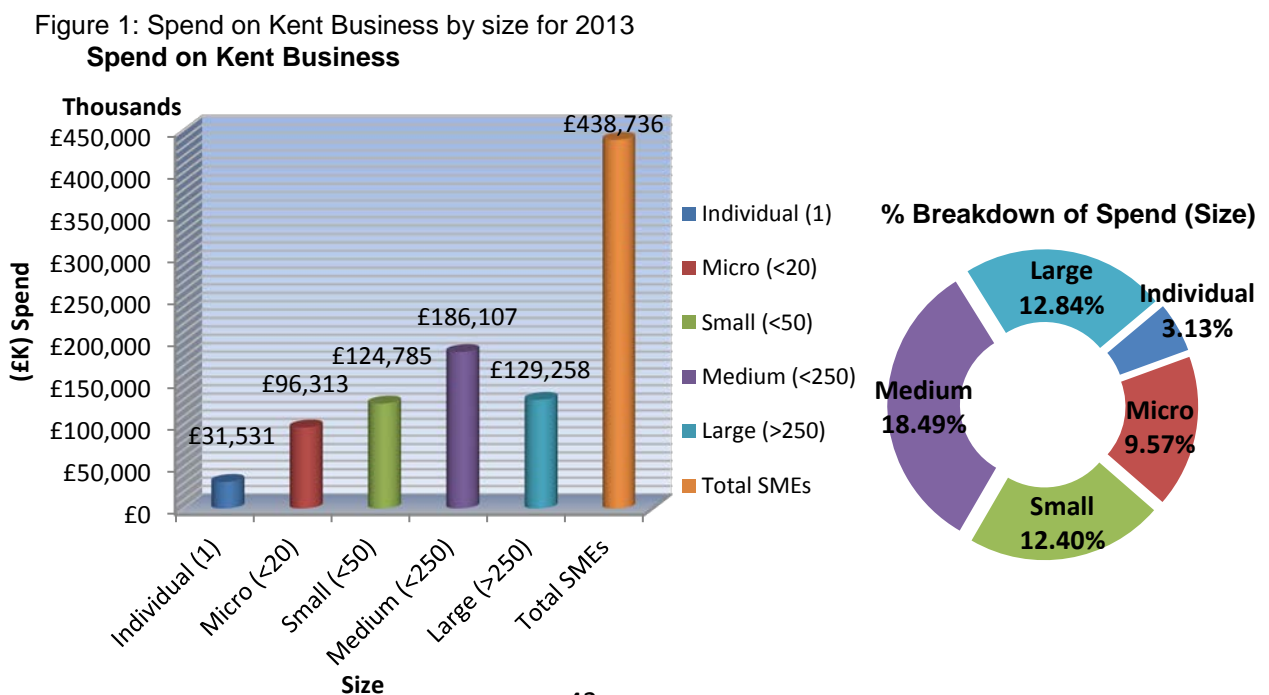
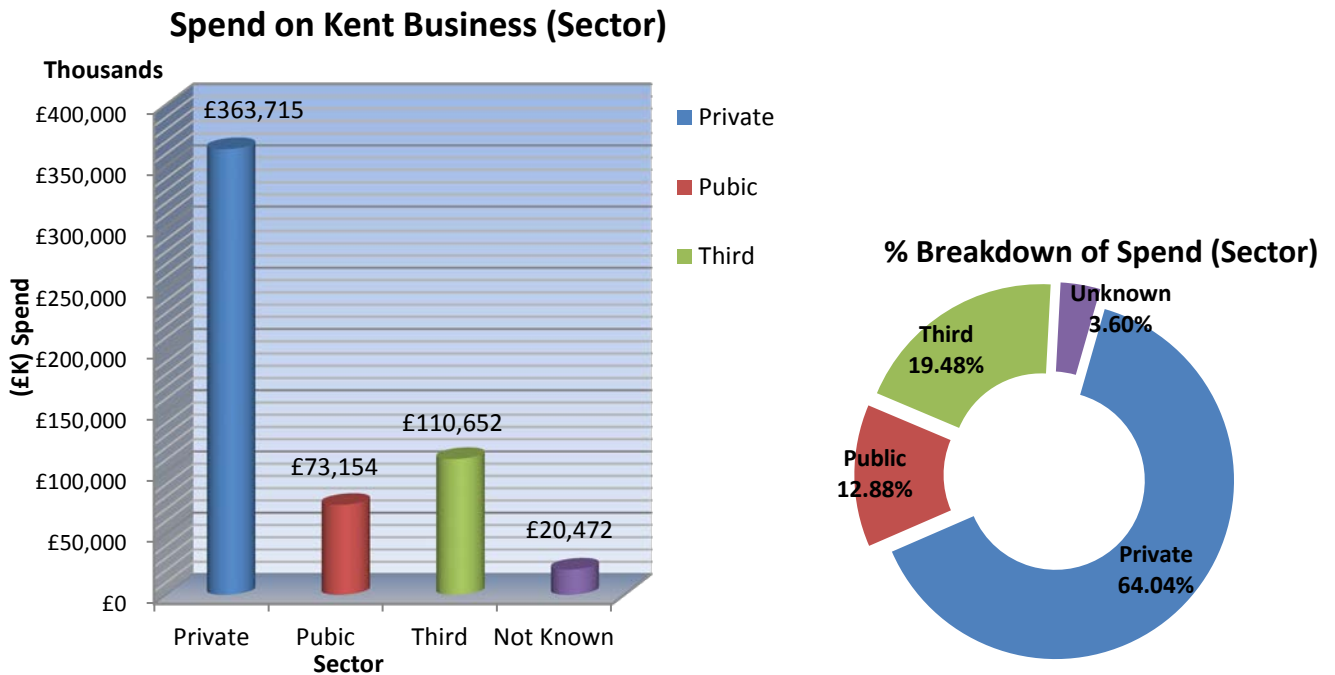


Figure 2: Spend on Kent Business by Sector for 2013:



## 6.2 Making it easier to tender to supply Kent services

6.2.1 There is evidence of significant improvements in Kent's procurement, however both the VCSE and SME sectors still face some hurdles in accessing opportunities through our tendering processes. If these can be addressed it would help to ensure it is easier for potential providers to enter the market and be able to compete for contracts.

*Transparency – “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”*

### 6.2.2 Local Knowledge and Bid writing:

The importance of ensuring local understanding and knowledge is factored into the tendering process was highlighted. There is a concern that some organisations have teams of experienced central bid writers, giving them an advantage. In order to drill into evidence of quality of provision and understanding rather than quality of central bid writers, Commissioners and Procurement Officers ask/ensure that the local managers are present for interviews (not only central bid writers) who if successful will deliver and manage the service.

6.2.3 To strengthen understanding of local knowledge and experience of organisations, it was suggested as potentially beneficial if KCC considered how to incorporate visits to existing services of potential providers as part of the tender process to get a real flavour of what was delivered on the ground as opposed to only on paper. There was a similar concern raised by Commissioners that knowledge of past

performance/experience of working with a provider (either good or not so good) is not reflected or taken into account in considering tenders for new work.

6.2.4 It was commented that there was still a need for plain language to be used in documentation, supporting guidance, ITTs etc. This is a KCC standard.

6.2.5 Capacity of SMEs and VCSE's to tender.

There are issues around the capacity of VCSE and small /medium organisations to tender. Organisations commented that the time taken for the process remains disproportionate for a small organisation, and a considerable length of time is required to complete the PQQ and tenders. Kent's PQQ is currently long compared to some other LA's.

*"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."*

6.2.6 'Small business: Great Ambition' sets out actions government plan to take to assist SMEs to grow and remove barriers they face to access public contracts. The possible legislation in 2014 – includes abolishing PQQ for low value contracts and standardising core PQQ for high value contracts to reduce complexity and cost. When this is applied to procurement to make public sector contracts more accessible for Small-Medium Enterprises (SMEs) the changes implemented will remove some of the barriers that SMEs face when bidding for public contracts.

6.2.7 The size of the PQQ Kent uses is about and is a reflection of the level of risk and willingness of KCC to take risk. Procurement are working to standardise the PQQ and this needs to continue at pace. An option is to consider self-certification on low value contracts and then more detailed analysis if proceed to award stage.

*"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."*

*"Time involved to wade through the processes is disproportionate for a small organisation. ... The true cost has not been recognised ... 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"*

*"Commissioning is top heavy on admin and this knocks out the small organisations despite their flexibility and excellent front line knowledge"*

*“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 bigger groups.”*

*“Small and local still has a useful presence if allowed to survive!*

6.2.8 Timescales are a significant issue for both VCSE and SMEs, and present a significant challenge to VCSE organisations and SMEs without tender writing teams:

- Invitations to Tender (ITT) often come out at the same time for different services, and can be especially the case and demanding for organisations which work across Directorates, resulting in several to complete at same time.
- The timing for completing/submitting tenders most often falls over key holiday breaks like Christmas when officers are away, and is reported as a recurrent pattern.
- The length of time to complete and return tenders is often short – often only three weeks. Presenting particular difficulties for consortium bids.
- Time between award of contract and mobilisation is often short and could be longer for more complex services and where more complex bid arrangements.
- PIN notice period could be longer, raising awareness and allowing time for supply chain preparation in time to tender, consortia bids etc.
- Slipping timescales, for example where the process has changed along route, or appeals are made prior to final award of Contract, so the length of time before funded to supply a service is longer than anticipated. This funding and time delay may be critical to a smaller business or organisation.
- More time for consideration of TUPE issues, transition of staff. 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.
- Give sufficient time for mobilisation – recruiting staff safely takes time, some can deploy existing staff temporarily to help with set-up, but this should not exclude new providers from the marketplace.

*“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)”*

- 6.2.9 Bidding for a contract with KCC can be of significant cost to contractors and a barrier to smaller providers, with no guarantee of success. Costs include time, the development of expertise in order to compete in a tender process, seeking legal advice, and any resultant TUPE and pension requirements if successful. The complexities of bidding are recognised by large providers and they will often have the infrastructure that allows them to participate, but smaller providers often do not have this.

*Financial arrangements, insurances or other thresholds being set at an unnecessarily high level within specifications etc. can deter new providers." (Written Evidence - KCC Staff)"*

*"Any provider is more likely to lose a contract on retendering than to retain it, and the average 'hit rate' for winning a new contract bid is between 20-40%, which is standard in the sector ... most of this expenditure is unproductive and is loaded into the cost of successful bids" ... "We don't think there is a single satisfactory 'answer' to this; longer contract terms, more streamlined processes etc. may work in some instances but be detrimental in others.*

*We would like to see a more 'intelligent' approach where tendering costs, are tailored against anticipated benefit."*

The transfer of TUPE staff can also create an inequality in an organisations workforce as different Terms and conditions to those already there. Also once successfully on a framework these have not necessarily led to the levels of work anticipated. There should be a clear understanding about size and amount of work expected, and for our frameworks to become more sophisticated.

*" It should be made clear to bidders 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."*  
*(Written evidence - Legal, KCC)*

*"The transfer of TUPE staff creating an inequality in organisations workforce as currently unable to meet public sector pension benefits."*

*TUPE – " this was one of the deciding factors not to tender as not prepared to award some members of staff these benefits and not others, and are not in a financial position to take these costs on."*

#### 6.2.10 Evidence for New providers

Kent supports a mixed economy of providers with genuine roles for both the VCSE and SMEs. There is however on balance a difficulty for new organisations to win new contracts and also for organisations to enter markets without specifically related previous experience and evidence of what they could do and is inherently linked to KCCs appetite for risk. There is an opportunity perhaps on frameworks to gain experience through smaller lots of work, or through working as part of a second tier supply chain. It was also suggested that developing a new rating service for small firms could be useful. It could give an opportunity for providers to rate public bodies on their procurement processes but also for Public bodies to have the opportunity to rate their suppliers so that small businesses that win contracts can start to build up their reputations.

*“New providers 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”*

6.2.11 Smaller contracts could be used to help micro small enterprises to gain evidence and make the step up – KCC need to offer opportunities for this to happen. There is a need to make contract opportunities easier to find by the publication of lower value contracts (i.e. £5K) and greater transparency regarding low value contracts that are available. For SME’s – including the voluntary sector – contracts as low as £5,000 can be of considerable interest, yet tend not to be publicised. However, an opposing view is that (in consensus to consultation) is 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. Any process must be transparent and promote opportunities for small and micro businesses and smaller VCSE.

*“Part of the education process for new businesses is to learn how to work up the ladder. Small businesses need to start with low value, low risk contracts and the challenge for commissioners is to publicise such contracts.” FSB*

#### Procurement Decisions and analysis

The ratio of analysis used in procurement decisions is variable across the organisation. Price is a significant driver within our decisions with a 70:30 split, and sometimes a more even split of 60:40. To provide an opportunity to maximise Social Value there should be a consideration of how much of each procurement decision should be given to Social Value considerations, and how this could be achieved in practice.



6.2.12 The Adult Community Support Team have included stipulations in all recent evaluation criteria regarding the Social Value Act. In for example the Carers Short Breaks specification 20% of the 60% quality score was based on social value, and is a welcome step in decisions to reflect potential added Social Value. On the other side Social Value is increasingly difficult when have to balance budget, so need to consider cross directorate policy to move from cost/quality analysis to consider 40% cost + 40% quality + 20% social value within specification/tender where appropriate.

**Recommendation 14:**

Strengthen our processes to access and utilize knowledge of Commissioners and potential providers - KCC should consider within the current Tendering process and complying with procurement law how KCC can strengthen our understanding of the local knowledge and experience of organisations, for example by incorporating

- visits to existing services of potential providers
- reflecting knowledge of past performance/experience of working with a provider,

both good and not so good.

**Recommendation 15:**

Simplify and standardise procurement processes further to remove or minimise procurement process barriers by:

- introducing reduced and less onerous requirements for low value contracts (e.g. financial evidence - self certification/documentation for low risk/low value followed by a more detailed analysis if proceed to award stage, proportionate pre papers or discontinuing PQQ where appropriate)
- simplifying and standardising the core and online PQQ, retaining the flexibility to add additional questions for more complex service areas
- better co-ordination of Commissioning and co-ordinating the diary of tenders across KCC where possible and introducing a plan of tenders
- giving earlier notice of intention to put contract out to tender and more time for the completion and submission of tenders.

**Recommendation 16:**

Promote opportunities to VCSE and SMEs through publication of lower value contracts (i.e. £5K) and greater transparency regarding low value contracts that are available

**Recommendation 17:**

Reflect Social Value sufficiently in our procurement decisions – need to actively consider how much of each procurement decision should be assigned to Social Value, and not only between price and quality.



## 7 Market Development

### **7.1 Support to VCSE and SMEs**

- 7.1.1 It is essential that the market develops and is supported to have the skills, capacity and capability to deliver the services that are needed for the future. The key question is how should and can KCC best support VCSE and SMEs?
- 7.1.2 There are a number of organisations that support the voluntary and community sector at national, regional and a local level.

#### National Infrastructure

Two of the most significant are the National Council for Voluntary Organisations (NCVO) and the National Association for Voluntary and Community Action (NAVCA)

#### Regional Infrastructure

RAISE is the main organisation operating at a regional level. It was established in 1999 and is the support organisation for the voluntary and community sector in South East England. Its remit is to work in partnership with policy-makers, stakeholders and funders to increase the potential of the sector and to improve quality of life within the communities they serve. RAISE has a particular focus on supporting health and social care.

#### Local Infrastructure (LIOs)

The term Local Infrastructure Organisations (LIO's) is generally understood to refer to Councils for Voluntary Service (CVS's) and Volunteer Centres (VC's). These organisations provide local infrastructure support to voluntary and community sector groups and organisations and contribute to overall community capacity.

In Kent there are six CVS's that together cover the whole of the county. They vary in size with some serving one district and others serving up to four districts. Three CVS's have integrated Volunteer Centres and there are also seven separate local Volunteer Centres. All receive some funding from KCC and some receive district council funding.

Other organisations operating in and providing support services to the sector in Kent includes Action for Communities in Rural Kent which has a focus on rural communities. The latter is a voluntary organisation but supports rural business as well as community and volunteer-led groups.

- 7.1.3 It was noted that KCC provides feedback to suppliers, as required under the Remedies Directive, but offers to spend additional time where requested with small businesses and social enterprises to help ensure that their tendering capability might be improved for future procurement calls. Micro and small

enterprises often lack understanding of the procurement process including an understanding of which contracts they should and should not bid for and the mechanics of completing tender documents. Procurement is also considering the re-introduction of bidder training days to provide help to Kent businesses on how to complete tender documentation.

*“It would be helpful to advise small business about what is available and what would be good to bid for as well as what not to bid for. Training could be offered at procurement workshops and “meet the buyer” events.” FSB*

7.1.4 The key points raised are that there is

- a focus on how the sector can support KCC – but little about what may help commissioners understand about sector, or shared experience of how operate
  - a clear need in the sector for support regarding the tender process
  - a need for support for VCSE and SMEs importantly on how to complete a tender and tender information, what to include, how much, what information to provide and how, particularly for organisations as ‘frontline experts’, with no central bid writing teams.
  - support provided for VCSE by infrastructure organisations across Kent. Although these organisations provide valuable information and training to the sector it is not necessarily equitable,
  - provision of some direct community services under contract by LIO’s, and as a result some providers believe that the support work suffers and are conflicting remits.
  - a view that some local infrastructure organisations do not fully represent or network for other VCSE in the wider sector
  - a concern around the closure of the recent Kent CAN, an organisation that operated in and provided support services to the sector in Kent, which had a county wide focus,
  - a significant skills gap for some organisations
  - a value in providing assistance to organisations once successfully tendered, to enable them to deliver a good service under contract e.g. shared training opportunities between provider and client
- and
- although market events provide a useful walk through the procurement process they cannot and do not however provide enough support on how to actually complete a tender

7.1.5 There is a shift in relationship between the public sector and VCSE sector with increasing need for organisations to have the ability to tender successfully within a mixed market, and play a key role in managing demand and building resilience. Therefore it is important that consideration is given to how best to support VCSE within an evolving and complex commissioning environment.

- 7.1.6 The key question is how can KCC best provide infrastructure support for the VCSE and SMEs to enable the market to develop? How should KCC ensure that everywhere in Kent has access to good support to develop the market, build capacity and improve tendering skills – infrastructure grants? consortia? framework contracts? market development specialists?
- 7.1.7 Other authorities have considered the issue of support and market development for VCSE for example:
- **Worcestershire** moved away from a grant to a consortium of infrastructure bodies and replaced this with £750,000 investment to build a managed market of support and build capacity in VCSE, commissioning support from a framework contract with providers from private, public and voluntary sectors. It provides support for financial sustainability, marketing, procurement, outcomes, professional support (HR, Legal).
  - **Oxfordshire** moved to a single contract for infrastructure services in April 2012
- 7.1.8 Adult Social Care are preparing a specification for the purchase of a new time limited Adult Social Care Voluntary Sector Market Development Service to work with voluntary and community sector organisations. It should play an important contribution to the infrastructure support that Families and Social Care commission or provide to support voluntary and community organisations to be sustainable and deliver positive outcomes for vulnerable adults. It is anticipated that this will provide key support for
- training or 1-1 mentoring to identify potential funding opportunities; writing bids and completing the tender process.
  - enabling networking and collaborations amongst VCSE
  - developing and sharing professional skills
  - information, advice and guidance website offering portal access to e-learning, workshop details, links to best practice and guidance, how to access the Kent Business Portal, examples of tender submissions
- 7.1.9 It was evident that there is much support existing and is clearly valued, and experience of different models within the Country, but on balance this needs to be looked at with providers to ensure the support is the best it can be. There is an intrinsic value in ensuring the VCSE sector **and SMEs have** the support **needed** to build capacity and develop. There needs to be further consideration of this issue in greater detail to ensure that both VCSE and SMEs have the support needed, and potential for joined up commissioning.

**Recommendation 18:**

Actively consider how best to support the development of the market and build capacity, particularly how best to provide support to VCSE and to SMEs.



## **8 Contracts, Risks, Grants,**

### **8.1 Length of Contracts**

- 8.1.1 The length of contracts is important as they need to be commissioned with an optimum length to seek innovation and for a provider to make a fair return. It was highlighted that increasing contract awards to 3 years in length is a vast improvement that allows services to fully develop their models of delivery and integrate them with other relevant services. It supports small organisations with sustainability and enables them to work with service users and communities to achieve long term outcomes and mutually supportive environments. It is an improvement on the historic yearly rolling contracts, often with no formal review of the contract taking place.
- 8.1.2 It was commented on that some contracts do tend to change hands every 3-6 years. It is then hard to engender loyalty amongst frontline staff, who are likely to be TUPEd to someone else in the future however well or poorly they perform. Senior staff have to repeatedly win new contracts to replace likely losses in order to retain work and their positions.

*“ This fast-moving storm of contract turnover includes tangible elements of antipathy and fear, affecting the aspirational desire to ‘do good’ which is one of the traditional strengths of the voluntary sector.”*

- 8.1.3 The length of contract also impacts on how effectively a contract can be managed regarding performance or measured regarding outcomes of a new model of service. There needs to be confidence in baseline data of inherited contracts and time to work with a provider to improve performance if need be before a re-let is on the horizon. It is a balance - if contracts are not long enough can we get the innovation are looking for? There are early contract costs for a provider from TUPE, redundancy costs etc in year one of a contract so organisations need time to cover costs and make a return.
- 8.1.4 With regards to risk, moving away from annual contracts to 2, 3 or 5 year contracts creates more certainty, allows time for innovation, providers to plan, build capability and improve services.

### **8.2 Aggregation and Disaggregation**

- 8.2.1 There is sometimes a balance to be found between larger long term contracts and SME and local supplier support. There is a clear tension between need to aggregate to achieve economies of scale and need to disaggregate to promote local growth. Dis-aggregation of contracts into smaller lots that are accessible to SME's is increasingly common across the UK – with LA's such as Basingstoke and Deane Borough Council leading the way in this process to the point where they have won an award for their

“small business friendly” approach to procurement. The recently announced changes to EU Procurement Legislation will also include “encouragement” to split large contracts in to small lots.

8.2.2 In following a policy of supporting smaller Kent businesses in its approach to procurement it might be argued that KCC is missing out on economies of scale. But it should be recognised that aggregation does not always result in better value, and each procurement needs to be assessed in its own rights.

*“... the aggregation of contracts to the point where their value excludes small suppliers”*

*“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!”*

As outlined earlier in the report additional benefit generated for every £1 invested can be greater from smaller businesses than large organisations. The increased use of Kent suppliers and contractors is due partly to the consideration of contract size and breaking down procurements into packages which not only deliver value for KCC but also enable small and medium sized businesses to compete.

*“Breaking potentially a very large contract into smaller, more manageable contracts is a key method of reducing barriers to entry especially for smaller organisations.”*

8.2.3 Key points:

- Acknowledge there is a challenge in delivering services at a provider volume which is efficient for KCC to manage
- Contracts vary in size for example from district, CCG area and county- wide
- Aggregation excludes small suppliers
- Disaggregation into accessible or smaller lots increases availability of low value contracts, to enable smaller organisations and SMEs to tender.
- Emerging role of VCSE as subcontractor on larger contracts, and concerns regarding this new relationship
- Contracts can be too large for an individual VCSE, so need time to build relationships and consortia to strengthen bid and opportunity for success
- small or specialist providers – sector is forming partnerships but takes time
- Risk/disaggregation: Many LA’s are now introducing contract terms that are proportionate to the risk involved in that particular procurement exercise

**Recommendation 19:**

Break down larger contracts into smaller lots, wherever practical.



### **8.3 Working with Consortia**

- 8.3.1 It is recognised that it can be difficult to manage a very large number of small contracts or for small organisations to bid for larger contracts. Organisations are encouraged to network, work together and strengthen their position and capacity to deliver for larger contracts through collaborative bids and establishing a consortia. To enable smaller organisations to work with the Council and compete for larger projects it is important that we enable them to work with other smaller organisations to combine their resources. This is applicable to both private sector SMEs and VCSE organisations, and is encouraged for example through 'Meet the Market events', however the Council needs to manage its risk with clear rules on how to address this.
- 8.3.2 The key issue for the authority that needs to be considered is the Council can only contract with one lead organisation, so if a consortium is being proposed prior to contract award the consortia must set its self, up as a formal partnership or joint venture. An alternative option is the Council contract with a lead body that then sub-contracts their partners. There have been issues with this type of arrangement in the past where the lead body has decided not to continue working with its partners post tender, or do not split work/finances evenly/fairly. VCSE can be hesitant around Consortia with regards to their long-term interest, as organisations need to retain their individuality and there are both good and not so good consortiums depending how they have been set up.

*“lead organisation takes the cream, gives little work to others or leaves the VCSE organisations with the risks or most difficult challenges.”*

- 8.3.3 It also needs to be recognised that it takes considerable amount of time to form Consortia and set up the necessary agreements, legalities and deciding on who is the lead person/organisation. There need to be better timescales to build partnerships and consortia reflected in procurement process and timelines. Although organisations are encouraged to collaborate and establish consortia there is a requirement of KCC to contract with one body, so these need to be set up as a formal partnership or joint venture.

### **8.4 Incentives, Payment by Results (PBR) and type of contract**

- 8.4.1 A key question is how providers can be rewarded or incentivised to continually perform well - if an organisation is performing well, should there be a presumption that it will be re-commissioned?
- 8.4.2 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.

8.4.3 There is also 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.”*

*“ Building an incentive into the procurement process to make further savings seems to remove a tool by which commissioners can pursue best value from the resource available to them. We are not clear how the resulting savings are allocated – do they sometimes end up funding something which may be of less priority?”*

8.4.4 It is agreed there should be a consideration of rewards if a provider performs well, but not through automatic extensions. There should be the possibility of negotiating an extension of contract if a provider has performed excellently, delivered outcomes, and brought innovation and/or additional social value. Some contracts have included possible extensions. De-commissioning is always a possibility at the end of a contract, but de-commissioning just to test the market is damaging to VCSE organisations and SMEs.

*“Some consideration of protection for good performance, and provision for positive bonuses and incentives, might help create a more aspirational and productive market.”*

8.4.5 It was highlighted that 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; as currently much innovation is restricted through tight specifications or models used. To reflect the need for encouraging best service design and innovation the Committee considered the value of using a different approach to procuring services and contract type by using a more negotiated style contract, where design of initial specifications is followed by the design of detailed models with selected providers to co-design service and outcome specifications in detail.

*“One model, which has been trialled in some areas, is for the process to choose a provider which has the best fit with the requirements, rather than choosing the best proposed service. The service is then specified post-award in partnership with the provider. This would allow commissioners to properly test a model, rather than trust what has been written in a tender.”*

*“The lack of engagement or providing dynamic purchasing opportunities to the VCSE restricts the opportunity for innovation”*

*“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 organisations in Kent.”*

*“KCC need to keep frameworks more open to accommodate new and emerging VCSE organisations and at the least have an annual framework intake or review”*

## **8.5 Contracts**

8.5.1 Other barriers to entering a tender include the financial costs that organisations incur in seeking external advice on contract law. This is an area of support required to ensure organisations can enter arrangements confidently. Contracts should set out rights and responsibilities on both sides, with clear protections and the remedies in event of problems. With a risk a-verse nature and uncertainty around contracts, organisations need to seek costly legal advice. Having successfully tendered for a service there are concerns around the subsequent contracts and KCCs approach and that contract terms can be disproportionate to risk involved. For example in a particular contract evidenced there was a concern highlighted by a provider from their legal advice regarding a bias in KCC's favour giving unilateral abilities to change terms within the contract, areas being contradictory of others, and no course to discuss these. Contracts should be to be more proportionate to the risks involved (see also 8.8).

*" The financial costs that we would incur in seeking external advice on contract law. We do not have this expertise in house."*

*" Solicitors identified 11 areas which raise concern for us .."*

*"wrote regarding concerns... the outcome was a letter from KCC insisting sign the contract and suggesting when tendered had tacitly accepted all terms and conditions. If they didn't sign they would jeopardise their providing of services and accordingly they signed as felt had no choice."*

8.5.2 The concerns in summary included

- KCC entirely controlling order/price – little scope for any negotiation
- Contradiction over travel expenses and price
- Time limits are short and possibly should be more realistic
- Need for several indemnities, their appropriateness, and risk of event occurring

- Rights of KCC to unilaterally change terms of an order- 'unusual, unfair and not advised'. Need clear terms for this and also for provider to have withdrawal without liability
- Unilateral rights to decide what is in an invoice
- Must comply with 'fussy payment procedures'
- Whilst a 5 year agreement – is really a rolling contract with 3 months' notice servable by either party at any time.

## 8.6 Payment Practices

- 8.6.1 Payment practices have traditionally been a controversial area for local authorities. The County Council will usually contract on 30 days net payment, but now has a target of paying contractors in 14 days which has been delivered in 90% of contracts. The FSB confirmed that this did not appear as an issue with Kent. KCC also has clauses in its contracts to require contractors to pay their subcontractors/suppliers in a timely manner. However, Procurement commented that there is always room for improvement and the need to improve monitoring and ensure compliance is recognised.
- 8.6.2 Requiring prompt payment terms all the way down a public procurement supply chain will ensure that SMEs have access to money when it is due. SMEs and smaller VCSE do not have the same access to credit that larger companies do and can be unfairly prejudiced when payments are not made within a reasonable period impacting on their cash flow.

### **Recommendation 20:**

Requirement for prompt payment terms all the way down our procurement supply chain continues to be built into contracts; and improve monitoring of this requirement to ensure compliance.

## 8.7 Use of grants

- 8.7.1 There is much transition for the VCSE sector from KCC funding being grant based to a commissioning focus and need to tender for contracts. Some organisations commented that although grants are really useful there had been issues around uncertainty year to year if a grant would continue or not, often only being agreed at the very last minute, making it difficult to manage expectations, delivery etc. Three year contracts giving more certainty and time to innovate were welcome.
- 8.7.2 There is a significant concern if grants were to disappear as they support many organisations doing valuable work, and who may not yet have the capacity/skills to tender. In some circumstances grant funding may have a role in capacity building.

*"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.*

Some organisations, due to the uncertainty and shift to Commissioning have sought different revenue so are not reliant on KCC. KCC Adults Social Care funded a total of £19,173,673.27 in 2013-14 in grants, ranging from the smallest of £536.75 (West Kent) to largest of £1,006,305.22 (Thanet & South Kent). The grants length of agreements, ranges from 3 months to 3 years, (the smallest and largest grants are for a year).

- 8.7.3 There is a clear vital role and place for grants in our blended approach - blended in terms of provider sectors delivering services and also in nature of funding models. Grants can provide support to innovate services, pilot ideas and then if proved successful can then move project to a contract basis. It is a held view that although grants have a significant role they should be time and task specific to support the innovation or development of services, enabling services to try out something new, be clearly monitored for performance and outcomes, with a clear and transparent process supporting their use.

#### **Recommendation 21:**

Recognise there is a clear role for 'smart' grants that are innovative, and outcome based. Need to ensure that their use is transparent and are time and task specific, and monitored /evaluated for success.

#### **8.8 Risk**

- 8.8.1 For start-up organisations the biggest issue is absence of a financial track record. For Local Authorities it is a matter of mitigating risk. Both sides need to build trust. The Appetite for risk is a significant barrier, demonstrated in KCCs non-willingness to take risk illustrated in current requirements for providers for low value contracts; very tight specifications limiting innovation; and VCSE organisations Trustees or Board traditionally are very risk averse, and often 'feeling out of its depth in entering into a contract'.

*"Trustees can be very risk averse – it is imperative for organisation to have the correct trustee skill mix (including commercial savvy)."*

- 8.8.2 There is a need to take some level of risk, and KCC 'Won't progress or innovate services if doesn't take an element of risk'. One of the key aims from Bold Steps for Kent is to manage risk through developing clear processes and appropriate governance (not being risk averse but risk aware). A contractor is responsible for the delivery of services, but ultimately KCC as contract holder has responsibility for failure of a contract.

*"There needs to be a sense of realism that outsourcing does not discharge the Authority to deliver against its statutory or moral duty, furthermore the Authority will be held to account by the general public for any failures of outsourced services, examples such as G4S in providing security at the Olympic games and failures in providing adult social care by Castlebeck Care even impacted on the Care Quality Commission.*

*Finding the right partner organisation who will share risk and protect the reputation of the Authority, Client and therefore customers is paramount - identifying such qualities must be fundamental at all levels of the engagement and then procurement process."*

Both KCC processes to secure services and contract providers should be more proportionate to the risks involved for particular contracts.

*"Many LA's are now introducing contract terms that are proportionate to the risk involved in that particular procurement exercise."*

- 8.8.3 Financial risk is being transferred to providers, and providers are concerned with their own financial viability. They are concerned about the financial risks of payment by results contracts (PBR) and can be unwilling to try different approaches. The VCSE are generally risk averse and PBR type of contract may prevent sector applying if too aggressively introduced. The VCSE have a duty to safeguard their assets and own core activities of charity.

*" .. 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."*

- 8.8.4 KCC is bound by the Public Procurement Regulations and its own Constitution and cannot unilaterally mitigate or remove barriers set by them, including financial barriers and how these might be eased. Legal, Finance and Procurement have met to discuss how the financial barriers might be eased and reportedly 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. There is a value in supporting organisations and small enterprises to tender and the offer of interest-free loans to enable an organisation to get started on delivering the service is a real benefit but has implications for KCC.

*“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.”*

*“Financial checks need to ensure that companies that are new or have a low income are not prevented from applying”*

There is obviously a clear tension between the levels of risk taken and the need to ease financial requirements, and support the small and micro enterprises.

#### 8.8.5 Bonds:

There is a need to balance risk, take some risks and support/incentivise risk taking to improve outcomes. Work by CGF and IFG highlight the need to specify types of innovation sought and incentivise them through partnership models, and payment and funding arrangements. Risk can be balanced by specifying for example the proportions of payment at risk if PBR targets are not met; payment of interim outcomes, looking at levels of risk transfer through the supply chain.

*For example:*

*The Greater London Authority Social Impact Bond supporting rough sleepers, pays providers a significant sum if those on the programme are in non-hostel accommodation for 6 months as well as longer term outcomes. (From CGF ISS)*

8.8.6 Offering a bond against productivity / performance could support small businesses to bid for and successfully deliver a contract. Contract terms need to be proportionate to the value of the contract. (Appendix 4 gives more details about Bonds).

*“For example it is not reasonable to require £10m public liability insurance to bid for a contract for small value contracts.”*

8.8.7 Recent Consultation “Making public sector procurement more accessible to SMEs’ stated that there is some evidence that the requirement, at the selection stage of procurements, for a performance bond to provide contracting authorities with a financial guarantee in the event of contractual problems, is excessive and often not proportionate to contract values and risk. It also may discriminate against smaller businesses. Larger businesses which have access to substantial capital and assets, or other sources of finance, find it much easier to provide such bonds. But for SMEs, such bonds may only be obtained at the expense of overdraft facilities. This can prevent them from bidding. Respondents commented that performance bonds should only be considered for very high value complex procurements and believed

that better guidance on the use of financial guarantees that advocated a more risk based approach would be a sensible way of addressing the topic.

## **8.9 Effective contract management**

- 8.9.1 Effective contract management is vital to ensure that resources are used effectively and best value obtained. Contract monitoring that is robust is essential to ensure priorities as set out in contracts with strategic partners are delivered effectively. Successful contract management is integrally linked to the culture and mind-set of both the manager and the provider; the capabilities and relationships.
- 8.9.2 The capability and skills to manage contracts, is variable and there is scope for improvement. Important have consistency and excellence in contract management - some contracts have not had regular monitoring of performance indicators (e.g. residential care), contract monitoring that is remote and impersonal, or where changes in the process take place without consultation. Contract management expertise is needed. KCC need to ensure contracts are well procured, set up and managed.
- 8.9.3 Although there is some excellent practice and recent re-lets of some contracts introducing robust performance management, there is a need
- for clearly defined roles and responsibilities for contract managers
  - for people monitoring to be as skilled as the provider, but who do not take responsibility for service
  - to ensure both the capabilities of Contract Managers, with continued support via training/guidance; and also to ensure the capacity to monitor and evaluate performance. KCC is still accountable and owns risk
  - to understand outputs and measures to be used, ensuring set meaningful outcomes, and ensure quality of measures
  - to ensure that all contracts have performance reviews and evaluate outcomes – for instance a schedule of reviews, building a range of monitoring mechanisms into contracts, including for example quarterly and annual reporting and periodic benchmarking.
  - to ensure the Contracts Register is completed. Although much improved there is still work to do regarding number of contracts KCC has and for what services. The Contract register should include all contracts over £50k – and it is proposed this includes details of the named contract manager, and lead director
- 8.9.4 How KCC manages underperforming contracts to improve is vital. Some contracts may not be performing as well as they could, but are not underperforming to an extent they need to be cancelled. Ultimately it is in the best interests to support a provider to improve through the management steps taken when a contract is not



performing at optimum level. It is important that the necessary sanctions are in place for underperforming contracts, for instance agreed improvement plans with clear targets. It is not always about financial sanctions and ultimately it is about improving service.

- 8.9.5 There is a perception that internal services are not performance managed in the same way as external contracts. Internal services should be managed with as much rigour for outcomes, treated on a level playing field as external providers. The need for establishing robust internal challenge has also been identified in Facing the Challenge as a role for the new proposed central team.

**Recommendation 22:**

Improve the capabilities to performance manage contracts; and ensure the capacity to monitor and evaluate performance and support improvement when appropriate.

**Recommendation 23:**

Stipulate that all contracts have clearly scheduled performance reviews and evaluate outcomes/outcome evaluations – for instance ensure contracts have schedule of reviews.

**Recommendation 24:**

Complete the Contracts register to include all contracts over 50k – and include details of the named contract manager, and Lead Director

**Recommendation 25:**

Manage internally provided Services with as much rigour for outcomes, and performance management as other providers.



## **9 Member Role**

### **9.1 Governance of Contract Management**

9.1.1 Members play a vital role to ensure commissioning and procurement deliver savings, improve outcomes and support SMEs and VCSE; maximising benefits of contracting with SME, VCSE underpinned by social value. Procurement, commissioning and contract management are an integral part of council business and spending, and are critical to delivery of services and strategic importance. Members have a vital part to play in that process. If KCC is to maximise the value it can obtain from the VCSE and SMEs then clear guidelines need to be established from the top of the organisation.

9.1.2 Clearly, Cabinet Members and Cabinet Committees play a crucial role, and there is oversight provided by portfolio holders and Procurement Board - However, there is a role for all elected members:

- having greater oversight of contract management
- being involved earlier, being involved in discussions of new service models and engaging the market and communities, tapping into for example connection with Kent residents – around specification stage dependent on contracts, size etc
- engaging with small or new providers

9.1.3 The key questions are:

- What is the Member oversight of contracts?
- What is the oversight of reviews undertaken with providers at key stages of the contracts? What does evaluation show? Where we are at?
- Where are we with de-commissioning – or what next?
- Through what mechanism should Member oversight be strengthened?

9.1.4 It is worth exploring the concept of having a cross-party strategic group, that can examine the work of commissioning throughout the organisation, and the contracts that result to see whether guidelines are being followed. There needs to be increased transparency. For example in Harrow contracts have to be signed off by another portfolio holder with commercial responsibilities. There is a role for a clearly defined Member Group or Contracts Board feeding into the process. It would need to be clearly defined through strong terms of reference, and agreed where it could add most value and have clear purpose.

9.1.5 The Group or Board should have access (confidential) to any contracts, and re-mitt to talk with both commissioners and procurement teams; would need a committed leader as chairman; and jointly set their Group or Board agenda. All Members should be encouraged to acquaint themselves with the commissioning

outcomes in their local areas, and their specialist areas of interest; referring any concerns to the strategic group. There should be a focus on:

- Contract management – 3 key aspects (cost reduction, performance and service improvement).
- Working with Members and officers to ensure Social Value Act embedded in everything
- Considering what evidence there is of
  - investigation of work being done by VCSE SME organisations in the area of interest to the commissioners?
  - commissioners taking regard of the scope and value of this work?
  - commissioners having had dialogue with potential providers from these sectors?
  - the procurement process allowing for co-design of the service that will achieve the outcomes desired?
- Whether the specification /contract reflect pre-procurement work.
- Is there an understanding that innovation by providers during the duration of a contract will be rewarded?
- Is there consistent contract monitoring and performance management, without frequent changes of process, which is both rigorous and supportive?

## **9.2 Training**

9.2.1 In order to support the changing landscape and increased role of commissioning it was agreed that training, to raise awareness and understanding should be available to all Members. This will support and better equip them in their roles locally regarding commissioning and create knowledge - getting people to understand what is happening now. Training for Members around commissioning, procurement, contract management is in the early stages of being developed in co-ordination with Democratic Services.

### **Recommendation 26:**

Further work is undertaken to the member role and what mechanism would best strengthen member oversight of commissioning, procurement and contract management; and member involvement earlier in the process and pre market engagement; and members are supported through training.

## 10 Social Value

### **10.1 Embedding Social Value**

- 10.1.1 Social value is key to the success of having strong and safe communities, a skilled and employed local workforce, good quality of life for Kent citizens, and reduced crime and social isolation. VCSE and SMEs are a major part of achieving this.

*"A number of recent reports – including the 2013 Federation of Small Businesses report on Public Sector Procurement – have shown that procuring from small, local, organisations has a major impact on the economic sustainability of the area, both in pure fiscal and social terms.*

*Pan-European research showed that as a country emerges from recession 84% of business is generated by SMEs which are more likely to take on new staff, recruit staff locally and therefore have a greater impact on the employment of young. KCC needs to support and enable SMEs to employ young people. "*

*"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."*

*"VCS can bring significant value through things such as match funding, volunteer time ... a wide network of partners who add value to programmes, through providing referrals, programme delivery, work experience, education, training opportunities and provide specialist support for young people where additional needs are identified."*

- 10.1.2 As we move to an ever more complex and joined up commissioning environment there needs to be 'Whole systems thinking across service supply looking at co-creation of value'. It was reported 'Social Value' is recognised on a case-by-case basis, and that the breadth and diversity of our services mean that a one-size-fits-all definition of 'Social Value' may not be appropriate or practical to encompass all KCC services. However, KCC must comply with the legislative requirements of 'Statutory Duty of Best Value', the Public Services (Social Value) Act and the 'Community Right to Challenge'. This means it is important for KCC to consider how best to incorporate and recognise 'Social Value' in its commissioning and procurement framework. There are a number of successful examples that have helped KCC to achieve both better value for money and enhanced social outcomes for services in our contracting process, for example:

**Highways** – the recent re-let of the contract saved the council money whilst providing more local apprenticeships and opportunities to sub-contract to local businesses;

**Youth Service** – negotiations were held with Locality Boards to use an outcomes based local commissioning framework and dynamic purchasing model to reduce the burden on small VCSE organisations (e.g. reducing PPQ criteria and requirements for proof for several years accounts history). Creating smaller, shorter contracts that appeal to local VCSE providers – enhancing chance of success at procurement stage.

- 10.1.3 There is evidence of added social value through access to funding, creation of jobs and apprenticeships:

*"We have successfully applied for additional funding from various charitable organisations and trusts, and received hundreds of donations from individuals over the years bringing many extra thousands of pounds worth of support to Kent's Carers and into the Kent economy."*

*"We only used Kent businesses unless the specialist skills were not available in Kent, on a practical level it was easier for them as a company to use local business."*

*"As a company ... we employed 8 or 9 apprentices and last year ran an Apprentice of the Year award, the winner of that award was rewarded with a permanent job organising all our training. ... All apprentices brought value to contract and the majority end up being employed full time and the approach was worthwhile and builds for the future."*

*"..... 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"*

- 10.1.4 Although some excellent examples are highlighted, Social Value however does not yet appear to be embedded in what KCC do at strategic or commissioning level, and can at times be difficult to quantify. It was highlighted that many of our tenders have not specifically mentioned social value, or the added value an organisation could bring. It is evident that some companies have listened to conversations at market engagement events and included information in their tenders despite no set specific questions around social value. This perhaps shows expertise in tendering, listening acutely but there is a concern that processes need to ensure all companies can demonstrate the additional value they could bring.

- 10.1.5 Within Adult Services commissioning for community support all recent commissioning activities have included stipulations in evaluation criteria regarding the Social Value Act. The recently commissioned Carers short breaks service

tender required providers to evidence how they will provide social value through the delivery of the service. The question formed part of the quality section of the evaluation. Quality was weighted @60% of total score and of this 20% weight was allocated to social value questioning (price being 40%). Could this be included on all tenders (unless contract of size going out to OJEC) to ensure social value is reflected and recognised on a case-by-case basis in individual tender specifications and contracts? The question included was

*“Q3. Describe how your service delivery model considers social value and shall improve the social, economic and environmental well-being of Kent society?”*

- 10.1.6 The Social Value Act is an important factor in public sector commissioning, and reflecting this other authorities have established Social Value Charters or produced ‘social value toolkits’, to inspire and create social value and indicate intention to maximise social value available from commissioning or procurement activities, for example ‘Inspiring and creating Social Value in Croydon’. A Social-Value toolkit for commissioners’. Strategic Commissioning (Community Support) are working with Corporate Procurement to understand and develop commissioning guidelines, including adopting the Birmingham City Council approach and having a Charter that all contractors sign up to.

*Birmingham Social Value Act Charter sets out guiding principles to which Birmingham City Council adheres to and invites its contracted suppliers, the wider business community other public sector bodies and third sector organisations to adopt. It includes how they can improve economic, social and environmental well-being and describe social outcomes that will result from their activities.*

- 10.1.7 A charter and guidelines could raise the profile of social value strategically, emphasise KCCs own priority of social value in commissioning and ensure it is embedded. KCC are in early stages of considering developing a toolkit for commissioners and /or charter for providers. Is this something KCC should put in place?

## **10.2 Measuring Social Value**

- 10.2.1 There is an expectation for all providers to demonstrate how their work makes a difference and adds social value. As this becomes embedded into commissioning processes organisations need to measure and evidence how they create social value. NAVCA stated there are number of different tools and approaches being used and developed, and implications for smaller providers. Providers need to keep up-to-date with how social value requirements are factored into KCC commissioning and procurement processes, the different approaches to social value, and the use of monetary and non-monetary values. For example Social Return on Investment (SROI) is one model used which can evaluate what has happened or estimate potential value created; another, ‘Your Value!’ developed by

Community Matters so that voluntary and community groups can demonstrate their social value.

- 10.2.2 NAVCA states that it is unclear what will be the most appropriate ways for organisations to think about, choose and evidence added social value or how measuring progress or achievement should be incorporated within contracts, grants. Research by the Third Sector Research Centre (NAVCA) indicates there are benefits and limits to different approaches, and uncertainty around judgement, potential for manipulation of what is measured through what indicators are used, and how it is reported.
- 10.2.3 There needs to be clear discussion about what value is sought for specific contracts with providers and service users, and how this will be measured. The SROI network promotes the involvement of stakeholders in both prioritising what is to be valued, discovering what outcomes have arisen, and in developing indicators.

*“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.”*

*“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.”*

- 10.2.4 The evidence highlighted there is a need to
- give greater recognition of the social value VCSE brings and the role that they can play in working with the council to discharge its responsibilities through the Social Value Act



- look at approaches to measure social values - social return on investment
- recognise 'Social Value' outcomes desire may differ on a case by case basis
- clarify the social value KCC is looking for and strategic direction
- engage with the community and local knowledge about what the issues are to be resolved – greater understanding of the types of social benefits to be sought – skilled training, apprenticeships, local management posts, wage levels, % of local suppliers, fair payment - meaningful consultation with communities would allow significant specifications to be put to ITT.
- consider how KCC could incorporate and reflect social value in tender questions, evaluation criteria, and procurement decisions, raising its profile and level of importance

*"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."*

**Recommendation 27:**

To maximise and give greater recognition to Social Value, incorporate consideration of social value questions in tender evaluation criteria and procurement decisions where possible, and develop a Social Value Charter.



# Appendices



## Appendix One: The Scope of the Review

**Scope:** The issues are explored in more detail to give a broader picture of the questions that the Committee considered when exploring this topic.

**What can we learn from current experience?**

**What do we need to do next to become a better commissioning authority – to remove barriers to entry for providers?**

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

**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 organisation 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 and 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 & 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?

**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?

**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/VCSE's? What might we do to support large private suppliers and VCSE sector working together?
- How is Kent actively shaping and developing the market, what else might we do?
- How have consortiums been successful in entering the market? How have these worked in practice - what might they/we do differently?
- 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?

## **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/supplier? 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?

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

#### **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?

#### **What can we learn from current experience? What do we need to do next to become a better commissioning authority?**





## **Appendix Two: Evidence Gathering**

**A list of those who attended meetings with the committee. All also provided written evidence prior to meeting with the Committee.**

### **Tuesday 14<sup>th</sup> January 2014**

Judy Doherty, Business Transformation and Programmes Manager, KCC

### **Tuesday 21<sup>st</sup> January 2014**

John Burr, Principal Director of Transformation, KCC

Mark Lobban, Director of Strategic Commissioning, KCC

Henry Swan, Head of Procurement, KCC

### **Wednesday 22<sup>nd</sup> January 2014**

Dean Benson, Contract Director - Transportation, Amey

Sam Buckland, Audit Manager, Internal Audit, KCC

### **Wednesday 29 January 2014**

Keith Harrison, Chief Executive Action with Communities in Rural Kent

Roger House, Chairman, Kent & Medway Federation of Small Businesses with

Tim Colman, Director of Partnership Working Limited &

Alison Parmar, Development Manager, Kent & Medway Federation of Small Businesses

Jan Perfect, Chief Executive, Case Kent

### **Thursday 30<sup>th</sup> January 2014**

Peter Heckel, Director, Project Salus

Carolyn McVittie, Managing Director, Stepahead Support

Thom Wilson, Head of Strategic Commissioning (Children's), KCC

### **Monday 3<sup>rd</sup> February 2014**

Angela Slaven, Director of Service Improvement , KCC  
Nigel Baker, Head of Integrated Youth Services, KCC &  
Andy Jones, Planning and Development Manager, KCC  
Jason Martin, Director, CAP Enterprise

#### **Tuesday 4<sup>th</sup> February 2014**

Karen Sharp, Head of Public Health Commissioning, KCC  
Ryan Campbell, Chief Executive, KCA &  
Karen Tyrell, Director, Development and Marketing, KCA  
Sean Kearns, Chief Executive. CXK &  
Stephen Bell, Director of Business Development, CXK

#### **Thursday 6<sup>th</sup> February 2014**

Peter Turner, Chief Executive, Carers First &  
Lorraine Williamson, Chief Executive, Crossroads Care East Kent  
Diane Aslett, Development Officer, Age UKs in Kent Consortium with  
Nigel Vian, Chief Executive, Age UK North West Kent &  
Gillian Shepherd Coates, Chief Executive, Age UK Sevenoaks and Tonbridge  
Emma Hanson, Head of Strategic Commissioning - Community Services, KCC

#### **Friday 7<sup>th</sup> February 2014**

Christy Holden, Head of Strategic Commissioning (Accommodation Solutions), KCC  
Adrian Adams, Chief Operating Officer, Kent & Medway Care Association / Research  
Fellow at University of Kent with  
Gill Gibb, Member of the Kent Care Homes Association &  
Ann Taylor, Chair of the Kent and Medway Care Alliance Board &  
Clare Swan, Member of the Board of the Kent Care Homes Association  
Comments received as written evidence.

**Evidence gathering - Written Evidence to the Select Committee.**

To complement 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 to small to medium businesses, voluntary agencies and the social enterprise sector?” for the final session on written evidence , Friday 7th February 2014.

Twenty-two organisations from across Kent were invited to send in written evidence. The organisations 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



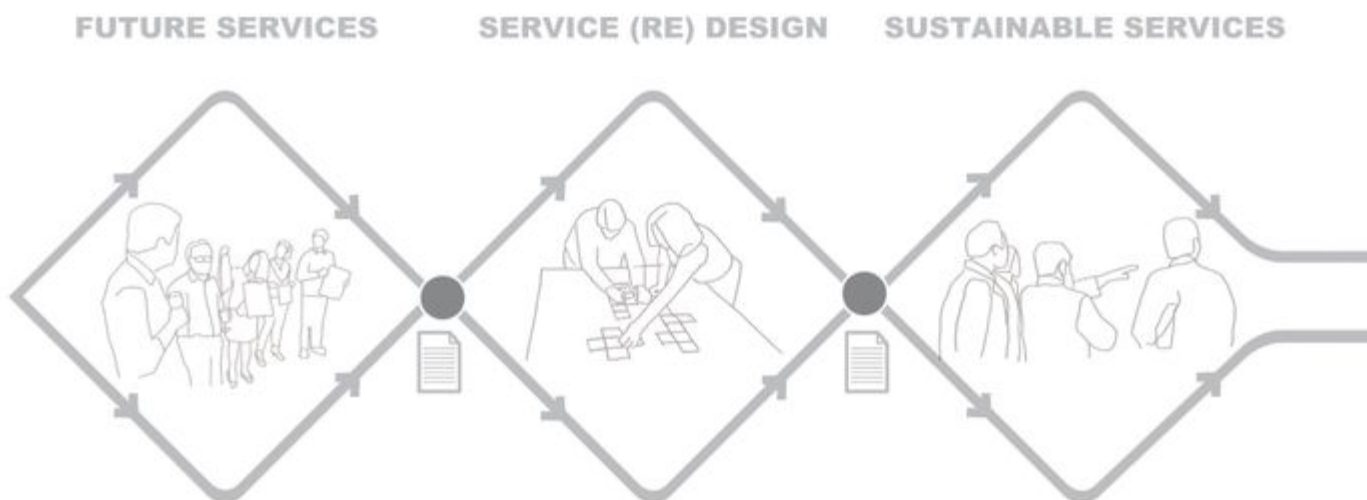
## Appendix Three: Social Innovation Lab for Kent

**SILK** is a small team based within Kent County Council that was set up in 2007 to 'do policy differently'. Over the past 4 years they have been doing projects which have demonstrated the benefits of working in a different way and have developed a Methodology and Toolkit which provide a structure for the way they work.

SILK believe that the best solutions come from the people who are closest to the issue; this could be service users, residents or frontline staff. SILK go much further than community consultation and believe that people should be actively involved in the design of services that they are going to use or deliver. The SILK Methodology provides creative and innovative ways to engage with people and approach projects, and enables a collective ownership and responsibility for project design, delivery and outcomes.

### Methodology

Each project will fall into one of three diamonds: **Strategic / Policy**, **Service Re-design**, or **Creating Sustainable Communities**:



Once the type of project has been identified it will follow four phases:

Initiate | Create | Test | Define. This is illustrated in the SILK Project Planner:

Silk Project Planner: The four phases:

Initiate

- Get the right people involved
- Collectively create a project plan
- Decide who else needs to know about the project

Create

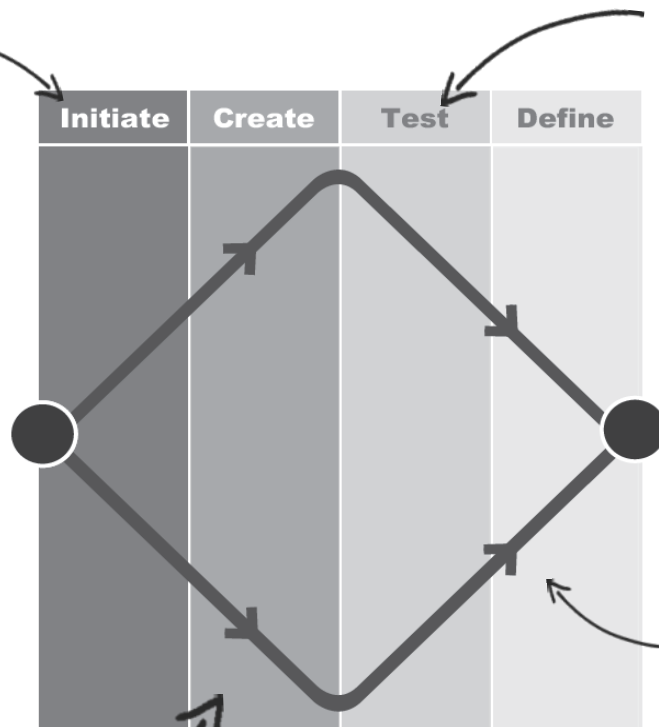
- Gather as many insights as possible
- Involve a wide range of people
- Create ideas that can be tested in the next phase

Test

- Test the ideas that were suggested in the Create phase
- You will need to keep testing until a model that works is found
- Testing can involve trial runs, prototypes or 'mock ups'

Define

- Once a model has been tested and is known to work it can be defined and consolidated
- The final output may be a report that captures what has been done alongside



The **Method Deck**, designed by SILK can then be used to choose which methods should be used during each phase of the project. The Method Deck and Project Planner allow for the project to be planned collectively in groups, with everyone having ownership over the decisions and course the project will take. It is a flexible project methodology and can be adapted as the project progresses.

## Appendix Four: About Bonds

A bond is a form of loan or IOU: the holder of the bond is the lender (creditor), the issuer of the bond is the borrower (debtor), and the coupon is the interest. Bonds provide the borrower with external funds to finance long-term investments, or, in the case of government bonds, to finance current expenditure.

Bonds usually have a defined term, or maturity, after which the bond is redeemed.

Being a creditor, bondholders have absolute priority and will be repaid before stockholders (who are owners) in the event of bankruptcy.





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