Glasgow Promise Partnership

Commissioning & Procurement Considerations

1. Introduction

The Glasgow Promise Partnership is a collaboration of third sector providers, supported by GCVS, in partnership with Glasgow City Health and Social Care Partnership. Partners secured Promise Funding under Corra Foundation with a commitment to: '***Explore alternatives to traditional procurement and establish tests of change which will create a blueprint for how children's and family support services across the country can be planned, procured and delivered.***

By adopting the Scottish Approach to Service Design, the Partnership's work genuinely put children, young people and families are the heart of the project, so that their voices, insights and aspirations were listened to and acted upon. Over the course of the Glasgow Promise project, commissioning and procurement was regularly discussed to identify challenges and opportunities with regard to third sector providers and HSCP commissioning colleagues. All partners hope this will lead to a focus on early intervention and preventative services that will deliver best value, and importantly, better outcomes for families.

2. Exploring Commissioning Approaches & Procurement Law Flexibilities

The specific focus of this paper explores the theme of **Transforming Commissioning & Procurement** touching on the principles of collaborative, ethical commissioning and procurement practice in the context of the Glasgow Promise project and the principles of whole family support. The content of this paper was prepared by GCVS, with input from MacRoberts LLP, on the basis that it would provide assurance as to legally compliant routes to achieving more effective commissioning and procurement.

So, in addition to, and informed by the co-design work with families, GCVS brought together third sector providers and Glasgow City HSCP commissioning leads in a series of conversations on commissioning and procurement. Focused sessions, using a coproduction approach, allowed all partners to explore how we might collectively deliver on our commitment set out for the project.

The aim of this deep dive was:

- To understand better the *flexibilities and explore alternatives* to competitive procurement, compliant with current procurement rules.
- To consider *national and local policy drivers* as an incentive and opportunity to rethink how family support services could be commissioned more imaginatively, collaboratively and effectively – including *learning from different delivery models* (Consortia; Public Social Partnerships; Alliancing; Light Touch Regime)

- To understand all *partners' perspectives and insights on commissioning* and manage expectations regarding what is possible to effect change.

In doing so, we had cognisance of:

- ❖ Existing family support service mapping to address any identified fragmentation, inaccessibility and/or inconsistency of family support services across Glasgow;
- ❖ Objectives in Glasgow's Children's Services Plan, Glasgow HSCP's Commissioning Plan and the Whole Family Wellbeing Fund;
- ❖ Financial considerations that may drive the need to find more efficient ways to optimise resources/assets as well as be more preventative in approach;
- ❖ A need to be more responsive to local need, to reach families earlier before their problems escalate and reduce the demand on statutory services;
- ❖ Ensuring that commissioning and procurement builds in a person-centred approach to service specifications that focus squarely on wellbeing outcomes for children and families, including through any contract monitoring.

The following sections outline what was broadly covered in these sessions, with some additional information, and the degree of consensus reached.

3. Procurement Legal Context

Overall, we understand that a public body has to interpret and remain compliant with the public procurement rules, introduced by The Public Contracts (Scotland) Regulations 2015, The Procurement (Scotland) Regulations 2016 and the Procurement Reform (Scotland) Act 2014, when procuring care and support services. Following commencement of the Procurement Reform (Scotland) Act 2014, the Scottish Government published 'Procurement of care and support services: best practice guidance' (2016/updated June 2021) and continues to promote existing flexibilities available under the legislation and guidance.

The key summary points are:

- there are ***significant currently available flexibilities*** relevant to how commissioning and procurement can be done;
- the flexibilities invariably operate to allow ***greater focus on quality and collaboration*** in design and/or delivery mechanisms;
- there is a duty on local authorities ***to consider use of these flexibilities***;
- it is appreciated that the flexibilities will ***not be the solution in all instances and may require resource*** to take forward;
- but the start point should be one of ***considering the use of the available flexibilities over standard procurement*** procedures.

Although flexibilities can apply to the range of goods, works and services that a public body may need to procure, the Glasgow Promise Partnership has a clear focus on family support services. Buying people-focused services is a complex area and, as such, it requires special consideration within a public body's overall approach to the procurement. Since many of these services reflect the need to be person-centred, the quality or availability of these services can have a significant impact on the quality of life and the health and wellbeing of people who need/ use them.

4. Policy Touchpoints

The Glasgow Promise Partnership's aims are aligned to Getting It Right for Every Child (GIRFEC), the UNCRC, The Promise, Glasgow's Children Services Plan, and principles outlined for the Whole Family Wellbeing Fund. Furthermore, reforming approaches to commissioning and procurement are threaded throughout key policy documents relevant to Family Support and adult social care more broadly. It is worthy of note that the Review of Adult Social Care dedicated a whole chapter to **Commissioning for Public Good** – an extract of which is below.

> *'We want to see **an end to an emphasis on price and competition** and to see the establishment of a **more collaborative, participative and ethical commissioning framework for social care services and supports**, squarely focused on achieving better outcomes for people using these services and improving the experience of the staff delivering them. By shifting emphasis in this way, we believe Scotland can deliver social care supports more fairly and more sustainably.' Independent Review of Adult Social Care*

5. A Routemap to Deliver Whole Family Support

At national level, Scottish Government and key stakeholders on the Family Support Advisory Group developed an agreed blueprint for holistic Family Support, and it was recognised that to deliver on this, commissioning and procurement of children's services and family support in particular needs to change. It is important to acknowledge that the scale and scope of commissioning and procurement of family support is vast and complex and that important connections across statutory and non-statutory services need to be understood.

However, against a backdrop of COVID recovery, demand pressures on the social care system, financial constraints and the cost-of-living impacts, it is even more imperative to adopt innovative approaches to the design, commissioning and delivery of services. Thinking differently about commissioning may result in changes to existing services and delivery approaches and some services may need to be decommissioned with sufficient time and resource allocated to transition to a new model/s of delivery.

6. The Importance of Strategic Commissioning

The Glasgow Promise Partnership aims to explore alternatives to traditional procurement specific to how children and family support services can be planned, procured and delivered. The importance of strategic commissioning in this context shouldn't be underestimated, and for clarity, commissioning is not synonymous with procurement but procurement may result from the commissioning process.

To define: '**Commissioning** is the process by which public bodies strategically plan ahead for the services they will provide, either directly or by procurement, to meet their populations' needs, using the budgets at their disposal'. Whereas, **'Procurement** is the process of purchasing specific services on the basis of the commissioning activity.

In Health & Social Care, it is worthy of note that Integration Joint Boards (IJB's) are responsible for the production of Strategic Commissioning Plans and provide direction and oversight where a decision has been taken to procure services. However, IJB's are not able to contract or hold

contracts with third parties, as contractual arrangements remain with either the Local Authority or the NHS Board.

Further, in preparing for the transition to a National Care Service, Scottish Government issued a Scottish Procurement Policy Note: SPPN 7/2021 which states that public bodies should: *review current Strategic Commissioning Plans – and maximise opportunities in new procurement decisions to introduce ethical procurement principles and use the flexibility of the Light Touch Regime.*

7. Alternative Approaches and Models to Standard Form Procurement

Aligned to policy level commitments to transform commissioning of health and social care services, third sector providers are also keen to see a move away from the dominance of competitive procurement practice in social care, including in children and family support services, too often driven by price and a competitive market environment.

It should be acknowledged, however, that in Glasgow, this isn't always the case and there has been some welcome innovative practice, including support to consortia approaches, alliance contracting, direct awards, grants and a genuine interest in exploring Public Social Partnerships (PSPs).

Collectively, our aim is to build on new approaches and to create a better and shared understanding of the flexibilities permitted to public bodies within current procurement rules and discuss how Glasgow City Council, Glasgow City HSCP and others might exploit these flexibilities to meet their ambitions to contribute to national and local outcomes.

8. Driving Change - Enablers and Blockers

Below sets out some of the flexibilities available under procurement laws which are often overlooked in the context of arrangements between Local Authorities and the third sector - whether in the field of health and social care or other related third sector services and activities.

The availability, opportunity and benefits of alternative approaches to standard form procurement can be used to: *reduce competition in favour of collaborative approaches; promote more innovative and sustainable commissioning practises; facilitate a greater level of involvement of users of services, providers, and deliver more effective service delivery outcomes.* The extract below from Glasgow City HSCP's Commissioning Strategy reflects the needs for diverse approaches to procurement.

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> *The diverse nature of procured services requires diverse approaches to procurement including the use of grant aid, co-production, framework agreement services, spot purchase, negotiated tenders, and standard competitive tendering processes.* ***Extract from Glasgow City HSCP's Commissioning Strategy***

It is appreciated that there are a number of factors which must be taken into account by public bodies when deciding which commissioning strategy to pursue and there are various drivers which can direct the procurement/commissioning option ultimately chosen, namely:

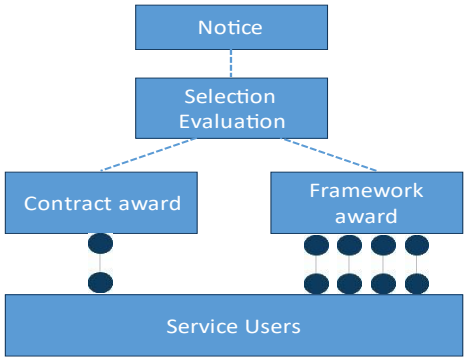
> *Finance/budget; sectoral legislation (e.g., SDS); whether delivery needs to be by way of a 'service' and whether delivery mechanism constitutes service or activity capable of being grant funded; procurement legislation/delivery risk perception; means of demonstrating value; whether an 'economic' or non-economic activity; tax analysis; capacity/experience of procurement team; provider and user engagement.*

9. Limitations of Standard Form Procurement

With standard procurements, providers often need to take part in repeat tender exercises which can be time consuming and costly, usually focusing on price rather than service users and leading to an outcome which limits choice and which may not be the best way to commission the service required. In a provider context, competitive tendering can create uncertainty and often inefficiencies, with strictly defined requirements, outputs focused on tasks and costs and leading to lack of continuity for both service users and providers.

Given the third sector's long experience and contribution to quality, person-centred care and support services, this entrenched procurement practice too often leads to rigorous competition amongst providers rather than encouraging collaboration. Aside from that, competitive tendering and re-tendering is resource-intensive for both buyers and suppliers and goes against the grain of: continuity of support for service users; modelling Fair Work principles, and inclusive practices.

The table below reflects some of the limitations of standard form procurement.



- Often a burdensome process for provider participants
- Price usually a significant factor
- Limited flexibility (contract and processes) to adaptto user needs
- 'Closed' limiting choice
- Winner takes all / race to the bottom
- Generally results in clear but ineffective system

10. Need for Continuous Improvement

Scottish Government is committed to maximising the impact of procurement in Scotland and continues to identify opportunities for improvements. They have done this through a variety of means: commissioning independent research on the impact of the sustainable procurement duty, supplier surveys, desk-based analysis of annual procurement reports, and importantly, by listening to buyers and suppliers across industry sectors. This also includes a continued focus on bringing procurement, economic development and enterprise stakeholders together around data, promoting the Grow Local tool, and improving pipelines to identify and engage local supply chains. This is important as the Scottish Government prepare for legislation on Community Wealth Building.

It is important to note that the Sustainable Procurement Duty, Scottish procurement policy guidance and the underpinning suite of procurement journey tools already enable buyers to embed Fair Work, Climate considerations, Community Benefits and other socioeconomic considerations within their contracts and supply chains, prioritising the focus according to market drivers and local priorities. Further, 'facilitating the involvement of third sector organisations in the procurement process' is a key

component of the Sustainable Procurement Duty yet the evidence points to the need for improvement in this area.

11. What is a Grant and What is a Service Contract?

A **grant** involves a local authority providing a financial contribution **towards another party's activities** due to the project meeting the local authority's policy aims and falling within the powers of the local authority.

A grant will usually involve money being given to a third sector provider to undertake activities (such as providing goods or services to a third party) that are not being provided for the benefit of the public authority; the provider receiving the grant has the choice of either performing or else handing back the money. Collaborative grant structures are also possible.

A **service contract** involves a local authority **specifying services which it wants or needs** and paying for them to be delivered by another party.

A service contract will generally contain: an obligation on the provider to deliver the **specified** services; an obligation on the public authority to pay for the services; provisions dealing with rights to terminate the contract, breach of contract and liabilities and contract provisions dealing with matters such as how terms can be varied, subcontracting, the law governing the contract and how disputes are to be dealt with.

On the basis of the above, when considering whether a requirement is a grant or a service contract,

the KEY INITIAL QUESTION is whether:

(i) it is to fund a pre-existing activity of another party which coincides with duties the local authority needs to promote; OR
(ii) the local authority is specifying the service to be provided to it or on its behalf.

(i) can proceed by way of a grant* and (ii) is a service.

(* it should be noted that grants are regarded as part of commissioning and that procurement law does **not** apply to grants. If deemed a service, then procurement rules apply and the usual processes need to be followed).

12. Light Touch Regine

Health, social care and related services have their own **Light Touch Regime (LTR) under procurement laws** which mean they do not need to be procured, in the same way as standard service contracts.

- ***Light Touch Regime (LTR) over £663, 540k***

For health, social care and related services over £663, 540k Regulations 74-76 of the Public Contracts (Scotland) Regulations 2015 set out a light touch regime for procuring health, social care and related contracts amongst others.

Unlike a standard procurement process, the LTR has minimum mandatory requirements leaving the Local Authority with complete freedom to shape the procurement. This means there are flexibilities

in the ***procedure and timescales*** with there being no need to use one of the main procedures contained in the 2015 Regulations.

Other than mandatory exclusion grounds there is complete flexibility in the ***selection process*** with the ability to have a lighter touch Single Procurement Document (SPD) which covers desired baseline checks proportionate to the procurement.

There is ***no requirement to limit the period*** of any minimum process framework to 4 years as is the case for procedures which fall under the main procurement regime. The LTR also reflects value drivers relevant to health and social care - ***innovation*** being one of those drivers.

Provided transparency and equal treatment is respected at all times there is scope within a LTR minimum process framework to have multi-stage innovative procurement processes, for example, **the first stage may be to achieve a collaborative service redesign** followed on by **the performance of active services or just to have a collaborative contract be that by alliance contracting, public social partnership or another collaborative approach.**

Collaborative contracting promotes both vertical and horizontal collaboration amongst the Local Authority and partners who work together to decide how best to meet key outcomes, share risk and improve ethos rather than the Local Authority having separate contracts with various organisations with no joined-up approach or collaboration. The Coalition of Care and Support Providers Scotland (CCPS) produced a useful document which explores in more detail Collaborative Commissioning approaches which is helpful in understanding the flexibilities and possibilities.

- ***Direct award of health and social care contracts below £663,540k***

As noted above the LTR process applies to the procurement of health, social care and related service contracts over £663,540. Below this amount, section 12 of the Procurement Reform (Scotland) Act 2014 permits the direct award of health, social and related service contracts.

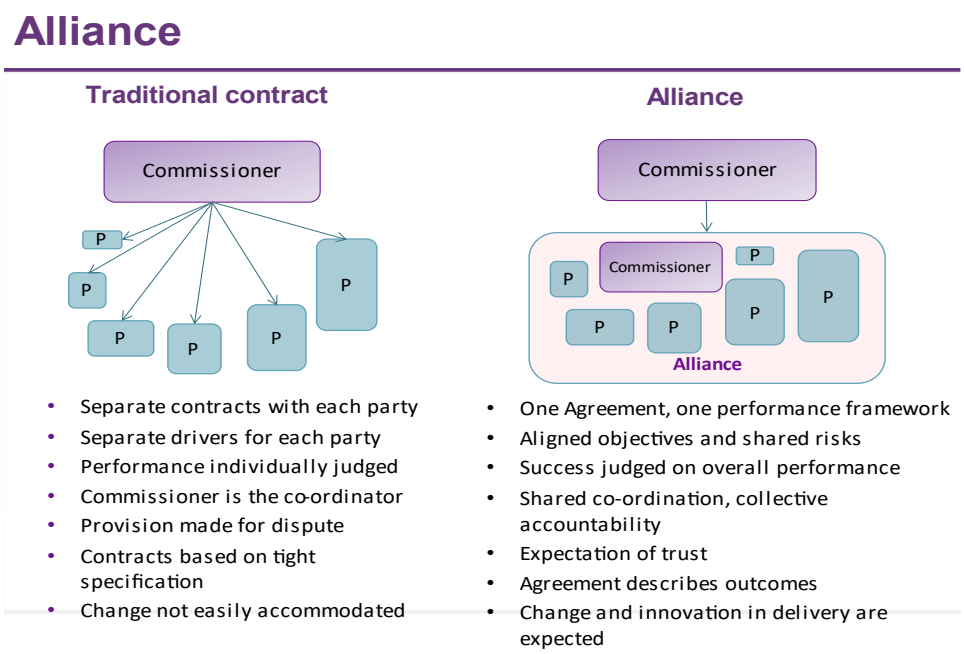
- ***Direct award of health and social care contracts over £663,540k***

Even in cases where the value of the service exceeds £663,540k, under section 33 of the Public Contracts (Scotland) Regulations, it is possible to make a direct award of a service contract where the service can only be provided by one organisation due to competition being absent for technical reasons. However, it's appreciated that Local Authorities will still require to ensure that the provision represents value for money. This can be done by benchmarking or comparator evaluation.

13. Alliancing & Alliance Contracts

*Alliance contracting and commissioning arrangements can be been defined as: "**a collaborative and collegiate approach that seeks to create cooperation between providers and commissioners... The parties enter into an agreement to work cooperatively and to share risk and reward, measured against pre-agreed outcomes and indicators.***

Alliance contracts are useful and have been used in a variety of contexts: the design and/or delivery of projects or services; the delivery of a programme of works, and supply chain integration. One of the preconditions to success is what is known as a "Best-for-Project" approach, where all participants in the alliance agree to make decisions and adopt behaviours that is to the benefit of the project/common goal and not the individual participant/organisation.



Although Alliances have not been tested to any great extent in Scotland, we can learn from where they have been used. National Development Team for Inclusion (NDTI) produced a useful document 'Alliance Commissioning and Coproduction in Mental Health' Drivers and Opportunities to Improve which looks at definitions of alliance commissioning and contracting and how these approaches differ from traditional commissioning approaches. The paper also gives live examples and learning from Alliancing in a mental health services context. We will also continue to learn from developments in Alliances in Scotland like Future Pathways and Glasgow Alliance to End Homelessness.

Key lessons:

- Alliances take time to develop – trust and loyalty between parties is critical
- Start small, demonstrate success then scale up
- Focus on a particular set of outcomes, group or services and not all things to all people!
- Define a shared vision: what could be different, how could it be different, how will this novel approach change outcomes for people.

14. Public Social Partnerships (PSPs)

PSPs are defined as: *'A strategic partnering arrangement which involves the third sector earlier and more deeply in the design and commissioning of public services.*

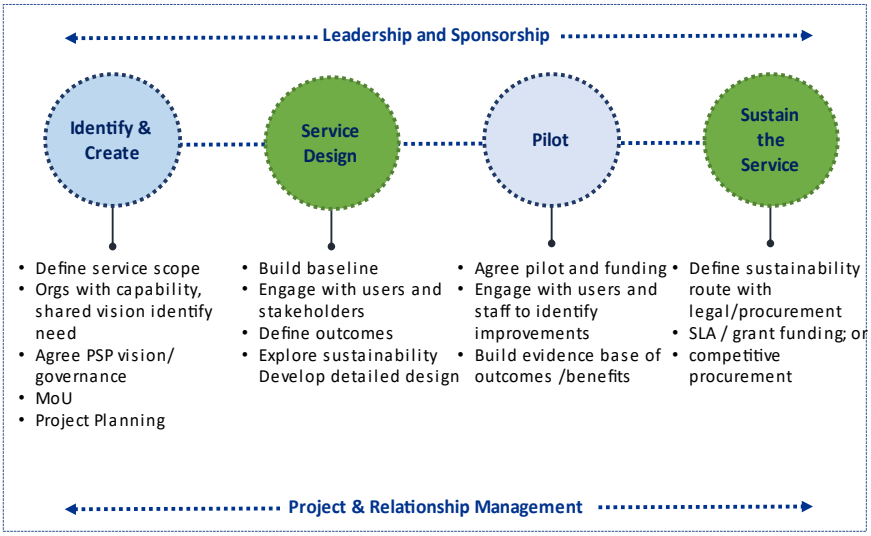
Key aspects of PSPs:

- Voluntary partnerships involving both the public and third sectors
- Based on a co-planning approach
- Involves the joint design, piloting of services in scope – with service user engagement critical to the process

- ❖ Require resources to be contributed by all parties
- ❖ Partners share responsibility for managing the PSP, designing and piloting the services
- ❖ Once piloted and evaluated over a defined period of time, the new service can be competitively tendered or funded via another route

From experience of PSPs in Scotland, the graphic below sets out the key stages for creating and sustaining a successful PSP.

Creating and sustaining a successful PSP



Public Social Partnerships have been widely tested in Scotland since 2005 with an external evaluation of a number of 'Strategic' PSPs undertaken by Glasgow Caledonian University.

PSPs were also used as a criterion within two Scottish Government's Change Funds – Reducing Reoffending and Early Years Family Support. Scottish Government also commissioned a useful document 'Public Social Partnerships: *Defining the Model' A guide for the Third Sector and Public Sector Service Managers, Commissioners and Procurement Professionals,* which seeks to examine application of PSPs in both a strategic and change fund context and across a range of policy areas.

Key Lessons: Scottish Government commissioned a PSP Lessons Learned Report in 2015 which is a useful resource for anyone seeking to develop a PSP.

15. Outcomes based Commissioning

Outcomes based commissioning is the process of defining, planning and paying for health and care services based on the achievement of agreed outcomes. Outcomes based commissioning in social care is a change from traditional unit-based commissioning. It is an approach to commissioning care and support that focuses on results instead of actions. It is more commonly used across care and support services and aligns with ethical procurement principles outlined in The Feeley Review. Through care commissioners and care providers working together towards the same outcomes, better results are possible, which improves the quality of life for people in the community. Coalition of Care and Support Providers in Scotland published a useful guide 'Commissioning for Outcomes'

which explains what outcomes are, why they matter and what outcome-based commissioning means in principle and practice.

16. Concluding Remarks

As we have collectively explored in The Glasgow Promise Partnership's work, alternative approaches to planning and purchasing care and support services already exist within current procurement regulations but are not utilised as they could be.

Although we acknowledged that there is 'no one size fits all' model of commissioning, procurement or delivery, some key principles are important if we can evidence success in delivering on Whole Family Support that leads to improved wellbeing outcomes for families.

Some final points to note:

- Commissioning (the planning, design and procurement) of services should adhere to a set of nationally agreed principles and be fully reflective of the objectives set out in Children's Service Plans and Health and Social Care Commissioning Plans;
- A corresponding action is to understand existing commissioning arrangements, and develop a new framework to support improved commissioning of family support, reflecting ethical principles;
- Commissioners should adopt an 'outcomes-focused' approach to commissioning family support services;
- A move away from traditional time and task, costs based on an hourly rate, to seeing an emphasis on an overall resource, and a move to defining the levels of support required based on person-centred outcomes;
- Whether via a grant arrangement or a procurement route, new models and approaches should typically support what might be described as streamlining, integrating and enhancing existing services. This is about more effective use of resources, building on innovative practice and third sector collaboration.
- Consider use of the Light Touch Regime, where appropriate, public social partnerships, alliances or consortia, involving an appropriate range of third sector and community partners.

Finally, it is important to acknowledge and thank all the Glasgow Promise partners from the third sector and Glasgow City HSCP, who willingly gave their time, shared insights and contributed with enthusiasm and ambition to the discussions dedicated to the commissioning and procurement theme.

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