

# Fair Commissioning

## - a good practice checklist

### Introduction

At the launch of the Department of Health Change Agent Team's Better Commissioning Learning and Improvement Network (the Commissioning LIN) on 19<sup>th</sup> March 2004, Dr Stephen Ladyman MP, Parliamentary Under Secretary of State for Community, addressed the delegates via a pre-recorded video speech. Reiterating comments he had made two months earlier on the publication of *Implementing Building Capacity: Principles into Practice* (the follow-up to the *Building Capacity and Partnership in Care Agreement 2001*), Dr Ladyman stressed, "The launch of the Commissioning LIN allows us to emphasise the messages of the Building Capacity Agreement and to stress once again the importance of imaginative commissioning frameworks and their central role in improving services".

"If we are to improve services", he said, "we must plan with care, we must balance local demand and local supply, we must proactively drive progress and standards and we must work hard to ensure the health of the care sector in every part of the country".

He commended the launch of the Commissioning LIN in its bringing "together senior managers from local authority social services, primary care trusts, independent sector care organisations, housing providers, and others – all people who are interested in forging better working relationships in order to commission better care and support for older people.

To do this, Dr Ladyman challenged health and social care communities to improve their commissioning practices and meet his 'four tests of fairness'

These are:

1. To be fair to people using services – and to ensure that they get good quality care, in the right place, in the right quantity, at the right time. Inevitably this will almost always mean they have been involved in designing the package of services they are receiving;
2. To be fair to tax payers – and ensure that the services they are supporting are giving value for money and being targeted at the right priorities;
3. To be fair to providers – ensuring that they receive a fair return for their services and they have not been set impossible objectives or given tasks for which they are not funded;
4. To be fair to commissioners from councils and primary care trusts who are entitled to choose between the services on offer and pay a price that offers quality at a price they can afford.

Dr Ladyman asked health and social care communities, “Can any of you genuinely claim to have met our obligations under the *Building Capacity & Partnership in Care Agreement* until you have met these four tests of fairness”?

The Change Agent Team aims to help health and social care systems assess whether they can respond affirmatively to Dr Ladyman’s challenge by producing the following checklist for sites to complete, as a collective exercise with colleagues from within their whole health and social care system. This checklist is a companion document for an earlier CAT checklist *Commissioning & the Independent Sector* completion of which enables system to assess their compliance with the requirements of the *Building Capacity & Partnership in Care Agreement* (and which is available to download from the CAT website).

## The checklist

The checklist is meant to help those who are involved in commissioning from health, social care, housing, private and voluntary sectors. It should be used across health and social care systems as a tool to facilitate discussions, debate and decision-making. Like all the CAT products, it can be customised locally and adapted to meet the needs of specific health and social care systems.

It has a focus on commissioning but is equally important in relation to the way in which services are provided. At the centre of all transactions are the experiences of the service users and patients we are seeking to help.

Under each heading, a series of questions enables organisations to consider the arrangements they have in place and whether they need to be reviewed or changed. The commentary in each section relates to CAT experience of working across a variety of health and social economies, to the input of colleagues in various sectors who have been consulted on this document and who have contributed to the final version, and to specific intelligence gathering exercises.

This checklist is a working document and not meant to be fully comprehensive. It has been produced for members of the Commissioning LIN and relates to the exercises that are undertaken at LIN meetings. We believe, however, that it has wider application in systems not affiliated to the LIN and we recommend that it is used as a self-help assessment tool as a constructive way of airing issues, resolving problems and helping to set a direction for more positive and effective health and social care commissioning arrangements. We would welcome any comments about omissions or improvements. These should be sent to Janet Crampton at the Change Agent Team by emailing either – [janet.crampton@dh.gsi.gov.uk](mailto:janet.crampton@dh.gsi.gov.uk) or [change\\_agent\\_team@dh.gsi.gov.uk](mailto:change_agent_team@dh.gsi.gov.uk) – marked for the attention of Janet Crampton

### Definitions:

*The phrase ‘independent sector’ is in common usage and, as such, is used occasionally in this document. Wherever possible, however, CAT has used the term independent provision or independent providers to reflect the diversity of a heterogeneous group of organisations and businesses. In either case, it relates to private, voluntary, charitable, non-profit-making and commercial organisations.*

*Within this document the word ‘commissioning’ is used in its broadest sense and in this respect covers the following cyclical process –*

- ⇒ *Understanding the market* (mapping, analysing and forecasting supply and demand to meet current and evolving need)
- ⇒ *Aligning system partners* (ensuring there is some agreement on what needs to be achieved to meet demand)
- ⇒ *Joint strategy planning* (involving all systems partners, including service users, in the development of plans and strategies to meet these goals)
- ⇒ *Applying resources* (across the system for best effect to maximise attainment of agreed strategic goals)
- ⇒ *Reviewing and evaluating* (in order to adjustment or re-provisioning to meet changing needs)

*Within this document, also, the use of the terms ‘Council’, ‘local authorities’, ‘commissioning authorities’ etc, reflect the prevalence of commissioning arrangements being conducted principally by local authority social services departments, but - in light of the increased amount of commissioning undertaken by PCTs and Housing - also are used to imply that those arrangements are increasingly shared with other commissioners from within the whole system.*

*Where the term ‘service user’ is used, the phrase also means ‘patient’ or anyone using any form of health and social care services with service user groups, or those who care informally for service users, or advocate on their behalf.*

# 1. Fair to Service Users:

Question	in place	under review	needs attention
1.1 <i>Are service users represented on your local planning and commissioning groups or Boards?</i>			
1.2 <i>Do you routinely work with services users, service user groups or with those who care for them informally, or advocate on their behalf, on identifying gaps in service provision and on analysing services needs?</i>			
1.2 <i>Do you regularly and routinely consult* on service plans and commissioning strategies with service user groups, or with those who care for them informally, or advocate on their behalf, and involve them in their production?</i>			
1.2 <i>Have you methods of gathering directly the views and concerns of service users (and their carers/advocates)?</i>  <i>Have you methods of gathering these views via local older peoples' groups or networks, including voluntary sector?</i>			
1.3 <i>Have you methods in place for demonstrating to service users that their views and concerns have influenced any re-shaping of services?</i>  <i>Have you method in place for demonstrating to service users why their views or ideas have <u>not</u> been taken into account?</i>			
1.4 <i>As part of your quality monitoring systems, do you routinely survey service user satisfaction with the services they are experiencing?</i>  <i>Is such service monitoring embedded into normal feedback and review processes?</i>			
1.5 <i>Have you methods for involving service users in identifying evaluation criteria and involve them in the on-going monitoring the quality of service delivery?</i>			
1.6 <i>Are you able to feedback/demonstrate that the results of service user monitoring influence the way services are de-commissioned or re-commissioned?</i>			
1.7 <i>Have you recently carried out an overall assessment of the care needs of your local population, using demographic and other data, in order to estimate what type and quantity of services you need to commission?</i>  <i>Are you clear about with whom this information needs to be shared and have you agreements in place on how its done?</i>			
1.8 <i>When identifying service shortfall or under/lack of provision, do you regularly seek service users' views (and complaints), and those of their carers and advocates, in both the range,</i>			

	<i>availability and quality of services they would like to have available?</i>		
1.9	<i>When arranging services to be provided – both internally and externally - do you place a requirement upon providers to also seek service users' views, and those of their carers, through satisfaction surveys etc?</i>		
1.10	<i>Have you sufficient information available, available in plain language and appropriate formats, on the range and choices of services available?</i>		
1.11	<i>Do you work formally and closely with voluntary organisations, advocacy groups and other government agencies who have a role in eliciting service users' views and working on standards to ensure that service users get the best possible quality of service?</i>		
1.12	<i>Do you have an active programme of working with and training staff to be sensitive to the needs and wishes of service users, especially older people and confused older people?</i>		
1.13	<i>Have you processes in place to work with 'hard-to-reach' groups, for instance those representing specific conditions or from specific ethnic groups?</i>		
1.14	<i>Do your approaches to planning and commissioning take into account the diversity and geographic dispersal of some groups?</i>		

## Commentary:

### Fairness to Service Users (Patients)

The purpose of all services should be to meet the needs of service users/patients. In doing so, the wishes and expectations of those receiving service should also be of primary importance of those arranging and providing services, ensuring that the best possible outcome and greatest benefit is achieved.

The Minister requires that services are fair to the people using them and that it is incumbent upon commissioners to ensure that the good quality services are available at the right time, in the right place, in the right quantities.

This requires commissioners to have a sophisticated understanding of gathering information on what people need and want and fully to understand the capacity of service provision to be able to respond flexibly and appropriately to meet these needs and to a standard that people have a right to expect.

It also requires to work collaboratively with all the other statutory and independent agencies who have a stake-holding in local service provision. At a practical level, for instance, this might lead to protocols promoting the assessment of people in a non-acute setting wherever possible to avoid people being 'fast-tracked' from one form of institutional care to another.

When working in health and social care economies, part of the methodology of the Change Agent Team is to ask the following two-part question:

- (a) what services do you need to have in place to prevent unnecessary admissions to hospital, and
- (b) what services need to be in place to enable speedy transfer from acute services to more appropriate services in the primary and community sectors?

This tests the ability of the system to work across service boundaries to ensure a wider range of available services that provide people with choice and which increase the capacity of available services to best meet demand.

Research shows that the majority of older people want to stay in their own homes as long as possible and that the traditional 'bed-based' thinking around service provision does not meet this aspiration. Commissioners are expected to develop as broad a range of service as possible, including a full range of domiciliary support and housing alternatives, including housing-with-care.

Estimates indicate that 70%-80% of older people now own their own homes and, in with buoyant property prices and land values in certain parts of the country, this means that many old people should be able to pay for their own care. Many of them may, however, be 'asset-rich' but not 'cash-rich' with little disposable income to buy the care and support they need to remain in their own homes.

Local authorities and PCT commissioners have a duty to ensure that a wide range of preventative, rehabilitative and community support services are available to enable people to choose from as broad a range of high quality services as possible, regardless of who is funding the care arrangement.

Research also shows that, increasingly, older people expect to be consulted on the types of service arranged for or available to them, and that their views are regularly used as a source of learning and understanding, and that their experiences inform the shape and quality of future service provision. This is likely to increase as the ageing populations of today will become the more demanding and better informed service users of tomorrow.

User representative groups accept that commissioning relationships are often forged within Social Services and PCTs at senior levels that exclude service users or their representatives, that these relationships tend to lead to macro commissioning on a scale which begins to deny individual service users close involvement in the shaping and reviewing of the services they receive. Much worse, however, is that commissioners often exclude service users at the more micro end of service commissioning, that insufficient dialogue takes place with service users about the range, nature and cost of the services being arranged on their behalf. These groups feel strongly that the monetary element of service provision needs to be aired – "Older people", they say, "understand about the economic realities and they aren't asking for much!"

\* Commentators involved in direct working with service users suggests that health and social care communities need distinguish different methods for consulting with service users

- a. directly
- b. through local groups and associations
- b. only using national data

At any level, consulting needs to be a contractual responsibility, on the part of both the commissioner and the service provider.

These agencies also expressed concerns that this checklist, along with many other guides and 'tools of the trade' are used by commissioners in ways which confuse and alienate service users. They want to see commissioners discharge their responsibilities to the end users of service in ways which are simple, effective and fair.

## 2. Fair to Tax Payers:

Question	in place	under review	needs attention
2.1 <i>Have you published a commissioning or investment strategy that plots activity over the next 3, 5 or 10 years?</i>			
2.2 <i>Have you developed any capacity planning models that help you predict future demand and the supply needed to meet it?</i>			
2.3 <i>Have you developed contracts with internal and external services that demonstrate your authority/trust commissions in accordance with the principles of best value?</i>			
2.4 <i>In relation to best value, are your contracting practices compliant with Competition Rules and do they allow for arrangements to be contested?</i>			
2.5 <i>Are you able to stabilise local markets by demonstrating financial prudence and good market management skills?</i>			
2.6 <i>Do you feel you have the freedoms to develop more imaginative/innovative ways of securing high quality and good value service supply?</i>			
2.6 <i>Similarly do you feel you have the competencies to develop more imaginative/innovative ways of securing high quality and good value service supply?</i>			
2.7 <i>Have you public literature in which you can openly share planning, budget, activity and purchasing data?</i>			
2.8 <i>Do you have regular contact with Scrutiny committees or audit functions that examine your budgetary controls?</i>			
2.9 <i>Do you have freedoms to use a range of contract types depending on the specified service, or volume of service, and to contract for periods longer than one year at a time?</i>			
2.10 <i>Do you ensure congruency between the standards which you specify, in terms of quality and performance measures, and any concomitant adjustment in prices?</i>			
2.11 <i>Have you done any work to establish the true costs of care in your area?</i>  <i>Are you satisfied you have reacted fairly to this knowledge?</i>			
2.12 <i>Does the evaluation of your contracted service arrangements comply with best value considerations?</i>			
2.13 <i>Have you an established methods of routinely reviewing the cost-effectiveness and value of services with a view to de-commissioning those that do not offer best value, and do you share this information generally with fellow commissioners and with service providers and with the general public?</i>			

- 2.14 *Are you conscious of operating in a collaborative commissioning market – fluctuations in one part of the market affecting others – and do you have plans in place for responding to whole systems market change?*
- 2.15 *Are you exploring joint arrangements with PCT partners e.g. lead commissioning, pooled budgets, integrated services and teams?*


## Commentary:

### Fairness to Tax Payers

Tax payers have a right to expect that the services being purchased in their local communities meet identified needs in accordance with well-publicised priorities.

The accountability of the statutory agencies to tax payers, to the wider community, needs to be underpinned by open communication of commissioning intentions and with demonstrable evidence of resulting benefits to the community. Tax payers need to have confidence in the knowledge, competencies and prudence of those who are authorising expenditure of public monies.

Commissioners need to be able to demonstrate, therefore, that they are buying wisely, deploying resources prudently and are able to measure the value and effectiveness of their actions. They need to develop capacity planning models that enable them to forecast future supply and demand in a non-linear organic way (to ensure that they do not continually 'buy more of the same' but are genuinely responsive to the changing face of need). This work may be informed by, but cannot rely upon, historic activity data; it needs to take into account public health and prevalence data, local demographic statistics relating to patients/service users, potential users and the work force.

The culture of performance management, leading to continual service improvement, enables councils and trusts to show their achievements against national and local performance indices. Tax payers expect that statutory agencies work together efficiently and well, for the benefit of the tax paying community.

Some services are, by their nature and because of the needs of the service users, extremely costly to provide or to purchase. This may not be fully accepted by the tax-paying public and commissioners need to ensure that there is transparency in their transactions but that sound principles of good financial management and budget control underpins all their contracting activity. This will include informed investment in future services, in creating viable markets in which a wide range of service provision flourishes and which assures stability, continuity and future availability of health and social care services. All commissioning strategies (however long term) need regular budget scrutiny and review.

Similarly, commissioners need to be explicit in the information they provide to the general public on the sources of funding. There is both central and local taxation and in the context of engage with local communities, some of their confusion about where and upon what these get spent may need to be addressed. This becomes even more necessary when commissioners' plans are predicated on pooled budgets with other statutory agencies, with the consequent risk sharing, governance and accountability issues involved in such arrangements.

All tax payers may be users or potential future users of services – many of them will have a real interest in understanding local commissioning priorities. They will also be interested in the quality of services and safe levels of service provision, not just the funding streams.

Whilst the questions above may seem to principally address funding issues, the wider context of service provision needs also to be addressed.

### 3. Fair to Service Providers:

Question	in place	under review	Needs attention
<p>3.1 <i>Have you worked through the CAT checklist on more effective commissioning practices with independent sector providers to indicate the level of your compliance with the requirements of Building Capacity &amp; Partnership in Care?</i></p> <p><i>[If you have not, or this matter still needs attention, please consult the CAT checklist Commissioning with the Independent Sector before proceeding]</i></p>			
<p>3.2 (a) <i>Service Planning:</i></p> <p><i>Do you have systems in place that enable providers to feel that they are part of the problem-solving stage of planning and commissioning new services?</i></p> <p><i>Do you draw on their experience of what works?</i></p> <p><i>– or – go to next questions</i></p>			
<p>3.2 (b) <i>Do your providers feel that they only get informed of solutions to service shortfall once the statutory agencies have agreed what to do?</i></p>			
<p>3.2 (c) <i>Do you have systems in place that enable providers to feel that they are part of <u>future</u> service planning and commissioning?</i></p>			
<p>3.2 (d) <i>Have you clear agreements with providers about involving them in problem-solving to ensure continuity of care at both strategic and micro commissioning levels?</i></p>			
<p>3.3 <i>Have you a clear agreement with providers on how their sector(s) are properly and genuinely represented at meetings where the planning and commissioning of services are discussed and where information is shared?</i></p>			
<p>3.4 <i>Do your senior managers, Elected Members or Board Members meet regularly with independent provider organisations?</i></p> <p><i>Are independent providers invited to present/address council and other meetings?</i></p>			
<p>3.5 <i>Do all statutory commissioners within your health and social care system unite in the messages given to independent provider colleagues, to prevent disinformation or mixed messages?</i></p>			
<p>3.6 (a) <i>Contracting practices:</i></p> <p><i>Is there a risk-sharing agreement in place with providers?</i></p>			
<p>3.6 (b) <i>In using this or other CAT checklists, would you routinely</i></p>			

*enclose them amongst tender documentation as an indication of openness and willingness to form better partnering relationships?*

**3.6 (c)** *Have service specifications been drawn up jointly with service providers?*

**3.7 (a)** *Financial Planning:*

*Do you know your in-house service costs and are these compared with independent sector costs on a like-with-like basis?*

**3.7 (b)** *Is local authority/PCT expertise on finances available to independent providers to enable them to properly understand public sector finance and to participate in budget planning discussions and financial monitoring arrangements?*


## Commentary:

### Fairness to Providers (... and - by extension – fairness to their employees)

The *Building Capacity & Partnership in Care Agreement 2001* is explicit in the messages sent out to local authorities and commissioning trusts in terms of the development of healthful, productive and mutually collaborative working relationships with independent sector providers of health and social care services.

Many providers have expressed disappointment that this concordat appears to have made little difference in the relationships between providers and commissioners and that attitudes, behaviours and commissioning practices do not reflect the spirit of *Building Capacity*. In particular, this concerns providers most when the ways in which they employ, manage, supervise and train their staff are affected. Providers urge commissioners to be cognisant of the legislation which governs their services, and the impact compliance may have on cost and ability to respond. (Examples quoted relate to commissioners, for instances, requiring providers to respond more quickly to deploying staff not yet fully CRB checked, or to requirements for extra training over and above the requirement in registration regulations, which has cost implications that the commissioners do not recognise in the prices paid).

The Change Agent Team works in many health and social care communities where better commissioning practices and more equitable contracting arrangements are being introduced and, in some places, consolidated but it is clear that this is not as wide-spread as has been hoped.

If commissioners or, indeed, providers are in any doubt about what the *Building Capacity Agreement* is trying to achieve, CAT recommends returning to the original document to re-read the requirements and to consult the follow-up document *Implementing Building Capacity: Principles into Practice* to see some very good examples of where change has occurred.

Please also refer to the CAT Checklist – *Commissioning with the Independent Sector* - to assess your system's compliance with the principles of *Building Capacity*. Ideally commissioners should be working through this checklist with their providers – at the very least they should ensure providers have a copy of it.

Service Provider organisations which have commented on this checklist, and on other CAT checklists, want to remind commissioners that the route of securing contracts through tendering mechanisms still seems a very onerous and – sometimes - unfair process, especially for smaller providers. They urge that other methods are found to let contracts. For instance, a contract may be let where the contract volume and the available budget is clear at the outset – the selection of provider rests on the quality of service they can guarantee and any other 'additionality' they can bring to the arrangement.

## 4. Fair to Commissioners:

<i>Question</i>	<i>in place</i>	<i>under review</i>	<i>needs attention</i>
4.1 <i>Have you methods in place that enable you confidently to assess the true quality and cost of care services provided <u>internally</u>?</i>			
4.2 <i>Have you methods in place that enables you confidently to assess the true quality and cost of care services provided <u>externally</u>?</i>			
4.3 <i>Do you feel you have the full support of senior management, Elected Members, Board Members for your commissioning activities?</i>			
4.4 <i>Do you have clear procedures in place for de-commissioning services or disinvesting in certain types of service?</i>			
4.5 <i>Does your de-commissioning process allow for open and flexible working with providers to establish what new services need to be put in place?</i>			
4.6 <i>Where services have been introduced on a pilot basis, and review indicates their success, do you have processes in place to mainstream them?</i>			
4.7 <i>Do you feel that you have in place enough staff and resources to undertake the commissioning and contracting functions that enables you to comply with the legal requirements of the function?</i>			
4.8 <i>Do you feel that you have in place enough staff and resources to operate the commissioning and contracting functions at level that enables you to feel that you are actively influencing the viability of local care service markets?</i>			
4.9 <i>Do you feel adequately supported in these tasks by financial, legal and IT colleagues</i>			
4.10 <i>Have you management information systems that provide you with reliable and timely data on which to base planning and commissioning decisions?</i>			

## Commentary:

### Fairness to Commissioners

The Minister has made clear that councils and trusts are entitled to choose between the services on offer and to pay a price that offers quality at a price that the commissioners can afford.

This sometimes leads to hard decisions having to be made by hard-pressed commissioners balancing competing demands on finite resources. Commissioners have to disclose their methodologies and rationale and to expose them to political and public scrutiny. This is not always a comfortable position, nor does their honesty appear to be appreciated by those disposed to criticise and condemn commissioning decision-making.

In some cases much is expected of commissioning functions without adequate resources having been invested to underpin the activity nor with proper levels of training or skills/competency acquisition available to those charged with tasks for which they have not been trained or in which they are not experienced or skilled.

Commissioning is a complex activity requiring the balancing of immediate service needs with longer-term financial and service planning. At times, commissioners feel under pressure to demonstrate effectiveness and perform more efficiently than they are able to achieve. Many feel frustrated that some freedoms to make and live by decisions are removed from them by internal and external systems which do not make allowances for the pressures and also continue to be a source of them! There is the additional confusion arising – a connected issue about understanding where the boundaries for one organisation's commissioning responsibilities fall, where they link and cross over into others' responsibilities. Is commissioning single-agency or part of a whole systems approach?

The Change Agent Team may be able to offer expertise and resources that will help commissioners meet the challenges set before them and the Department of Health offers a wide range of information, guidance, assistance and support in their tasks.

---

## What To Do Next

If you feel that your health and social economy has not sufficiently met the Minister's Four Tests of Fairness listed above and – by implication – may be failing to meet the service needs of the very people who depend upon the availability of a wide range of good quality services, the CAT may be able to help.

A commissioning workbook "*A Catalyst for Change*" has been developed to assist sites work their way through a process of identifying where commissioning weaknesses lie and some suggestions on how their performance can be improved. The workbook is available on the CAT website but it is best used in a facilitated process which is free of charge to health and social care systems. The CAT may be able to arrange this.

If you are interested in this approach, please check out the website and then email us:-

[www.changeagentteam.org.uk](http://www.changeagentteam.org.uk))

[change\\_agent\\_team@dh.gsi.gov.uk](mailto:change_agent_team@dh.gsi.gov.uk)