



## **Commissioning for a vibrant voluntary disability sector: the case for change**

# INTRODUCTION

The Voluntary Organisations Disability Group (VODG) is a membership body that represents organisations within the voluntary sector who work alongside disabled people<sup>1</sup>.

A vibrant and distinct voluntary sector thrives when organisations work together to enable disabled people to live the lives they choose. What's more, ambition and trust grows within the sector when services are co-designed and commissioned by strategic partnerships formed between statutory bodies and the voluntary sector.

The disability sector is as dynamic as it is diverse. From user-led organisations to traditional provider services, organisations support disabled people through advocacy and state-funded service delivery as well as contributing to local communities and national causes over and above directly commissioned activities. Our earlier report, *Above and Beyond*<sup>2</sup>, demonstrates how voluntary organisations are connecting communities while proactively collaborating to bridge gaps in support, especially as austerity continues to undermine services for disabled people<sup>3</sup> while Social Care Future<sup>4</sup> is seeking to create a new ideal of social care with a strong vision focused on solutions.

The voluntary sector offers a unique contribution by:

- providing services that are co-designed with individuals, families and local communities
- championing the rights of people who experience social inequality
- provision of specialist services that complement publicly managed services
- developing innovation
- building social capital, including volunteerism.

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1 Throughout this report, the term 'voluntary sector' refers to the breadth of services that support disabled people and families – from user-led organisations, to community interest companies to mutual/registered societies and charities of all sizes.

2 Voluntary Organisations Disability Group (2019) *Above and beyond: how voluntary sector providers add value to communities*. [www.vodg.org.uk/wp-content/uploads/2019-Above-and-Beyond-web.pdf](http://www.vodg.org.uk/wp-content/uploads/2019-Above-and-Beyond-web.pdf)

3 Voluntary Organisations Disability Group (2018) *A stitch in time: the case for funding social care*. [www.vodg.org.uk/wp-content/uploads/2018-VODG-A-stitch-in-time.pdf](http://www.vodg.org.uk/wp-content/uploads/2018-VODG-A-stitch-in-time.pdf)

4 Social Care Future  
<https://socialcarefuture.blog/>

There are 13.3 million people living with a disability in the UK, representing 21% of the population and 44% of state pension age adults. This is an increase of 18% from 2007/08<sup>5</sup>. The provision of essential services to disabled people in ways that promote independence, choice and control, as well as supporting their carers, is a statutory obligation. Social care also plays a crucial role in preventing the escalation of needs and costs falling on other services, such as the NHS and wider local government services. In relation to older disabled people's support, the voluntary sector accounts for 14% of the care home market<sup>6</sup> and of adult social care jobs<sup>7</sup>. Voluntary sector providers predominantly serve people who rely on the state to pay for their care. This group is disproportionately affected by budgets cuts. Without adequate public funding for their services nor a long-term sustainable funding plan for social care, voluntary sector providers, and the care and support they provide to disabled adults, are increasingly at threat. Of all public service areas where the voluntary sector is involved, the provision of social services has the largest number of organisations (32,000) and highest income<sup>8</sup>.

There is a drive towards universal personalised care and commissioning based on what matters to people and their individual strengths and needs. VODG welcomes this move to give individuals greater freedom and choice over services. This report focuses on the provision and challenges of public sector commissioned and procured services, largely via local authorities and clinical commissioning groups (CCGs). The purpose of this report is to draw on collective experiences across the VODG membership to strengthen statutory and voluntary sector relationships in the local commissioning of services.

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<sup>5</sup> Skills for Care (2019) *The size and structure of the adult social care sector and workforce in England, 2019*.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791271/family-resources-survey-2017-18.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791271/family-resources-survey-2017-18.pdf)

<sup>6</sup> Laing Buisson (2018) *Care homes for older people: UK market report*.  
[www.laingbuisson.com/](http://www.laingbuisson.com/)

<sup>7</sup> Skills for Care (2018) *The size and structure of the adult social care sector and workforce in England, 2018*.  
[www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/The-size-and-structure-of-the-adult-social-care-sector-and-workforce-in-England.aspx](http://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/The-size-and-structure-of-the-adult-social-care-sector-and-workforce-in-England.aspx)

<sup>8</sup> National Council for Voluntary Organisation (2019) *The UK Civil Society Almanac 2019*.  
<https://data.ncvo.org.uk/>

# THE CASE FOR CHANGE

Strategic commissioning is one of the major routes by which public service commissioners assess and identify the needs of local areas, developing and implementing the services and policies required to meet those needs. Strategic commissioning defines how public bodies think about, behave and engage with delivery partners in addressing need. In the case of local authorities, good commissioning aligns with the political objectives of the authority and seeks outcomes that have the widest positive impact on local economies, communities and the environment.

Strategic commissioning is not procurement. Procurement is the purchasing of services, often via tendering through a competitive bidding process. A significant risk to the voluntary sector is that procurement processes are tightly focused on price, rather than outcomes. They can be over burdensome and not proportionate to the risk involved. This may undermine the systems designed to meet local need and stymie the development of partnerships between public commissioning bodies and voluntary sector providers.

## What good strategic commissioning looks like

Exemplary strategic commissioning works when local communities and the voluntary sector establish a shared vision and purpose from the outset. Beyond process, it is an ethic that sees the voluntary sector involved in genuine co-design and co-production of services, by:

- drawing upon the expertise and practical and professional insights of the lived experiences of the people and their families who use those services.
- drawing upon other experience and ideas nationally and internationally.
- allowing involvement to challenge orthodoxy.

With user and public involvement at its heart, strategic commissioning:

- should protect rights, promote well-being and support people to live independently.
- sets strategic vision, purpose and objectives.
- determines outcomes required to meet needs.
- identifies options available and which are affordable and involves current and potential partners, and alternative providers, to identify the optimal means of securing these outcomes and takes into account the social, equality, economic and environmental impacts.
- meaningfully involves the voluntary sector in oversight and governance.
- continually monitors and reviews performance and options.

**A current reality:** A lack of strategy within a local authority's procurement process resulted in a significant waste of public funds and left disabled people, and their families, with uncertainties for almost 12 months on who would provide their future support.

In early 2016 a provider was awarded a local authority contract. However, on transfer it transpired that the actual care hours required to be delivered were significantly less than those assumed following tender clarifications. This resulted in a substantial reduction in contractual income. Subsequently, the provider also raised concerns around the impact this may have on quality given that the contract hours also appeared to be lower than those previously delivered. Nonetheless, the provider continued to work collaboratively with the council and initiated negotiations to increase their hourly rate to mitigate the reduced income. However, this proved unsuccessful when the council held firm that procurement regulations would prevent them from considering this further. Instead the council offered a non-contractual payment to partly compensate the provider for some of the tender issues that had arisen, yet, this still failed to return the contract back to a sustainable level.

As time passed, the two parties were unable to agree a viable way forward. During this period the provider was able to maintain a high-quality service, as recognised by the 'outstanding' CQC report, whilst still continuing to suffer untendered losses. With no availability for further financial support, the provider reluctantly agreed that the only option left was for the contract to be retendered as they could not provide a good quality service for the money available.

Significant delays in contract award followed and the initial process ceased when it emerged the council had agreed to separately fund agency to the new provider (something that was not offered to the existing provider), consequently breaching procurement regulations. Following a legal challenge, the contract went back out to tender. However, a week before transfer the award fell through once more when the new provider also requested additional funding to run the contract.

The council was forced to once again ask the existing provider to continue delivering the contract while it went back through a retender process. In the lead up to the handover, many managers and staff left the provider due to the doubt they had about the service's future and their reluctance to work for the incoming provider. In order to continue with the service, some staff had to be reinstated, new staff had to be employed and trained and agency staff also had to be hired – all at considerable additional cost.

For the third time in less than a year a new provider was needed and each time the existing provider had to reset its systems and go back through a process of consultation with all those affected, causing great distress and uncertainty for everyone involved.

Throughout the retendering process confidence in the council faltered at every stage and it remains unclear what impact procuring this contract – with what appears to be insufficient funding – will have on the future of people's homes. The regulator had previously commended the outgoing provider for promoting a positive, inclusive and open culture with person-centred care at the forefront of service delivery. Yet, this quality had been put at risk over the last 12 months due to the instability created by procurement failures, causing unnecessary expense along the way. Equally, the whole process failed to recognise the individuals supported and their families who asked the existing provider to continue delivering their support.

This case highlights the importance of commissioner transparency with a requirement to provide clarity over the precise nature of their contracts and the associated expectations of service delivery.

The provider has demonstrated its commercial focus in being prepared to step away from an unviable contract that is not funded to a level that enables good quality service provision – it is a fundamental right that individuals must receive the support that they require.

# COMMISSIONING FOR QUALITY

Commissioning should be all about quality and meeting the needs and choices of people who use services, their families and the local community. The voluntary sector can support effective commissioning but there are challenges involved, which must prompt a fresh approach to commissioning based on outcomes and not price. The combination of squeezed funding, increasing demand, and rising costs means that quality cannot be delivered at any price. There needs to be investment in both services and the workforce. In social care, providers are continuing to cease trading or hand back contracts to local authorities because of funding pressures. At least 72% of local authorities experienced some kind of provider failure from the six months to March 2019<sup>9</sup>. While user-led organisations have had local authority financial support withdrawn to such an extent that some are no longer financially viable and have ceased operating<sup>10</sup>.

The sector understands and empathises with the financial constraints and cuts imposed by central government on local authorities. These funding pressures have been amplified by public policy that is focused on markets, competitive tendering and low-cost contracting. Some voluntary sector organisations jump through complex and over-engineered public procurement processes to compete for ever lower priced contracts.

The true financial cost and impact on value for money of these procurement activities, sustained by both commissioners and providers, is unknown. Price is also too often dominating commissioning and procurement decisions. There are examples of local authorities inappropriately trying to place younger adults into older people's residential care. These are decisions focused on the cheapest form of provision rather than individuals' rights, choices and entitlements to services and also suggest that quality and suitability of care is secondary to price. The Equality and Human Rights Commission (EHRC) has expressed significant concern over CCGs failing to consider the specific needs of individual patients and in 2017 began writing to CCGs, with some now facing court action<sup>11</sup>. As the EHRC is demonstrating, commissioning for quality means being person-centred and embracing real co-production.

There is evidence that some voluntary sector organisations subsidise services contracted from the public sector from their charitable funds, with as many as two thirds in one survey reporting that they actually need to use other sources of income, such as money from fundraising, in order to deliver contracts<sup>12</sup>. This is unsustainable and, in some circumstances, may compromise the purpose and constitution of the organisation. Similarly, VODG is aware that commissioners have examined the accounts of voluntary sector organisations and used this as a basis for refusing to offer financial uplifts to meet the growing costs of service delivery. This approach is totally unacceptable.

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<sup>9</sup> Association of Directors of Adult Social Services (2019) *ADASS Budget Survey 2019*. [www.adass.org.uk/media/7275/adass-budget-survey-report-2019\\_sans-embargo.pdf](http://www.adass.org.uk/media/7275/adass-budget-survey-report-2019_sans-embargo.pdf)

<sup>10</sup> Carter, R (2019) *Accelerating closure of user-led bodies, amid care cuts, creates 'perfect storm' for disabled people*. *Community Care*. [www.communitycare.co.uk/2019/04/29/accelerating-closure-user-led-bodies-amid-care-cuts-creates-perfect-storm-disabled-people/](http://www.communitycare.co.uk/2019/04/29/accelerating-closure-user-led-bodies-amid-care-cuts-creates-perfect-storm-disabled-people/)

<sup>11</sup> Equality and Human Rights Commission (2019) *NHS facing court action over unlawful policies*. [www.equalityhumanrights.com/en/our-work/news/nhs-facing-court-action-over-unlawful-policies](http://www.equalityhumanrights.com/en/our-work/news/nhs-facing-court-action-over-unlawful-policies)

<sup>12</sup> New Philanthropy Capital (2017) *Charities taking charge: transforming to face a changing world*. [www.thinknpc.org/wp-content/uploads/2018/07/Charities-taking-charge-transforming-to-face-a-changing-world\\_NPC.pdf](http://www.thinknpc.org/wp-content/uploads/2018/07/Charities-taking-charge-transforming-to-face-a-changing-world_NPC.pdf)

# STRENGTHENING PARTNERSHIPS

## **A current reality: the importance of relationships**

*"In the past, we built personal professional relationships with commissioners but with structured procurement this is less likely to be the case. We get the impression some commissioners are frustrated with the way procurement inhibits innovation.*

*"Where we do have good working relationships it's with local authorities who plan services alongside us, make the best use of available resources and operate to establish a 'win-win-win' for themselves, us and service users. We work with them on shared agendas. We know they have no money but they understand we can only support vulnerable service users with safe and robust services. We have, on a number of occasions, worked creatively to develop services that minimise risk for both parties. We feel like they trust us.*

*"Others are not so flexible. they dictate what they want, which is mostly to a very high standard but often difficult to achieve. This results in delays (and frustration). We feel the soft market tests are tick box exercises and we are not encouraged to develop on-going dialogues. We know that mini tenders are often written with particular providers in mind, which then wastes time for commissioners and other providers who might bid not knowing that the opportunity is all but promised to another provider. We do not think they trust us. They often have unrealistic timescales. They are slow and have much more complicated procurement processes."*

Local commissioners (and local authorities, in particular) and the voluntary sector are both embedded within and serve the same communities, are driven by social purpose ahead of profit, and seek to contribute to community well-being. The financial pressures that local authorities, in particular, have experienced in recent years, as a result of central funding cuts, have put relationships with the voluntary sector under strain. Yet, during periods of financial stringency, strong partnerships are needed more than ever. Procurement and tendering processes that encourage partnership and collaborative working, such as collusive tendering, and discourage competitive practices, should, therefore, be strengthened.

When a public body spends public money, whether through directly managed services, campaigns to affect public or business behaviour, or by procuring services and goods, it should always seek to maximise public benefit. VODG believes that public bodies should be held to account for maximising public benefit achieved by their public expenditure. We welcome public bodies that promote social value and wider public interest considerations in ways that fully recognise the role of the voluntary sector.

The House of Lords Select Committee on Charities<sup>13</sup> has called on government to strengthen social value considerations in public sector commissioning, to recognise the added benefits of charities' involvement in service delivery, and to urge local authorities to consider grant programmes wherever possible, in order to retain the "valuable innovation that charities can bring to service delivery". There is, therefore, an important purpose for commissioners to avoid treating voluntary sector providers in the same way as major for-profit organisations.

<sup>13</sup> House of Lords Select Committee on Charities (2017) *Stronger charities for a stronger society*. <https://publications.parliament.uk/pa/ld201617/ldselect/ldchar/133/133.pdf>

Voluntary sector providers can be disadvantaged by inappropriate social value assessment in social care contracts. The voluntary sector is best placed to achieve social value but we accept that this is not always the case even when voluntary sector providers are delivering services. Social value and the wider public interest considerations must be specific to local places and individual services. This means there should be a dialogue with the sector before objectives and targets are set.

### **A current reality: assessing 'social value'**

*"Local Authority funding is incredibly tight and, as a small charity, we struggle to evidence economic social value on top of our existing community development contracts at any significant scale.*

*"We have one tender to reduce social isolation so we can't evidence anything relating to that as an outcome for the Social Value requirement, the bulk of scoring for which is based on valuing staff time given to specified categories activities. We are a small charity and do not have profit that we can use up by supporting employee volunteering at any significant scale, unless the financial value of contracts were increased to allow us to offer these opportunities for our staff. This seems highly unlikely.*

*"We are being asked to favour certain social value areas. But if we do have surplus, we can only spend this on our registered charitable purposes which, of course, are closely aligned to the type of business we'll be bidding for and not other social value areas and activities determined by commissioners."*

Generic approaches are less likely to result in significant social value and instead should be achieved through bespoke considerations and relational partnering with the voluntary sector.

VODG believes that commissioners should be protecting existing, voluntary services as the default option. This should include a recognition of the merits of relational partnerships with the voluntary sector that complement rather than compete with the work of statutory partners through a shared, socially motivated, ethos.

# FUTURE STRATEGIES

## A current reality: how good practice works

*“We’ve been a provider for more than 30 years. It’s not just people we support but local communities. Our aim is to ensure we build thriving communities. A key success indicator for us is if we were not around not only would the people we support, their families and our staff miss us but also the local communities.*

*“Money gets tighter each year, even for providers like us who have positive relationships with local authorities. We’re a charity and so can’t make a loss. However, it’s frustrating to be told that we have too much leadership and do too much staff training because we know that’s what makes our support have quality.*

*“When designing services, it’s crucial to start with the end in mind and not get caught up in red tape. As an organisation, many years ago we made an ethical decision to not competitively tender. We don’t believe people’s support should be bought or sold. We believe it’s about trust, having the right intentions and not pursuing power, which sadly is the priority of some commissioners.*

There is no question that good commissioning practices exist. We encourage local authorities and their political and executive leaders, and CCGs to consider adopting policies and practices that ensure:

- the full breadth of voluntary sector provision, whether or not directly commissioned, is identified and mapped locally, and understood.
- there is genuine engagement between voluntary services in place-shaping, policy development, budget decisions and strategic commissioning.
- strategic commissioning is a partnership made up of people who use the services, their relatives, the voluntary sector and statutory sector in equal numbers with a joint responsibility to produce plans that are genuinely co-designed.
- political leaders should engage with the sector as should senior public officials.
- strong governance is in place involving local stakeholders including user-led groups and providers.
- a return to genuine strategic commissioning, as described above, that involves the voluntary sector in the co-design and co-production of services.
- voluntary sector services are valued when they complement statutory agencies
- activities that do not support relationships with the voluntary sector are abandoned – for example, removing competitive tendering and replacing with relational partnerships, using grants and whilst recognising that accountability will often involve contracts – though these should not be over-engineered nor over-prescriptive.
- when used, procurement processes are simple and proportionate but this use should be minimal.
- services are always fully funded (including all delivery costs, overheads and a surplus for investment and development in services and the workforce).
- providers are encouraged to respond to need in ways in which people who use services are able to determine; and consequently, to take managed risks and to innovate.
- recognise how social value and wider public value can be delivered through genuine partnerships with the voluntary sector when the objectives and targets are jointly determined.
- there is investment in voluntary sector capacity building.



We encourage trustees and sector leaders to consider what is right for their individual organisations. This may include:

- delivering state-funded services in way that adds value to existing public services but not as an excuse for withdrawing statutory services or to undermine public provision.
- advocating for individuals and communities to ensure that people who use services are involved in all aspects of policy and operational decision making.
- engaging with senior local authority politicians as well as senior officers.
- insisting on being involved in strategic commissioning and wider policy decision making locally, and being prepared to support local governance; and demonstrating the benefits of such involvement.
- campaigning to change public policy, and for the funding and provision of appropriate public services.
- considering opportunities to provide services funded by the public sector through grant aid (or, in some cases contracts) when this does not mean subsidising the public sector.
- promoting relational partnering with statutory bodies as part of a wider move away from competitive tendering.
- using charitable resources to develop, test and introduce new approaches and services with the aim of persuading the public sector to replicate and promote these at scale.
- refusing to be the default low-cost delivery option.
- remaining true to mission and values.

The voluntary sector makes a significant contribution to ensuring that the rights and entitlements of disabled people are met. These contributions should always be driven by individuals themselves and based on the rights and entitlements of disabled people. An ambitious, trusted and vibrant voluntary sector that works together plays a unique role in achieving this aim.

VODG will continue to act as a collective voice for its members on the commissioning of services for disabled people. We will work with others to find solutions and to ensure that the rights and entitlements of disabled people who use services are fully met.





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