



**Joint Improvement Team -- Scottish Procurement Directorate  
Social Care Procurement Programme**

**Local Meetings Report**

**Background**

The purpose of local meetings within the social care procurement programme co-ordinated by the Joint Improvement Team and Scottish Procurement Directorate was to inform the development of national guidance material and identify good practice which might be of interest across the country. Meetings were arranged in seven local authority areas separately with council staff (social work managers and contract staff, corporate procurement staff and legal services staff) and with service providers (voluntary and private sector providers in a range of services and for different care groups).

Arrangements were made for service provider involvement in the meetings through Community Care Providers Scotland, Scottish Care at Home and Scottish Care, with some providers also identified by local authorities. The wide range of service providers all provided services in the local area in which the meeting they attended was taking place, but many of them also brought knowledge and experience of social care procurement across the country.

The seven meetings with council staff and seven meetings with service providers all had a common agenda, which covered:

- General experience of local procurement arrangements
- Key issues/difficulties in relation to local procurement
- Local principles, policy, procedure and approach
- Relative strengths and weaknesses in local procurement
- Expectations of proposed guidance

In relation to the item on local principles, policy, procedure and approach, detailed consideration was given in all of the meetings to:

- Grounds for tendering/re-tendering and the tendering/re-tendering process
- Service user and carer involvement in tendering and re-tendering
- Nature of contracts and approach to contracting
- Service change and/or transfer including TUPE
- Market analysis, nature and expertise
- Implications of self-directed support
- Partnership with providers
- Special features of social care procurement
- Contract monitoring and review, including service user, carer, provider and regulator involvement
- Staff skills and training needs for procurement

## **Application of Local Meeting Comments**

The draft guidance framework, which has been developed, has provided a format which can be populated with all of the detailed comments made in local meetings and other meetings (such as with the Learning Disability National Involvement Network), alongside responses made in the local authority and service provider surveys. This means that as the guidance is drafted, what was said in the local meetings can be fully taken into account. This report provides a brief summary of comments made both in the local meetings with Council staff and service providers against the elements of that draft guidance framework:

- ❖ Legislation
- ❖ Policy, Strategy and Approach
  1. Analyse -- Structure and Market
  2. Plan -- Service Specifications, Contracts and Procurement Plan
  3. Do -- Tendering, Contract Award and Re-Tendering
  4. Review -- Contract Management and Review

### **Legislation**

There was a broad consensus that it should be recognised that social care procurement has certain special features including its complexity and, whilst procurement principles, legislation and regulations require to be observed, that it was also important to work within human rights legislation and reflect social work principles in relation to valuing individuals, citizenship, equalities, social inclusion, personalisation and outcomes.

A number of Councils had formally recognised such distinctions with additional Standing Orders and Financial Regulations governing social care procurement policy and procedures. In other Councils, there appeared to be a continuing tension between social work and corporate procurement approaches over the extent to which social care should conform to standard policy and practice within the Council.

There was also a general view that further guidance would be helpful in relation to the implications of procuring Part B services, as defined in the European Union's Directive on public procurement contracts (Directive 2004/18/EC). This guidance should expand on the 2008 Scottish Procurement Policy Note on social care procurement<sup>1</sup>.

The question was also raised about whether there were any plans to examine the role of the Care Commission and Social Work Inspection Agency in evaluating local procurement practices as part of the amalgamation of these bodies.

### **Policy, Strategy and Approach**

Whilst council staff identified different approaches between care groups and to meet different service and procurement situations, service providers also had experience of very significant variations in policy and approach between local authorities, for example in relation to their own involvement in the procurement process, in the flexibility and discretion service specifications and contracts allow, and in the nature and extent of service user and carer involvement.

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<sup>1</sup> Scottish Procurement Policy Note SPPN 10/2008

Local authority staff provided reasons for their own local approaches. Service providers presented a case for greater standardisation and consistency in social care procurement, and the need to develop national policy and frameworks for:

- The approach to social care procurement;
- The appropriate cost ranges to meet certain quality standards;
- Service user involvement in procurement processes;
- Reducing duplication between national regulators and local purchasers;
- Lead arrangements within the context of shared services;
- The promotion of personalisation and self-directed support.

With respect to service user and carer involvement, both Council staff and service providers talked of a commitment to engagement in the procurement process, but there were clearly different approaches with one Council following internal advice to restrict involvement in tender evaluations and another Council seeking to maximise such involvement with service users and carers influencing tender questions and meeting prospective providers.

It would be useful if the proposed guidance set out what service users might reasonably expect regarding engagement within the tendering/re-tendering process. Council

Continuity of service is very important but it is not absolute -- it may be necessary to consider a change of service because of the quality of current service, because of the location of current service (and desirability of bringing service users back to their home area) and because of the cost of current service including significant variations in cost. Council

There was a widely shared expectation that change in the direction of more personalised services and self-directed support would have a significant impact on the procurement process, but also considerable uncertainty about the nature and extent of this impact.

Looking ahead there may be a shift to the council procuring less but more individuals choosing from preferred providers. Individual budgets are very difficult and progress is likely to be limited without strong Scottish Government direction. It is not clear that anyone yet knows how to link procurement with the national community care outcomes. Council

Shifting towards greater user control would also require culture change for providers. Service Provider

Scottish Care local representatives and care home providers attended the service provider meetings, but some indicated that they did not feel they had experience of many of the issues under discussion, because they were matters which were already addressed centrally including through the national cost and quality framework. It was suggested that lessons could be learned from this national work with care home providers. Council staff cautioned against the practicality of this approach because of the complexities involved, and the resources and very extended timescales which would be required to determine national agreements in other areas of social care provision.

Whilst not reaching any conclusion, the local meetings did provide evidence of extensive variation in approach to social care procurement across the country, and raised the question of which issues would merit greater consistency, and how much consistency would be beneficial.

## Partnership -- Local Authorities and Service Providers

There was extensive comment both in the local authority and service provider meetings, which related to the issue of partnership working between councils and providers. Local authority staff provided information about a range of ways in which they were seeking to engage with and involve service providers in the social care procurement process and, in certain local authority areas, service providers spoke positively about this engagement.

Stakeholder involvement is good through the Care Home Forum, and the Forum for Independent Sector Home Care Providers, and there is provider involvement in the contract compliance, monitoring and review system. Council

Home care providers were very positive about joint mechanisms and working parties in which they felt the Council listened to their views -- there is ongoing dialogue and a genuine wish by the Council to work with providers. Service Providers

However, in other areas it appeared that the Council staff believed they were working on a partnership basis, but service providers did not share that view.

There is an imbalance of power – there can be good relationships with individual Council staff, but there is not a proper partnership – there are senior and junior partners. Provider

In addition to the basic question of what does partnership mean within the context of social care procurement, in which local authorities have a statutory responsibility for arranging services and spending public funds, certain shared concerns were raised in both Council and service provider meetings, including the issues of:

- **Size** – an increasing dominance of large, and a reduction in small and local providers;
- **Innovation** -- the procurement process not providing sufficient scope for creativity and innovation, against the need for the promotion of flexibility and development;
- **Flexibility and Security** -- how to balance spot contract flexibility with block contract security;
- **Procurement Arrangements** -- greatest enthusiasm across partnerships for framework agreements, but different approaches to them;
- **Bureaucracy** -- staff resourcing, duplication and paperwork;
- **Communication and Involvement** -- variations in approaches.

We are seeking to develop framework agreements to provide continuity of care. Council

Service providers raised further issues connected with partnership working:

- **Risk and Responsibility** -- imbalance with service providers having a greater burden;
- **Re-Tendering** -- variation in local promotion of procurement regulations or principles of continuity;
- **Cost and Quality** -- experience of significant variations in the priorities adopted to the balance of cost and quality in decision-making.

If you invest in higher quality standards for higher grades you are unlikely to win contract because of higher costs. Service Provider

## 1. Analyse -- Structure and Market

### Preparation

In the area meetings, there was some discussion of the local organisational, governance and staffing for social care procurement. All of the local authority areas visited had specialist social care procurement/contracts staff within their social work services, but there were variations in how autonomous they were from their corporate procurement sections and how far councils accepted special approaches for social care procurement.

The issue of experience and skills, training and staff development was raised in all local meetings in relation both to these specialist Council staff and service providers. It was reported both in meetings with council staff and service providers that larger voluntary and private sector organisations were more able to resource specialists skilled staff for social care procurement processes and tendering exercises, and that smaller providers were at a disadvantage in being able to resource this activity, although they might provide high quality services.

There is a need for an accredited professional qualification and career development in social care commissioning and procurement.	Council
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### Analysis

#### Current Supply Arrangements

The capacity of service providers to resource engagement in procurement exercises was felt to have already affected supply arrangements with large organisations and consortia winning contracts and small organisations being at risk.

Providers are not ready for re-tendering and do not have huge experience in tendering particularly in smaller organisations.	Service Provider
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Some council staff also noted decisions within their local authorities to reduce the number of providers with whom the Council was contracting in certain service areas. In other Council areas, the particular approach to the operation of framework agreements allowed the funding of services with a much larger (and potentially increasing) number of providers, although not on the basis of additional funding capacity. There was an awareness that these activities and changes, which might have a basis in organisational efficiency and cost effectiveness (thereby making wider use of public funding), might also be having an effect on reducing the choice of services available to local service users and carers.

Additional supply issues were noted in rural, and especially in remote areas, where the level of need and demand for service might not be sufficient to generate or sustain provider involvement at the funding level available. This raised issues about the potential for any procurement competition, and what further social care procurement approaches were appropriate in those areas.

Rurality means that there is not a critical mass of services to allow for viability of a range of service providers.	Council
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## Market Analysis

Service providers in the local meetings emphasised the major impact in the social care market of the differential approach to directly provided and purchased services in a variety of respects (service allocation, cost, uplift, security, employment conditions, staff drift).

In house services should be considered on an equal basis as they have an impact on the market.

Service providers

Both councils and service providers indicated what factors should be considered within market analysis and gave examples of market analysis in social care

Market analysis needs to include consideration of: the range of services; the client group; service type; service redesign; future levels of control between the council; service providers; and service users.

Council

Guidance needs to consider service user involvement and disability impact assessment.

Service provider

An analysis of care and support services demonstrates that there was a wide range of costs (£10 to £30 hourly rate) across a range of providers. The re-tendering process has led to the authority being much clearer about requirements and the delivery of harmonised rates and more effective business arrangements.

Council

The range of very experienced and skilled staff in social care procurement and market analysis was noted within the meetings, but there was also concern about the need to enhance skills in options appraisal and risk analysis, for example in relation to: the decommissioning of services; understanding of transaction costs; and the implications of changes in the social care market such as the range and number of providers.

In reducing the number of providers, need to be careful about not creating monopolies.

Service Provider

There was a general and comprehensive recognition amongst Council staff and service provider representatives at the local meetings of the current and future financial situation and an awareness that there are significant implications for social care procurement.

The challenge after 16 years of new growth and expansion of services is to meet the current and future situation with an economic downturn and a focus on efficiency savings and contraction.

Council

## 2. Plan

### Service Specifications

Comments made within the local meetings suggested that in developing service specifications there were differences across the country in the level of collaboration and involvement of key stakeholders, including service users and providers, and also in the involvement of advocacy services. In addition, service providers noted significant variations in the level of definition and specificity, and in the discretion and flexibility allowed to service providers, and in how far innovative practice was enabled and promoted. This appeared to reflect more generally on the local approach to the procurement process, with more open service specifications going along with more extensive negotiation, including after contract award, and opportunities for varying the terms of service specifications in the light of experience, for example during the process of annual review.

The service specification and tender process sharpened thinking on what should be delivered and outcomes.	Service Provider
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Service specifications are much more open here than other areas with scope for provider discretion and flexibility in meeting need and to vary the specification during the contract review process.	Service Provider
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The need to consider specification of task and time against quality and cost was identified by both Council staff and service providers, with the latter indicating variable practice across the country in this regard. It was also reported by a Council staff member, who had examined contracts from a wide range of local authority areas, that there were very similar contract terms in all areas, with the potential for standardisation of certain contract elements across the country, leaving scope for the main variation being in service specifications and particular elements of cost.

Guidance should deal with issue of cost versus quality in service specifications-- it would be helpful to have a nationally agreed range of acceptable costs	Council
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### Contracts

The meetings rehearsed the arguments for block contracts as providing for stable partnership working and spot contracts as linked to greater service user choice and purchaser flexibility. There was particular interest in discussing the experience of framework agreements, which appear to be operating in different ways across the country.

In one Council area the intention had been to reduce the number of service providers within the framework, and be able to work with the framework providers in a more stable environment, whilst ensuring consistency of provision for service users through call off contracts with service providers who had not succeeded in getting into the framework.

In another Council, all providers who met the defined criteria were accepted into the framework with further providers able to join -- continuity of service provision for existing service users had been delivered, but the allocation of new business to higher ranked providers meant that lower ranked providers were being allocated little or no new work by the Council.

In a third Council area the framework agreement allowed providers to provide services on the basis of individual contracts, and enabled continuity for service users-- with rolling contracts for three years and beyond -- contract management included benchmarking and strategic change -- there was major review after three years, and after five years for building-based contracts, but unless there were issues about service quality for other factors, the contract would be rolled forward -- the Council believed that the way to ensure partnership working with service providers and continuity for service users was open-ended contracts within the contractual arrangements and a contract management framework.

There was also an interest in outcomes based contracts and the place of Individual Service Agreements. Some consideration had been given to how to accommodate these approaches within framework agreements, but as with issues in relation to personalisation and self-directed support, development was in the early stages.

Many providers had issues about the lack of contracts, and some about performance bonds.

### **Procurement Plan**

Procurement planning involves the selection of the appropriate procurement process (open, restricted, competitive dialogue) and decision about market shape, including number of providers.

There was a consensus between Council staff who attended the local meetings and service providers who attended their separate meetings, that some form of tendering was appropriate for the procurement of new services, and that re-tendering might also be appropriate in certain circumstances, such as when service quality was found to be poor and improvement could not be made through service change by the provider and contract management.

There were significant variations between Councils in their policies and approach concerning more general re-tendering, with some Councils indicating a view that this was a necessary action to comply with European Procurement Regulations and other Councils acting on the basis that compliance with the principles of fairness and competition could be met through the operation of their framework agreements with roll forward or call off contracts ensuring service continuity for individuals or groups of service users.

This was linked to local policies and decisions about contract length. One Council had a number of annual contracts, and another had a three-year contracts, with both renewing these unless there were particular grounds for not doing so. A third Council had three-year contracts, but took the view that these could only be renewed for a one or at most two years before re-tendering was required.

Tendering is seen by some as constraining and service driven but tendering for strategic partnership can support innovation.	Service Provider
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Short contract terms result in high levels of re-tendering. This has a negative impact on staff recruitment and retention and one provider described a falling interest amongst staff in pursuing SVQ programmes as a consequence of uncertainty and impact on morale. Timing issues can lead to providers issuing redundancy notices to staff during re-tendering processes; some leave while some take redundancy. All of this has a negative impact on the organisation and the service provided.	Service Provider
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The mini competitions for the framework agreement were a positive process; real people were discussed within the process; there was a continuity requirement, with a consequently reasonably low-level impact; this compared well to generic tenders and the type of specifications required by them and an institutional process which dictates wholesale change.  
Service Provider

The Council is looking for the guidance to clarify the circumstances in which tendering is appropriate.  
Council

As with other parts of the procurement process, the local meetings noted significant variations between Councils in relation to: the timelines for the procurement process and implementation; the transparency of the process; the level of risk sharing proposed; transfer arrangements and mobilisation plans; and the nature and level of attention to service delivery from contract award and thereafter.

Detailed comments were made both by Council staff and service providers about the application of the TUPE regulations.<sup>2</sup> There appeared to be considerable uncertainty about the terms of these regulations and different approaches by Councils with respect to procurement planning, activity and responsiveness to financial implications.

It would be helpful if local authorities provided information on TUPE -- it is not possible to commit to costs without TUPE information.  
Service Provider

Previous re-tendering exercise have been complicated by bidders having difficulty getting information regarding staff costs so new contracts will require providers to supply the council with TUPE information.  
Council

TUPE risk can be all with providers -- related to the information process -- there is no commitment by some local authorities to adjusting the price post award, although this does happen in some authorities -- some tender documentation allows providers to give options in relation to TUPE scenarios.  
Service Provider

A range of comments were made about the information provided to service users and carers, communication with them, and their level of involvement in the procurement planning and later process.

When decision to re-tender is taken there is no involvement of service users. Service Provider

During the process contact with service users was done through providers. This was considered to be the only viable approach.  
Council

There was good practice locally in involving people in planning together day services: with service users involved in tendering assessments.  
Service Provider

<sup>2</sup> Transfer of Undertakings (Protection of Employment) Regulations 1981

### 3. Do - Tendering and Contract Award

#### Tendering

As with the terms of contracts, the experience of service providers is that the tender documentation issued by the various Councils is very different, although the nature of the content is very similar. It appeared from the local meetings that there have been situations in which Council policy and procedures for tendering have been felt to be sound by all parties, but the actual practice and experience, for example in relation to the timescales set and the information and communication carried out has been problematic. There have also been experiences in which policy and practice have both been positive.

The tendering process for the framework agreement included: consultation; open meetings; providers well-informed; a timetable for the programme; contracts good compared with other areas; opportunities for questioning; a very approachable contracts manager; and an openness in approach.	Service Provider
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There is a concern that the tender process does not always ensure quality.	Council
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#### Contract Award

Service providers expressed the view that clarity about the scoring system to be used for evaluating tenders is variable, as is the proportional balance in quality and cost to be used. There is also variation in the factors to be taken into account, for example with some Councils taking account of Care Commission inspection gradings and others taking the view that these gradings cannot be taken into account. In addition, Councils noted the need to respond to situations in which service providers are bringing resources, including both revenue and/or capital resources into the service development.

Councils reported their own positions concerning evaluation/scoring balances between quality and cost, with one Council indicating a balance weighted quality 70%/30 per cent cost, another indicating quality 60%/40% cost, and a third quality 50%/50% cost. One Council described an evaluation process as based on an initial consideration of quality indicators, with price then added to give a total score. Another Council described a more holistic approach considering quality and cost proposals against the initial service specification. Whilst a number of service providers indicated a view that the main driver in tender evaluations was cost, a range of evidence was presented about quality considerations, although there were also issues raised about how to get behind well-written tenders to more fully assess service quality.

Whilst there was therefore variation in relation to approaches to tender evaluation, there was also variation in the scope for negotiation after contract award in relation to service delivery against the original specification and in relation to staffing and costs within the context of TUPE regulations. In addition, there were various views about the involvement of service users and carers in the tender evaluation process, from a position that they could not have a role for legal reasons and commercial confidentiality to a position of involvement in developing the scoring system and the tender panel. In the mid-position were those who wanted to involve service users as much as possible but were concerned about issues of confidentiality.

## Re-tendering

A distinction was drawn both by many Council staff and service providers between tendering and re-tendering. In relation to re-tendering, there was concern about the balance between fairness/competition for providers against stability/continuity for service users and providers. Concerns were raised about a series of other issues with re-tendering, and these included:

- Service user and carer involvement;
- The impact on service users and carers;
- Promoting innovation;
- Enabling new providers;
- Making budget savings;
- Transaction costs;
- The length of contracts;
- TUPE;
- Transition process.

A decision not to re-tender may exclude competition and so there must be a rigorous process and documentation to evidence decision making.	Council
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Guidance needs to consider research on impact of re-tendering on service users.	Provider
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Within the re-tendering process it would be good to identify those service users most at risk and consider their needs, and consider the management of the transition, which perhaps should be more closely defined.	Council
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#### **4. Review -- Contract Management and Review**

Some Council staff expressed concern that there was too much focus on the early process and not enough on service delivery with respect to Council activity in contract monitoring and management.

As with other aspects of social care procurement, different approaches to contract management by different Councils were described by those attending the local meetings, and ranged from limited involvement to much more extensive contact against a defined system and procedure. The extent of involvement did not necessarily reflect the level of detail in service specifications or discretion allowed to service providers, and service providers were not necessarily satisfied with limited involvement than more regular contact. What appeared to make a difference was openness and flexibility of approach by the Council, the relationship between contract managers and service providers, and a clear connection between contract monitoring/management with service review and improvement.

Some Councils emphasised the importance of establishing a good connection between social workers and others engaged in assessment, care management and review involving the service users taking up the purchase services. Some Councils also made direct contact with service users within their service review process, but this did not seem to be a universal practice. The issue was raised about confusion for service users in relation to service review if they are being contacted to express their views both by Care Commission within the inspection process and the Council for contract management purposes. Both Council staff and service providers shared a concern about the potential for duplication between Care Commission inspection and contract management, but no clear view emerged about a response to this issue.

Other variations between local authority areas included the nature of contract monitoring information required, which meant that a large service provider delivering services in most Council areas might be having to reformat management information in different ways for each of them.

Service providers also mentioned the use of performance bonds in a small number of Council areas across the country and the issues raised by this practice both in relation to finance and contract management.

In terms of the full procurement cycle from analysis to review, the experience of sustaining contact with a large number of suppliers had significantly influenced decisions by a number of Councils to seek to reduce the number of funded providers as part of the tendering process.

Earlier elements of the procurement cycle also impacted on contract management. Service providers noted that the absence of a contract made for difficulties in contract monitoring. Whether the local procurement policy would lead to a contract rolling forward or would conclude re-tendering (possibly after a limited extension) made a significant difference to approaches to contract monitoring, management and review.

Finally, whilst no detailed work was done in this area, the level of resourcing for contract management work appeared to differ between the areas in which meetings were held, and it was noted that the scale of the Councils' contracting workforce would have an impact on its capacity to carry out contract management functions, and other procurement activities.

## Some Key Issues

The purpose of the local meetings within the Joint Improvement Team -- Scottish Procurement Directorate social care procurement programme was to establish the current range of issues requiring attention, including those which might benefit from consideration within national guidance, and to identify practice from which others might learn. The local meetings were designed to provide opportunities for the JIT -- SPD group to listen to the experience of Council staff and service providers, and learn from their knowledge. From the point of view of the JIT -- SPD group, these main purposes were achieved, and the group appreciated that this depended on the commitment of others both to attend the meetings and to make the detailed and open contributions which they did.

From all of the above material, and the wide range of matters raised, which reflect the complexity of social care procurement, some key issues, amongst others, included:

1. Balance in national policy/consistent approach v. local discretion
2. Nature of partnership between local authorities and service providers
3. Nature of involvement of service users and carers
4. Relationship between and evaluation of cost and quality
5. Local arrangements, training and skills in social care procurement
6. Market change strategy – number and scale of providers
7. Differential approach to directly provided/purchased services
8. Level of specificity/flexibility in service specifications
9. Approaches to framework agreements
10. Experience and planning for re-tendering or roll forward contracts
11. Balance between fairness and competition v. stability and continuity
12. Knowledge, roles and responsibilities with TUPE
13. Contract monitoring and management approaches and resources
14. Links with assessment, care management and personal outcomes
15. Implications of self-directed support

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