

National Social Care Category Strategy for local government



Acknowledgements

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Foreword

As part of the Local Government Association's (LGA) National Procurement Strategy,¹ which was launched in July 2014, we identified that effective category management can reduce demand, simplify the way we buy, and aggregate spend across an entire organisation or multiple organisations. We are committed to exploring this approach in some of the most significant areas of spend: energy, ICT, construction and social care. The following strategy sets out our specific recommendations for social care category management.

The Finding Common Purpose project, commissioned by the Association of Directors of Adult Social Services (ADASS) and the Care Provider Alliance (CPA) identified the need for better cooperation between commissioners including procurement and providers. Resources have already been developed for social care commissioners which support this aim, including Commissioning for Better Outcomes. This strategy complements Commissioning for Better Outcomes² and addresses the need for better cooperation with providers by focusing more specifically on social care procurement. It recognises the transformational role procurement has in the social care commissioning process

and highlights examples of good practice from across local government.

We recognise that the field of social care is large and as part of the continued rollout of the National Procurement Strategy we will be considering and consulting upon whether there is a requirement for a separate children and young persons category management strategy.

Social care provides a unique procurement challenge as good practice not only focuses on commercial processes and efficiency gains but also on the individuals that social care services will support. This personalised approach can sometimes seem at odds with the pressing need across local government to balance the books. However this strategy shows that efficiency gains and a personalised approach are not mutually exclusive. We do this through five themes:

- **Leadership:** championing the value of information sharing and joint commissioning with other agencies and top-level recognition of the need to implement unique processes for social care procurement.
- **Outcome focused procurement:** putting the needs of individuals at the centre of service design.
- **Partnering and collaboration:** better integration between health and social care and joint procurement where shared outcomes can be achieved.

¹ National Procurement Strategy for Local Government in England, LGA, 2014

² See: <http://www.local.gov.uk/documents/10180/5756320/Commissioning+for+Better+Outcomes+A+route+map/8f18c36f-805c-4d5e-b1f5-d3755394cfab>

- **A person-centred approach:** involving service users throughout the procurement process and exploring procurement routes that give more choice to service users.
- **Development of markets:** creating an environment in which providers are supported to develop innovative solutions to better meet the needs of service users.

With funding reductions and demographic pressures causing funding gap growing on average by just over £700 million a year in adult social care alone, this strategy is a timely guide to the role procurement plays in safeguarding high quality social care services.

I therefore strongly encourage you to support the recommendations made in this strategy and to share and use the suite of additional resources available on the National Procurement Strategy microsite.³

Councillor Shirley Pannell

Deputy Chair, Improvement and Innovation Board

Local Government Association

The provider perspective

Social care providers care for hundreds of thousands of people 24 hours a day and people rightly expect care and support that is of high quality but also efficiently organised and delivered. Procurement processes need to support providers to achieve this and reflect an understanding that care needs to be personalised and that providers want to focus on delivering this. We welcome this Social Care Category Strategy as an important step forward in linking the aims of procurement with the aims of person centred social care.

The Care Providers Alliance (CPA) has been a member of the Finding Common Purpose Steering group and the focus on

better relationships between commissioners and providers has been much welcomed. This National Social Care Category Strategy and the supporting model standing orders and provider protocol will form a framework to continue to promote respectful working between commissioners and providers that sees both as equal partners in securing positive outcomes for people receiving social care services.

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³ <http://www.local.gov.uk/web/lg-procurement>

Definitions

Diagram 1: The commissioning cycle



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Definitions used for the purpose of this document:

Clinical commissioning group (CCG):
 A group of GP practices in a particular area that work together to plan and design local health services. Each CCG received a budget from NHS England to spend on a wide range of services that include hospital

care, rehabilitation and community-based care. A local CCG should work with the council and local community groups to ensure that the needs of local people are being met.

Commissioning: the effective design and delivery of policy or services. It involves understanding the needs of the people using or affected by the service or policy and engaging with stakeholders to deliver an effective product.

4 Commissioning for Health and Social Care, Institute of Public Care, edited by Alex Claburn, SAGE, 2014 p143

Coproduction: This refers to viewing people who use social care, their families, carers and wider communities as equal partners in decision-making. It recognises that people who use social care services (and their families) have knowledge and experience that can be used to help make services better, not only for themselves but for other people who need social care.

Direct payments: Payments made to individuals who request to receive one to meet some or all of their eligible care and support needs. Money is paid to the person (or someone acting on their behalf) on a regular basis by the council so they can arrange their own support, instead of receiving social care services arranged by the council. Direct payments are available to people who have been assessed as being eligible for council-funded social care.

Health and wellbeing boards: A group of health and social care leaders who work together at a local level to help improve local services and deliver better outcomes for local people. Health and Wellbeing Boards are tasked with producing a joint health and wellbeing strategy for the local area. The boards will usually include senior elected members, senior officers from the council, local CCGs, local health providers, NHS England commissioners and a representative of the local Healthwatch. It may also have broader representation (for example, from housing).

Joint strategic needs assessment

(JSNA): A continuous process of identifying the population needs of a local area and the local assets to inform decisions made locally about what services are commissioned. The core aim is to improve the public's health and reduce inequalities. It should therefore guide the work of Health and Wellbeing Boards, and lead to a joint health and wellbeing strategy.

Market positioning statements (MPS): An MPS lays the foundations of relationships

between the council and providers of social care services. It should cover all potential and actual users of services in the local area, not just those that the state funds. An MPS should signal to providers commissioners' intentions to commission services now and in the future to enable them to respond effectively. They are likely to include summaries of the needs of the area, including the outcomes that people using services and the local population want to achieve and the activities the council will undertake to meet needs.

Outcome: An aim or objective that people would like to achieve or need to happen – for example, continuing to live at home, or being able to go out and about.

Personalisation: A way of thinking about care and support services that puts people who need care and support at the centre of the process of working out what those needs are, choosing what support to use and having control over their life. It is about the person as an individual, not about groups of people whose needs are assumed to be similar, or about the needs of organisations.

Person-centred: An approach that puts the person receiving care and support at the centre, treating the person with care and support needs as an equal partner; putting into practice the principle of 'no decision about me without me'.

Procurement: the process of acquiring goods, works or services. It includes acquisition from third parties and also from in-house providers. The process is part of the whole commissioning cycle as demonstrated in diagram 1. It involves early stakeholder engagement, assessing the impact on relationships and linkages with services internally and externally, options appraisal and the critical 'make or buy' decision and determining the appropriate procurement strategy and route to market.

Introduction

The Comprehensive Spending Review 2010 set significant austerity challenges for local government equivalent to a 20 per cent budget reduction between 2010/11 and 2014/15. As part of their response, the Local Government Association (LGA) and the National Advisory Group for Local Government Procurement (NAG) produced a National Procurement Strategy for local government (NPS) that was launched in July 2014. The NPS sets out a vision for local government procurement and encourages and facilitates all councils in England to engage with the delivery of outcomes to achieve this through clear recommendations in four key areas. The NPS has now been followed by category strategies for construction, ICT and now social care. Further category strategies on high spend services will also be developed. The purpose of the category strategies is to provide further guidance on specific key spend areas by setting out specific recommendations.

What is category management?

Category management in procurement can help reduce the cost of buying goods and services, reduce risk in the supply chain, increase overall value from the supply base and gain access to more innovation from suppliers. It is a strategic approach that focuses on the majority of organisational spend for both services and supplies and if applied effectively seeks to reduce demand, simplify the way we buy and

aggregate spend across an organisation or multiple organisations. The results can be significantly greater than traditional transactional based purchasing.

This strategy is aimed at council procurement officers to support them in managing the key spend category of social care. A suite of additional supporting documents for service users, providers, commissioners and elected members examine what good practice looks like. This strategy complements 'Commissioning for Better Outcomes', a set of standards for commissioners of adult social care, by focusing on best practice in the procurement of all social care.

In many ways social care procurement presents a unique challenge to procurement. In other areas of council spend good procurement focuses on commercial processes and how procurement can support the social and economic goals of the council. However, good procurement of social care services has more of a focus on the individuals that services are provided for, meaning that commissioners and procurement officers must take a personalised approach to procurement. That is not to say that making savings is not important for councils, and given the high spend on social care services councils are attuned to the need to reduce costs in this area. This theme carries through the chapters in this strategy with case studies showing how councils can make savings whilst at the same time focusing on outcomes for individuals and groups.

In social care procurement the key emphasis is on procuring in partnership with individuals and providers to ensure services are adequately meeting people's needs. In developing innovative solutions to addressing complex needs councils should also be mindful of the balance of risk each stakeholder carries. Ultimately, care centred decision making must guide social care procurement, setting it apart from other key spend areas.

The complexities and unique nature of social care procurement and the role of procurement in the commissioning cycle can affect the relationships and perceptions between different stakeholders. Whilst procurement professionals will be acutely aware of their responsibilities under the Public Contracts Regulations 2015, this can be perceived as causing tension with both commissioners and providers who will be focused on developing a person centred, outcomes focused service. It is the purpose of this strategy to provide procurement professionals with the right tools to manage this complex process and mitigate tensions. It does this by: setting out key recommendations and outcomes based on extensive consultation with different stakeholders; providing practical tools to promote synergy between social care commissioning, providers and procurement; and highlighting best practice in social care procurement.

The main characteristics of good procurement in social care which are set out in this strategy are:

- Procurement officers are involved throughout the commissioning cycle, so that options about how money can be spent on health and care are understood, and market analysis is available at the outset of the process.
- Procurement imperatives are aligned with those of the commissioners, and procurement officers must be able to offer a range of

solutions that are person centred, plus deliver timely and adequate support to individuals.

- Long term and trusting relationships are built with current and potential care providers to foster innovation.
- Boundaries between the activities in the social care commissioning cycle can be porous. This strategy is therefore relevant for anyone responsible for the buying or delivery of social care and support within a council.
- Quality communication between stakeholders is paramount to achieving the right outcomes for people who use services.
- The market for social care provision is relatively 'horizontal' – the majority of providers are single care homes so procurement approaches must demonstrate the importance of creating and maintaining a diverse and appropriate market through which commissioners and individuals who have a personal budget or personal health budget have a choice of quality services to buy.
- Due to the interconnected nature of health and social needs, procurement strategies are aligned with local clinical commissioning groups (CCGs) and other NHS services so that: the service provided to people is seamless; providers can map service need in a local area; and so funding flows are agreed at the outset and are not a factor that delays people receiving the care and support they need.
- Social care procurement strategies have regard to housing needs and solutions for people with assessed needs in their area.

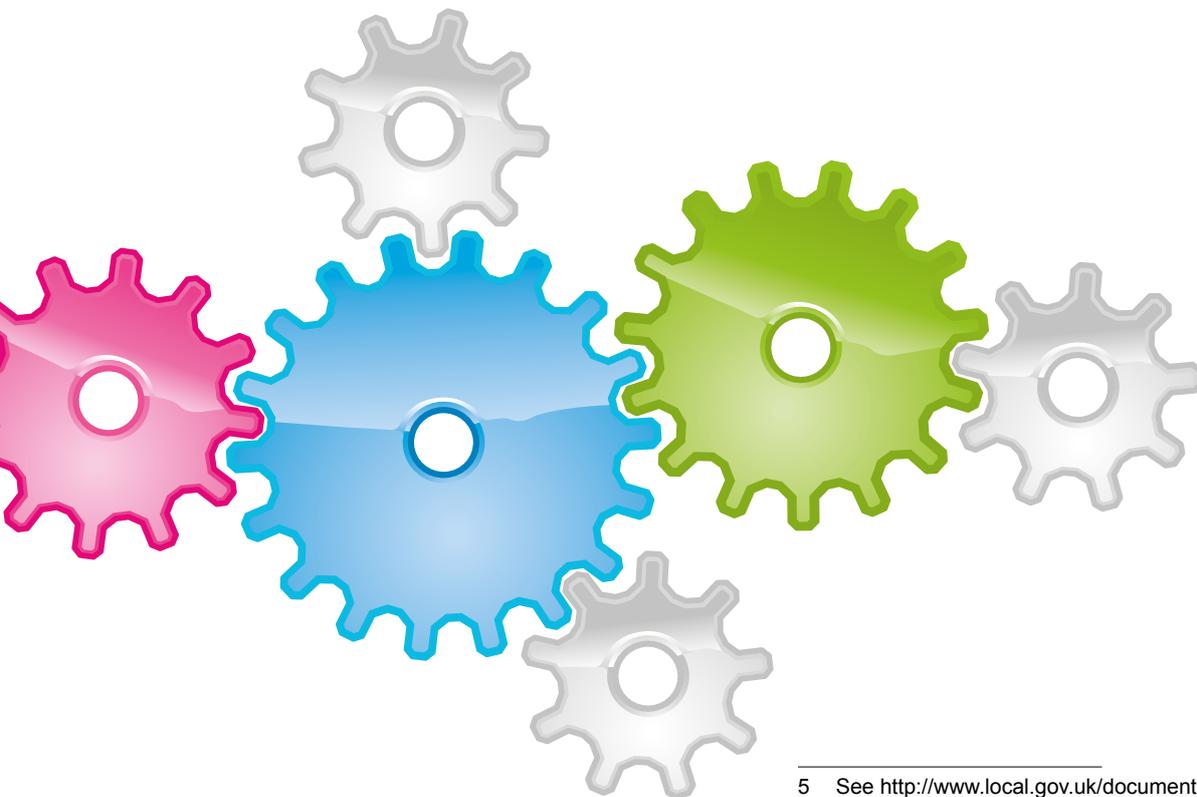
The commissioning context

In order to fulfil their joint duty of care, commissioners and procurement must ensure they are working in partnership to meet the needs of those their services are being delivered to. This recognises procurement's role in supporting the effective implementation of overarching commissioning objectives. In addition to complying with the legislative duties of the Public Contracts Regulations 2015, procurement, as part of the commissioning cycle, must adhere to the various legislative requirements of the Care Act 2014 and the Children and Families Act 2014.

Duties within the Care Act 2014 require that commissioners provide services that maximise independence, prevention and wellbeing. Councils must promote, without gold-plating, equality and diversity in the provision of care and support services. The Care Act 2014 also requires that care and support is integrated with health services, including the provision of housing accommodation.

Duties within the Children and Families Act 2014 also require that councils place children, young people and families at the centre of decision making, enabling them to participate in a fully informed way, and with a focus on achieving the best possible outcomes for children and young people. Councils must carry out their duties under the Act in a way that promotes integration between education and training provision and health care and social care provision.

Further information about good practice in commissioning can be found in 'Commissioning for Better Outcomes: A Route Map'.⁵



⁵ See <http://www.local.gov.uk/documents/10180/5756320/Commissioning+for+Better+Outcomes+A+route+map/8f18c36f-805c-4d5e-b1f5-d3755394cfab>

Leadership

Strong leadership at a local and a national level is vital to ensure the best outcomes in social care procurement. At a local level councils should take the lead in building strong commissioning relationships with stakeholders including health services, providers and service users. This includes considering joint financing across social care and health when common outcomes can be realised.

Procurement should be seen as transformational, rather than transactional, and should use its negotiation and problem solving skills to come up with innovative approaches to service design, evaluation, partnership working and customer engagement. Procurement should be involved throughout the strategic commissioning cycle, as echoed in Diagram 1 (page 6).

The danger of not including procurement teams in the pre tendering stages is that in the tendering exercise, procurement officers may not have adequate information to understand where the outcomes came from or how they were reached. They may then miss the opportunity to most effectively integrate that learning into the tendering exercise and in requests for clarification or further information. Compact Voice notes that “VCS (voluntary and community sector) organisations report having fantastically productive discussions around service design and co-production in partnership with senior managers at a strategic level, only to find that none of this filters down to directorate or service levels where the

spend actually happens – and where attitudes can be much more antagonistic and protectionist”.⁶

Case Study – London Borough of Islington

The London Borough of Islington recognises the importance of procuring services jointly with the Islington Clinical Commissioning Group and has reflected this in the development of a senior procurement role which covers both the council and the local CCG. This post is responsible for managing contracts and relationships with health and social care providers and the management of a pooled budget for mental health services. By having a joint procurement lead in this area, service reviews for mental health services can more easily identify the strengths and gaps across health and social care. Integral to this post is the development of public involvement within commissioning and leading on the social care personalisation agenda for mental health in Islington, and leading on the social care personalisation agenda for mental health in Islington.

⁶ Understanding Commissioning and Procurement: A Guide for Local Compacts, Compact Voice, written by Helen Thomas, p 18

Leaders should recognise their role in embedding the principle of putting the user experience at the centre of the social and health care systems. Senior council officers also need to signal a commitment from the top to recognise the strategic importance of procurement throughout the commissioning cycle. In particular, leaders should ensure that governance arrangements are flexible enough to recognise the person-centred nature of social care procurement.

At a national level there needs to be a more strategic national conversation with social care providers through the national bodies representing them, supported by NAG.

Case Study – Hull City Council

Hull operates a category management model, where procurement interfaces with the entire commissioning process to ensure effective team work and communication. Hull makes sure communications plans are in place for commissioning activities and that relevant steering groups lead the change process. Each commissioning activity sets out an outcomes framework that is informed through direct customer engagement.

What should councils be doing?

- Ensuring that consultation and engagement with stakeholders, providers, health, housing and other agencies is standard practice.
- Considering alternative or joint funding mechanisms where appropriate.
- Championing the value of sharing information and developing joint analyses.
- Adopting category specific standing orders to cover social care procurement transactions, an example is available on the NPS microsite.⁷

The ADASS Eastern Region has adopted the model standing orders for adult social care. The standing orders have been amended to reflect the region's needs and is used to inform good commissioning practice.

Outcomes

- It is clear to local leaders that social care procurement is different from other category spends and that procurement processes are modified accordingly.
- Local leaders collaborate with other stakeholders to deliver services that are procured across different funding streams for common outcomes based on the needs of individuals.
- Local leaders look at procurement expertise as transformational, rather than transactional, and encourage procurement input and collaboration in all areas of the commissioning cycle.

⁷ See <http://www.local.gov.uk/web/lg-procurement>

Outcomes focused procurement

An outcomes focused approach to procurement and commissioning places the emphasis on results instead of activities, and shifts the focus from how a service operates to the results or outcomes it achieves. An important role for procurement is ensuring that this is reflected in the service specification. Although efficiency savings are not the primary indicator or driver of good social care procurement, if done well, outcomes based contracts can deliver a fit for purpose service and deliver efficiency savings for councils.

Outcomes have been the focus of social care commissioning for some time and many of the key principles are now codified in law. The Care Act 2014 sets out that councils must facilitate the market to offer continuously improving, high quality, appropriate and innovative services. The Children and Families Act 2014 has very clear principles enshrining good outcomes for children and young people and parental preference for services. Procurement processes must adhere to these principles in the overall strategic objectives for local procurement strategies, as well as in the nuts and bolts of contract drafting and monitoring.

Service users are the experiential experts of social care services. Therefore consideration should always be given to involving service users in shaping specifications and informing outcomes.

By reducing the level of detail on functionality requirements at the specification stage of procurement and instead detailing the outcomes required, the risk and responsibility for functionality shifts from the purchaser to the supplier. Councils need to recognise this in their approach to procurement.

Early market engagement should take place so suppliers have sufficient time and access to procurement and commissioners to develop appropriate solutions to the outcomes sought. This has the additional benefit of encouraging innovation.

Wiltshire County Council

Wiltshire Council has developed the 'Help to Live at Home' domiciliary care programme which commissions for outcomes that promote independence. Payments to providers are based on whether set outcomes have been achieved. So far the programme has achieved: stability in the numbers of older people being placed in residential care; for all older people who receive the service, 60 per cent are reabled to live independently within six weeks and require no further service; providers have security in the market and at least one of the four providers offers all staff contracts on a salaried basis. In addition to the service benefits the outcomes based approach has led to significant financial savings of £11.6 million over the duration of the programme. Wiltshire are now extending this approach to other customer groups.

Prior Information Notices (PIN) can be particularly useful for contracts for the care of people with complex needs, for children, and for people who lack capacity. The commissioner and procurement manager will agree on what 'good looks like', and then ask the provider market to come up with their proposals on how those outcomes can sustainably be met. The involvement of service users, their carers and family members in this process should be encouraged where appropriate.

Prior Information Notices

Councils (referred to as 'sub-central authorities' in the Regulations) can use a PIN to give suppliers early awareness of future projects and allow them to plan accordingly. In some procedures it is possible for authorities to reduce the minimum time limits when a suitable PIN has been published. Councils can use a PIN as a call for competition providing that the PIN:

- refers specifically to the supplies, works or services that will be the subject of the contract(s) to be awarded
- indicates that the contract will be awarded by restricted or competitive procedure with negotiation, without further publication of a call for competition, and invites interested suppliers to express their interest in writing
- contains specific information about the contract, similar to that required in the standard contract notice form
- has been sent for publication between 35 days and 12 months prior to the date on which the authority subsequently invites responders to the PIN to confirm their continuing interest.

There must be agreed methods of evaluating whether the outcomes have been met. These should be proportionate to the value and complexity of the care delivery and must be supported by competent and robust contract management systems. Councils must be prepared to develop the necessary ICT systems that can facilitate this approach.

Outcomes based contracts are an especially effective tool in implementing commissioning strategies that are focussed on prevention and enablement. With procurement involved in the whole commissioning cycle there will be a more seamless incorporation of the needs of service users into the design of services; both through specifications and contract management, monitoring and evaluation.

Essex County Council

Essex County Council have developed a category strategy using an outcome based, integrated process. 'Increasing Independence for Working Age Adults', is for people with learning disabilities and/or physical or sensory impairments. The key outcome is for people to live independently and exercise control over their lives. The procurement team are working with commissioning, operational teams, project management, and commercial teams to develop a progressive approach to care support. Procurement's market development team has centred on working with the existing care market to explain the strategy and with residential and supported living providers to understand what the future spend of the county council is likely to be. The strategy has a strong evidence base, including the current numbers and cost of working age adults in residential and supported living placements, as well as the capacity and range of providers within Essex County Council.

Outcomes

- Councils achieve value through developing and using appropriate specifications and procurement processes developed for outcomes based commissioning.
- A direct link between higher level strategic outcomes and individual service users' assessed care needs and the benefits they receive from each service.
- Increased opportunities for personalisation.

What should councils be doing?

- Making use of PIN notices to involve the independent market's suggestions of what can be done to achieve outcomes.
- Utilising the model standing orders for adults' services and children's services which is available on the NPS microsite: <http://www.local.gov.uk/web/lg-procurement>
- Involving service users in the design of outcomes focused specifications.
- Involving procurement through the whole commissioning cycle.

Partnering and collaboration

‘In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) must cooperate with one another in order to secure and advance the health and welfare of the people of England and Wales.’

National Health Service Act 2006

This strategy calls for leaders of health and social care to work more effectively together and considers the importance of local areas partnering with local CCGs and NHS England to commission services on behalf of their residents. Shared procurement services and posts should allow for a more integrated approach across social and health care. The Care Act 2014 obliges local authority commissioners to cooperate with each of its relevant partners, such as NHS bodies. They must promote integration between social care and health provision with the aim of joining up services. The Children and Families Act 2014 places a duty on health bodies and councils to jointly commission some services for children with special educational needs and disabilities.

Case Study – Leeds City Council

The objective of the Adults and Health Category Plan is to group together related goods and services contracts based on the ability of the market to supply and not on the basis of organisational boundaries. The category plan supports Leeds to realise a range of benefits from its procurement activities relating to those goods, works and services covered under the adults and health category. This includes value for money, improved governance and assurance, and improved support for the council's wider ambitions. The plan has been jointly developed between colleagues from the Public Health, Strategy and Commissioning (Supporting People), Adults Social Care and Projects Programmes and Procurement Unit (PPPU), Public Health, Strategy and Commissioning and Adult Social Care.

Senior management across health and social care need to agree service needs and joined up funding arrangements.

Councils and CCGs have equal and joint duties to prepare joint strategic needs assessments (JSNAs) through their health and wellbeing boards in order to identify the current and future health and social care needs of the population in their area. They are also required to prepare joint health and wellbeing strategies (JHWSs) for meeting the needs identified in the JSNAs. Procurement officers should be involved in these assessments both to inform the assessments criteria so that the information collected is relevant to corporate procurement strategies, as well as to use the information to ensure that the procurement strategy is relevant to the needs identified and to inform the scope of block contracts and frameworks.

There are a number of legislative flexibilities in place to enable joint working between NHS bodies and councils. The NHS Act 2006 enables NHS bodies and councils to enter into partnership arrangements. These may involve pooling funds and the delegation by a council of its health-related function to an NHS body or vice versa.

The Health and Social Care Act 2012 provides the basis for better collaboration, partnership working and integration across local government and the NHS at all levels with both being given new duties to promote integrated working. There are a number of joint financing options which can facilitate greater partnership working.

Pooled budgets and the Better Care Fund

A pooled budget (or fund) is an arrangement where two or more partners make financial contributions to a single fund to achieve specified and mutually agreed aims. Pooled budgets are covered by Regulation 7 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000. It is a single budget, managed by a single host with a formal partnership or joint funding agreement that sets out aims, accountabilities and responsibilities. A recent consultation sought views on amending the regulations to allow for primary care to be included. The responses to this consultation were still being analysed at the time of publication.

NHS bodies and councils entering into partnership arrangements must ensure that a written agreement is in place to manage the operation of the arrangement. The regulations specify what the agreement must address. These include the agreed aims and outcomes, the particular functions subject to the arrangement, the levels of contributions to be made and the arrangements in place for monitoring the exercise and/or managing any pooled funds.

Regulation 4 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 sets out that partners must

jointly consult people who would be affected by the partnership arrangement before they enter into it. Joint financing arrangements such as pooled funds, can facilitate joint working. However, it should be noted that pooled budgets are not the only option for delivering care and support in an integrated way, and other options such as aligned budgets are also available. Commissioners should focus on the difference being made for people who use services and whether the right arrangement is in place for the service's needs, rather than solely on the process or structures.

The £3.8 billion Better Care Fund (BCF) was announced by the Government in the June 2013 spending round, to support transformation and integration of health and social care services to ensure local people receive better care. The BCF is a pooled budget that shifts resources into social care and community services for the benefit of the NHS and local government. Providing detailed information about the BCF is outside the scope of this strategy however those with the responsibility for procuring health and social care services should be aware of their locally agreed BCF Plan.

Other tools to facilitate partnership working

Transfer payments (section 76 and section 256 of the NHS Act 2006) allow councils to make revenue or capital contributions to NHS England or CCGs and vice versa in certain circumstances.

The NHS Act 2006 also offers other flexibilities such as lead commissioning arrangements, integrated management and frontline staff. Lead commissioning, where one partner leads service commissioning on behalf of another, may be a sensible option depending on the size and make-up of the service to be commissioned. Integrated management or service provision is when partners merge to create a single staff structure for the provision of a service or services.

Statutory obligations of health partners

By April 2016, the Public Contracts Regulations 2015 will apply equally to NHS and local authority commissioners. In terms of sector specific procurement regulations, the Procurement, Patient Choice and Competition Regulations 2013 apply to all NHS commissioners – CCGs and NHS England. They do not apply to other organisations that may commission health care services on commissioners' behalf, including councils.

NHS commissioners have ultimate responsibility for complying with the Procurement, Patient Choice and Competition Regulations 2013, including where they have delegated responsibility for commissioning to a third party or relied on third party support or advice. NHS commissioners must therefore ensure that those third parties act in a way that enables the commissioners to comply with their own duties under the Procurement, Patient Choice and Competition Regulations 2013. However compliance with this set of Regulations will only be relevant in so far as the procurement relates to health care services commissioned for the purposes of the NHS, and should be raised with the NHS commissioner. Additional informal advice on the Procurement, Patient Choice and Competition Regulations 2013 and how they relate to joint commissioning can be obtained from Monitor.

The guidance on the NHS standard contract emphasises the flexibility that NHS commissioners have to enter into an agreement that meets the needs of their local health economy and exhorts NHS commissioners to commission for outcomes, for service integration, for transformation and for sustainability.

Outcomes

- There are effective links with health services.
- Commissioners and procurement teams understand people's needs and abilities

across health and social care.

- Councils enhance quality of services through effective collaboration with NHS bodies or via a shared service on common services without compromising whilst still achieving social value and providing opportunities for local businesses.
- There are shared locally set objectives for health and social care to incentivise keeping people well and safe in the community.
- Local leaders actively seek to meet their duties under the Care Act 2014 in relation to prevention, integration, cooperation with stakeholders, development of the independent market and promoting wellbeing; through the intelligent and innovative procuring of services.

What should councils be doing?

- Making effective use of Market Positioning Statements (MPS) and JSNAs to bridge the gap between information, analysis of that information and procurement strategies for local health and social care.
- Understanding and using integrated social and health care delivery systems (BCF, pooled budgets, bespoke agreements).
- Establishing joint funding arrangements where appropriate.
- Ensuring compliance with legislation and regulations all partners are subject to.

A person centred approach

The guidance on the new light touch regime under the Public Contracts Regulations (PCR) 2015 makes it clear that allowing people who use services to choose their provider, whether through call-off from frameworks or dynamic purchasing systems, does not contravene requirements around transparency and treating providers equally.

By understanding and participating in the procurement process, individuals will understand better what their service can and cannot deliver. More importantly, it will enable the end users to be treated as equals in the delivery of their care. True commercial understanding includes the evaluation of outcomes and the needs of people using the services, using a best price/quality ratio where the service quality is paramount. This can involve setting a high minimum quality standard, and then accepting the lowest cost bid to meet that standard.

Procurement processes must continue to adapt to bring the perspective of the service user (and their carers/family members) into the procurement strategy. This will give a sense of 'ownership' of the final care delivery to the people who will be using the services. Good service user engagement goes beyond analysing the complaints and surveys about a service and brings the voice of the end user into the procurement cycle through, for example:

1. pre tendering exercises with individuals (and their carers/family members) to assess what needs to be commissioned/ decommissioned
2. development of specifications in genuine consultation with individuals (and their carers/family members)
3. involvement of individuals (and their carers/family members) in evaluation panels to shortlist and award contracts

4. integration of service choice into the care planning process
5. involvement of individuals (and their carers/family members) in contract monitoring and evaluation.

Newcastle City Council –co-production

Newcastle City Council together with NHS Newcastle Gateshead Clinical Commissioning group are jointly commissioning a new speech and language therapy service through co-production with stakeholders, including service users. The council commissioned Contact a Family, a voluntary and community sector provider with experience of co-production and of work with children with disabilities and their families, to advise project leaders on co-production and to provide a 'critical friend' challenge. Throughout the commissioning process the project team have consulted parent carers, children and young people, special educational needs coordinators and service providers. Engagement in the early stages of the project comprised of questionnaires and focus groups. The service redesign stage provided greater opportunities for involvement with the project team carrying out a 'yellow brick road' exercise with stakeholders. Here participants were asked to consider what a new service might look like by identifying the pathway through the service: the individual steps an individual would take through the service; the resources they would need; and the brick walls and barriers they might come up against and how these could be overcome. Participants were also asked how they would measure progress. From this the project team developed a pathway for 0-25 years which was sent out for further comment. The engagement activity uncovered a number of issues, service gaps and unmet need. The co-production approach has meant stakeholders and service users have greater investment in the outcomes of the commissioning exercise and this has produced a more comprehensive service design.

Involving service users, particularly children and young people, in the procurement process is viewed by some as creating too high a risk of challenge. Additional risk should not be used as a reason to exclude service users from the procurement process. Councils should instead consider what reasonable steps could be taken to mitigate against the risk so as to facilitate involvement. Any decision not to engage service users in the procurement process should be accompanied by a fully reasoned explanation detailing why no steps short of exclusion from the process could adequately mitigate against the risk. Possible ways to lessen risk whilst providing appropriate opportunities for inclusion include graduated involvement based on the individual's capability rather than a blanket approach to service user engagement and engaging with advocates/representatives for those who lack capacity to be involved themselves.

Case Study – Cumbria

Cumbria County Council's contract procedure rules incorporate the following into their procurement methods for all social care contracts:

- ensure services and their procurement are user-focused and user-led
- seek to obtain the best service possible for service users and their carers, most cost-effectively
- ensure fairness to organisations providing or wishing to provide services.

The council maintain a record of how decisions are made under the contract procedure rules and a summary report is prepared annually for the Head of Management Audit. This ensures that there is consistency in the processes used.

A person centred approach is about involving service users in designing the services provided to them. One option to increase choice for service users is through the use of pre-payment cards. Rollout of pre-payment cards usually starts with adult social care but they can also be used for children's services where appropriate.

Resource and cost savings through prepaid cards

Direct payments or personal budgets have been around for many years now and have worked relatively well in allowing service users to choose their own care providers. However issues around ensuring that money is spent in accordance with the agreed support plan and how to monitor any unspent money remain. Processes put in place to resolve these issues are often cumbersome, time consuming and are not user-friendly, with unspent funds are difficult to reclaim.

Over 70 councils have moved to using prepaid cards to make adult social care and other direct payments. Funds are uploaded onto a card, looking like a debit card, and given to the service user and/or their carers. The cards include an account number and sort code which allows anyone with a bank account to be paid, either directly or via direct debit. Both the council and the service user has access to real time transaction level details, money can be uploaded (for emergency funding) or blocked instantly. Councils can block certain inappropriate transactions (such as cash) as agreed during implementation and the funds remain the property of the council until it is spent.

Councils using prepaid cards say that they allow councils to focus on monitoring high value processes. They are easy to use, safer and more secure than cash, and help make more effective use of staff time. Councils report savings of 5-10 per cent of the direct payment budget through using prepaid cards.

Surrey County Council has a framework contract for pre-paid cards that is available to all councils. For more information see <http://prepaidnetwork.org.uk/> or contact: Nicola.sinnett@surreycc.gov.uk

Outcomes

- Councils operate simple streamlined procurement processes that are focussed on outcomes for people using services.
- All procurement for social care services is carried out in the spirit, as well as to the letter, of the new light touch regime.
- Procurement processes and contracts measure outcomes rather than simply meeting needs.
- The individual service user (and/or their carers) is involved in the procurement process as far as possible, in terms of the design of the service and in their feedback on the service provided.
- During the procurement process, consultation and engagement with stakeholders, people who use services, providers, health, housing and other agencies is standard practice.

What should councils be doing?

- Ensuring that the specific needs of different groups of users, including in particular disadvantaged and vulnerable groups, inform the specifications of contracts.
- Involving service users in developing specifications of contracts.
- When deciding what the most economically advantageous tenders are, the council takes into account the quality and sustainability of the offer, and its price/quality ratio should reflect the outcomes required.
- When awarding contracts or places on frameworks, use award criteria which are properly linked to the subject matter of the contract.
- Promoting the easy read documents (available on the NPS microsite⁸) to service users and support services to facilitate a greater understanding of the procurement process.

8 See <http://www.local.gov.uk/web/lg-procurement>

Development of markets

Case Study – drug and alcohol services, Leeds City Council

The new community drug and alcohol prevention, treatment and recovery service was driven by national and local policy changes and was designed by the council with extensive engagement with providers. The service started in July 2015 and consists of a consortium led by one company giving an integrated service replacing the previous arrangement of 15 providers.

Several events were held to engage the market including a key findings event which gave providers an update on the service review process and sought their input on the new delivery model. Subsequently an event in October 2013 sought feedback from providers on developing the service model through a strengths, weaknesses, opportunities and threats discussion on a number of themes. Finally during the pre-procurement stage a market sounding exercise in November 2013 sought responses to 12 questions with the aim to clarify whether there was market ability and appetite to deliver the proposed service.

Moving on to procurement stage, engagement continued through a bidders' day held to support completion of the pre-qualification questionnaire (PQQ). Further communication occurred during the procurement which was particularly helpful to both bidders and the client as it allowed negotiation on pre-identified areas of the specification and contract. In particular the concept of the integrated service delivery model was clarified leading to a thorough understanding by the bidders, and ultimately a better service provision.

Finally feedback was requested from the bidders on the procurement process as part of a 'lessons learned' exercise which will prove helpful to the council for future procurements.

The challenging balancing act for councils is to develop high quality local services which meet the need of services users whilst also ensuring providers are treated equally and that the whole process complies with the principles of fair procurement. It is important to build long term and trusting relationships with current and potential care providers to achieve this because innovation in care markets is difficult to achieve through contracting alone. Furthermore using individual contracts as the main or only provider management mechanism is likely to produce very high transaction costs.

When councils are trying to meet the needs of adults and children with complex yet low incidence needs, it makes sense to develop regional procurement strategies to coordinate the development of a care market appropriate to those needs. It is important to ensure that such a regional approach does not necessitate displacing service users from their community for housing or support.

By communicating and forecasting together with the local independent market, providers and procurement managers can jointly find the best way to shape the market, focussing on prevention, enablement, and high quality services. Forecasting with providers provides suppliers with the information they need to develop local services which meet current and future demand, especially in meeting the needs of people with complex health and social care requirements. The Care Act 2014 states that councils should use JSNAs, or other similar analyses, together with local partners, such as the NHS, to develop a broader, shared understanding of current and future needs. Local health and wellbeing boards should work with procurement so that the data and analysis produced is relevant to procurement strategies and social care spend.

This requires councils to take the lead on developing an appropriate approach to risk management and supporting the local independent market. It also falls on procurement to have a streamlined procurement process for social care, so that the interface between the commissioners and providers is clear and simple.

Case Study – Kingston upon Hull City Council

Hull has a unique approach based on pre-accreditation that delivers three levels of review. This review process strategically shapes and shifts the market place, to ensure that the tender is well designed and achieves the best results for customers, but also informs a clear sector market positioning statement. The approach enables providers to submit a business plan against a specification for change and supports the council in developing a narrative for service remodelling.

Risk management

The risk balance between commissioners and providers must be fairly distributed and

clearly set out in contracts. The whole life cost of the contract and the sustainability of requests for reductions in contract values must be discussed and agreed amongst stakeholders.

Having an appropriate approach to risk management includes clearly stating where and how providers are assuming a degree of risk in contracts. It should also be clear where commissioners remain liable for the overall safety and wellbeing of people.

It is generally accepted that providers are primarily responsible for the quality of care and support services: it therefore follows that a sizeable proportion of risk will inevitably lie with them. However, commissioners must be careful to ensure providers are not overloaded with risk as this will threaten service quality and innovation in the market, as well as undermining commissioners' relationships with providers.

Risk management tools may be prescribed in a council's own regulations and therefore departmental officers have limited scope to work with these rules. There should be consideration of whether a council's risk management tools are fit for purpose and whether standalone tools are required for social care procurement.

Suggestions for a more proportionate and fairer sharing of risks include:

- free and open dialogue to focus on the outcomes sought rather than process
- developing local Market Position Statements which described the roles of providers in explicit terms which involve a fair sharing of risk
- commissioners and procurement managers could present providers with an analysis of costs for similar services, to start a dialogue on the sustainability of the commissioners' ambitions.

Another area of risk for providers is around innovation. Smaller providers in particular find it difficult to take the risk of developing services and training staff to meet demand with no guarantee of winning the contract. The Care Act 2014 has a strong emphasis on providing for complex needs and procurement

processes must be developed that encourage capacity building in the local market without asking providers to bear a disproportionate risk in terms of investment. PIN led procurement and genuinely co-produced contracts between people who use services, providers and commissioners are two ways to develop a service without asking providers to develop services in isolation and without a guarantee of a return on their investments.

The PCR 2015 introduces the 'innovation partnerships' procedure which allows the development and subsequent purchase from the same provider(s) of an 'innovative' service. This added flexibility could be a further opportunity for councils to work together with providers to develop new services.

Working collaboratively with voluntary, community and social enterprises (VCSE) enables local areas to commission and procure services which are responsive and high quality. True innovation comes from strong relationships between a council and its local care market, which in turn inform tendering exercises. Involving procurement officials in provider forums and consultation exercises will ensure a joined up approach that will take account of any prior provider engagement that has taken place.

Councils can use 'the Compact' as a resource to maximise partnership working with the voluntary and community sector.

The Compact⁹ is a voluntary agreement that aims to foster strong, effective partnerships between public bodies and voluntary organisations. The Compact has five principles: a strong, diverse and independent civil society; effective design of policies; responsive and high quality services; clear arrangements for managing change and an equal and fair society. Many local areas in England also have a local Compact; they take the principles of the national Compact and reinterpret them to reflect local circumstances.

If the council is signed up to a local Compact this should be used by procurement to inform different models of service provision including staff mutuals and VCSE only contracts.

Case Study –Winterbourne View, Essex County Council

The Winterbourne View cohort of people are some of the most complex cases that procurement officers will have to design a service delivery model for. Essex County Council's procurement team are involved in bringing residents with learning disabilities and challenging behaviour out of specialised hospitals and back into their home communities.

One of these residents has been in hospital for 20 years and is very keen to get into his own flat, however previous attempts to arrange care in the community failed due to lack of specialised support. Last year, Essex County Council asked the local care market who would be prepared to develop a service for this cohort, starting with two individuals as a pilot. Seven providers stepped forward, each with a general proposal to meet the individuals' needs. However, after visiting the NHS facility which cares for some of these individuals to assess the current level of support, only four of those providers still felt confident that they could safely meet their needs.

Detailed proposals were submitted by each provider and were assessed by a panel comprising of advocates and carers of the two individuals, representatives from the hospital where these individuals currently reside, social workers, procurement and commissioning leads. After clarification and evaluation, one provider stood out as being the most appropriate solution, offering wrap around care and accommodation in the individuals own supported living flat. The one outcome that was used throughout this process was that the 'placement would not fail'. This person centred approach to care delivery will now be rolled out to place the rest of the 'Winterbourne Cohort' that Essex County Council has responsibility for.

9 See www.compactvoice.co.uk

Supporting local economies

Councils need to maximise the economic, social and environmental benefits to communities for every pound that is spent. We believe that spend with SMEs and VCSEs can make a significant contribution to local economic growth. The Public Services (Social Value) Act 2012 (the Social Value Act) only applies to contracts over the OJEU value threshold for services, however this does not preclude procurement officers considering social value for contracts below that threshold.

The Social Value Act applies to the pre-procurement stage of contracts for services and that is where social value can be considered to greatest effect. The best value duty, on the other hand, applies to all of the commissioning cycle, including procurement. This duty states that councils should include local VCSEs and small businesses in their consultations around commissioning arrangements, and be responsive to the benefits and needs of VCSEs and small businesses.

Access for SMEs and VCSEs can be improved by simplifying procurement processes and identifying forward spend wherever possible, and using this data to inform pre market engagement and supplier planning.

The light touch regime permits councils to adopt any process or procedure they choose for contracts under 750,000 euros. Above the threshold, councils do not have to use the standard EU procurement procedures but do need to advertise through OJEU and have reasonable and proportionate time limits for the tendering process. In light of the considerable flexibility permitted under the light touch regime councils should review their own contract procedure rules and consider how best to support local providers to bid for opportunities tendered by the council.

Implementing appropriate streamlined procurement processes

The Finding Common Purpose project facilitated discussions between commissioners and providers of social care and found that procurement was a significant source of friction between them. Providers complained about bureaucracy and cost, while commissioners defended the use of framework agreements as a means of rationalising the volume of potential providers. They worried that their loss of dedicated procurement capacity had led to a shift to 'corporatised procurement' with a lack of specialised social care expertise. There was also concern that the annualised accounting systems in local government worked against long-term investment and market development strategies.

There are many examples of how procurement practitioners can support providers to understand the tendering exercises, for example through training and workshops. This can be of particular value to new providers, SMEs and voluntary and community sector organisations who can be deterred by procurement processes.

Some councils use 'lean sourcing' techniques to emphasise the need to carry out significant levels of pre-procurement market engagement with a diverse range of prospective suppliers in order to warm-up the market, test assumptions, and generate ideas for innovation. This forms part of the development of outcome-based specifications. It also highlights that early engagement and joint working with the procurement teams is a critical success factor. It is also generally accepted that the provision of services by SMEs and VCSEs can be enhanced by breaking down requirements into lots¹⁰.

¹⁰ The suite of 'lean sourcing' tools can be found at: <https://www.gov.uk/government/publications/lean-sourcing-guidance-for-public-sector-buyers>

Outcomes

- Councils develop health and social care forecasting techniques and implement them with local independent providers to inform current and future spend on social care.
 - Commissioners, providers and people who use services are clear on the duties and responsibilities of each party.
 - The costs of innovation of services are rationalised so that independent providers do not bear the full financial risk of developing services without a guarantee of a contract.
 - Social value considerations are developed in conjunction with the local market so that the local area will benefit from the money councils spend on health and care.
 - Procurement processes are streamlined and not a disincentive to smaller providers and VCSEs.
 - Through local Compacts leaders ensure that their procurement processes uphold their duty to 'ensure well managed and transparent application and tendering processes, which are proportionate to the desired objectives and outcomes of programmes' and 'ensure equal treatment across sectors, including reporting and monitoring arrangements, when tendering for contracts'¹¹.
- Signing up to a local Compact.
 - Making use of the flexibilities set out in the light touch regime.

What should councils be doing?

- Developing JSNAs and MPSs with the kind of data and analysis relevant to procurement strategies. These forecasting tools should be used by commissioners and procurement when drafting their local strategies.
- Tying budgets to clear lines of accountability for the outcomes being contracted for.
- Developing new services and markets as joint enterprises between councils and providers.
- Integrating the Social Value Act into contracts for social and health care.
- Adopting a locally appropriate variation of the provider protocol available on the NPS microsite.

¹¹ See www.compactvoice.co.uk



Making it happen – how the LGA and NAG will support delivery

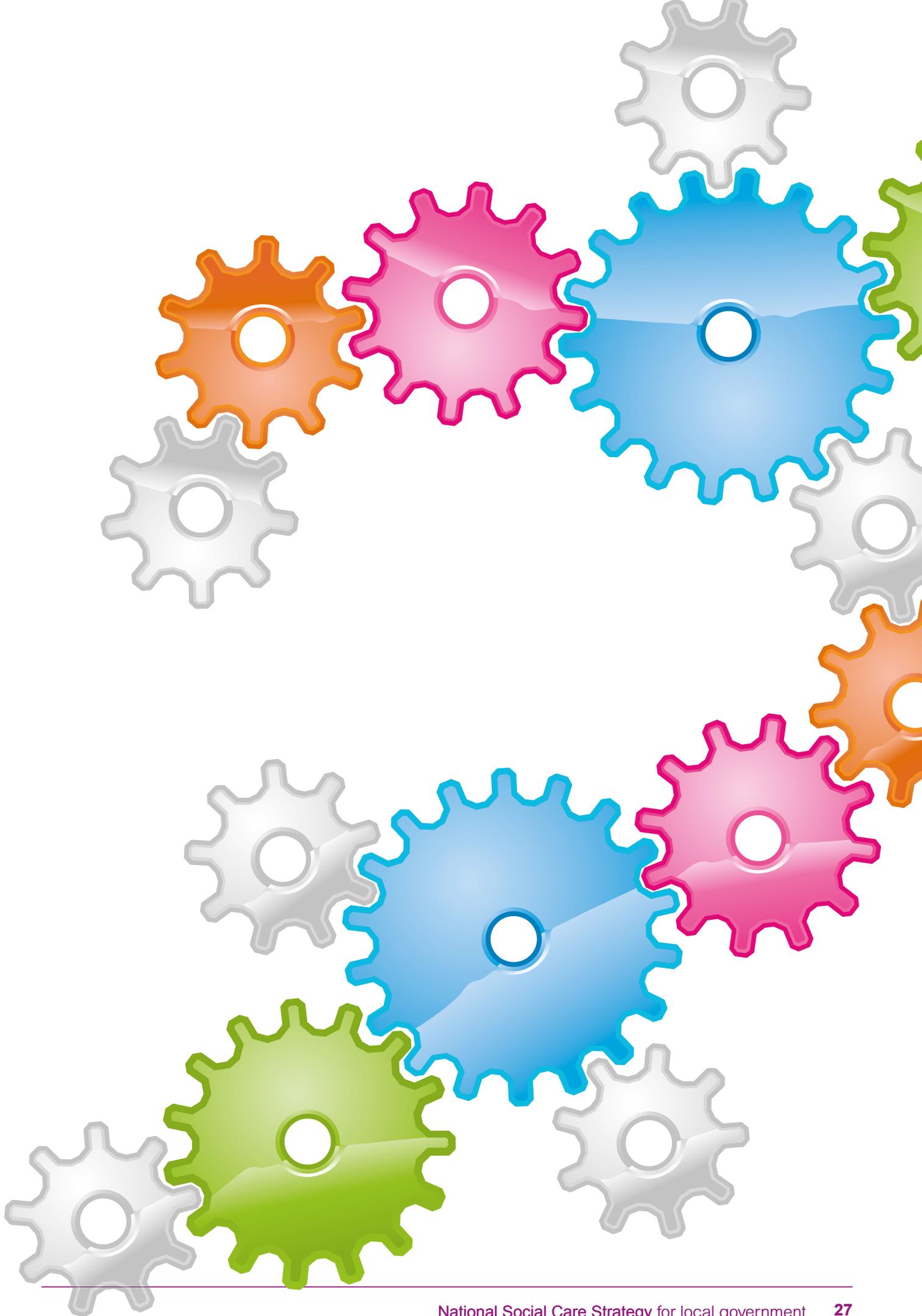
This Strategy aims to integrate the duties within the Care Act 2014 and Children and Families Act 2014 and looks to the Department of Health for support in dissemination. This strategy is also aligned with 'Commissioning for Better Outcomes', a joint ADASS and LGA project, and expects these organisations to lend support to the recommendations contained in this strategy. This strategy has incorporated the concerns of providers through Care England and the Care Provider Alliance, and it is anticipated that social care and health providers will support the recommendations herein. This strategy has considered the Quality of Life Standards and audits, and included their overall message that people should co-produce the services they use, into the recommendations.

On a day-to-day basis the LGA's National Advisory Group for Local Government Procurement (NAG) owns the strategy and is responsible for overseeing its implementation.

NAG will work with the Society of Procurement Officers in Local Government (SOPO) and other networks to promote the approaches and good practice set out in the strategy and will facilitate peer help and support where appropriate.

The LGA has developed a microsite¹² for the strategy and publication of good practice resources to support implementation. The LGA can support councils to implement the good practice set out in this strategy through some existing programmes (including the Leadership Academy, Productivity Experts and Peer Challenge).

¹² See: <http://www.local.gov.uk/web/lg-procurement/health-and-social-care>





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