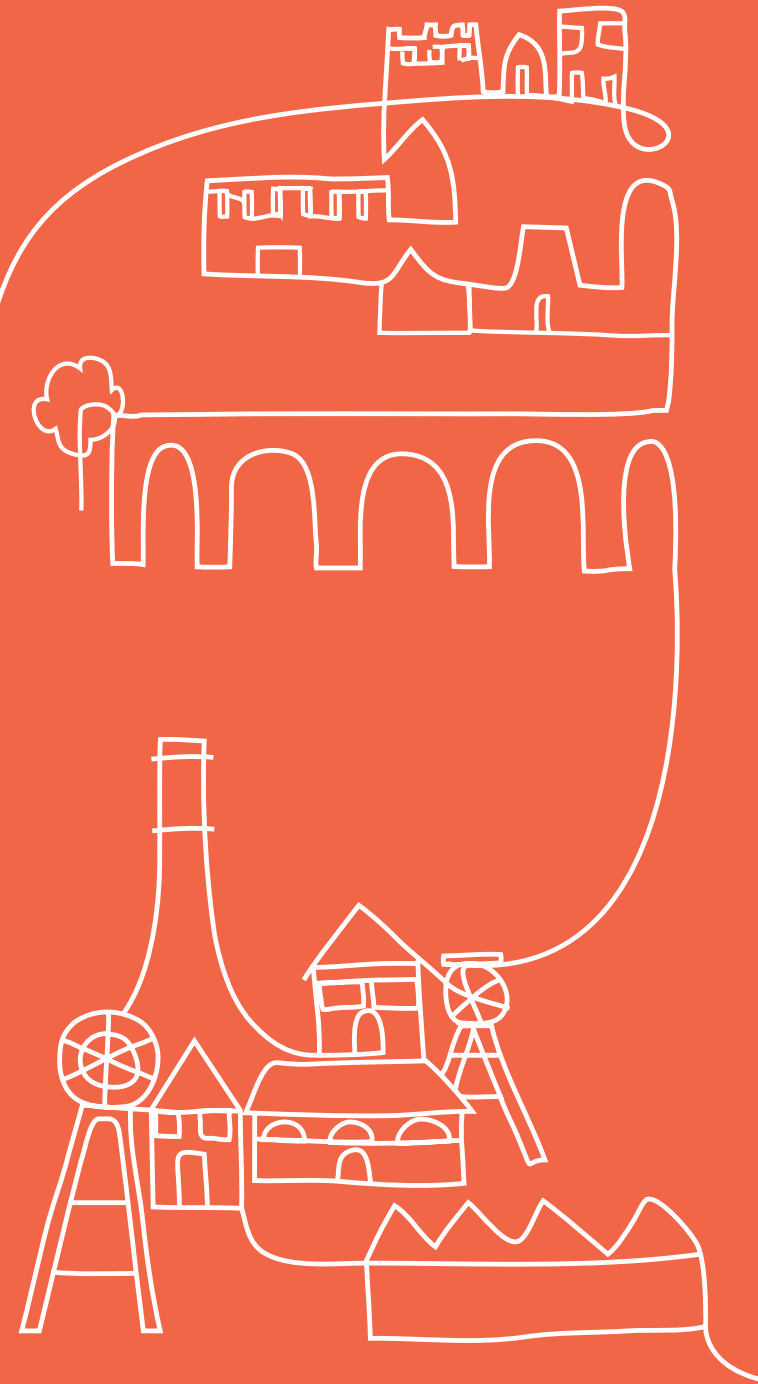


# COMMISSION ACCOMPLISHED

Public Sector Code of Practice for Commissioning Third  
Sector Services in Merthyr Tydfil and Rhondda Cynon Taf

Commissioning Policy Development Project 2011



# PREFACE

## What is the Code of Practice?

It is a commissioning framework for public and third sector organisations produced by the Commissioning Policy Development Project (2009-2011) and written by the Project Officer, Margaret McLaughlin. Although its focus is the third sector, it is recognised that it relates to good practice in commissioning that can be applied more broadly. It has been designed to work alongside existing commissioning frameworks and guidance. National guidance that it is consistent with includes Fulfilled Lives-Supportive Communities Commissioning Framework and Guidance 2010 and Value Wales' Procurement and the Third Sector: Guidance for the Public Sector in Wales 2008. The Code of Practice is intended to contribute to:

- Improving commissioning and service planning processes
- Designing and delivering public services that are citizen-centred, needs-based and outcomes-led
- Identifying and removing barriers to third sector involvement in public service planning and delivery
- Developing a joint public services policy

- Improving business relationships between public and third sector organisations

## Who are the partner organisations for the Commissioning Policy Development Project?

- Cwm Taf Health Board
- Interlink (County Voluntary Council for Rhondda Cynon Taf)
- Merthyr Tydfil County Borough Council
- Rhondda Cynon Taf County Borough Council
- Voluntary Action Merthyr Tydfil (VAMT) (County Voluntary Council for Merthyr Tydfil)

## How can the Code of Practice be used? To:

- Demonstrate and support good practice - the 16 Good Practice Checklists can be used to "walk through" the entire commissioning cycle or in a "mix and match" way to focus on a particular task or area
- Develop transparent processes and promote a mutually beneficial relationship
- Show how involving the third sector effectively can help to achieve more sustainable outcomes and value for money

- Highlight the value of local knowledge and expertise
- Describe the constraints of the powers and policy framework within which commissioners must work
- Promote more efficient use of resources
- Provide a mechanism for evidencing good practice in partnership working and commissioning
- Provide a basis for increased joint commissioning
- Strengthen learning between public service organisations

## Who is the Code of Practice for?

Everyone in public and third sector organisations involved in planning, delivering or commissioning public services in Merthyr Tydfil and Rhondda Cynon Taf.

## What service areas does the Code of Practice consider?

It can be applied to any area of public service delivery.

## What's in the Code of Practice?

- Shared principles to guide commissioning relationships between public service organisations and bring greater consistency and cohesion to them
- Checklists that cover the key stages of the commissioning / service planning relationship
- Undertakings from public and third sector organisations on what they can expect from each other
- A glossary of key terms

## What's the Commission Accomplished Website?

It is an on-line version of the Code of Practice, [www.commissionaccomplished.co.uk](http://www.commissionaccomplished.co.uk), which contains more detailed information including:

- The national and local policy context
- Reference and links to a range of resources including other guidance and websites
- Local resources and case studies
- Action plan templates based on the checklists

# CONTENTS

## SECTION 1: INTRODUCTION

Principles  
The Commissioning Cycle

## SECTION 2: COMMISSIONING CHECKLISTS

Analyse	Checklists 1-4
Plan	Checklists 5-7
Secure Services	Checklists 8-14
Review	Checklists 15-16

## SECTION 3: IMPLEMENTATION

Implementation and monitoring of the Code of Practice

## APPENDIX 1: GLOSSARY OF TERMS

# ACKNOWLEDGEMENTS

## Thank you to:

- The former Rhondda Cynon Taf Teaching Local Health Board's Big Idea Fund
- Merthyr Tydfil Compact
- Local Service Boards for Merthyr Tydfil and Rhondda Cynon Taf
- Value Wales Procurement Route Planner for Social Care
- Voluntary Norfolk and National Council for Voluntary Organisations Third Sector Commissioning Guide 2009

**Disclaimer:** The information contained in this guidance is not meant to be exhaustive nor a substitute for legal advice. Organisations should seek further advice in any area of doubt on a case-by-case basis.



# SECTION 1 - INTRODUCTION

## COMMISSIONING PRINCIPLES

Public services organisations in Merthyr Tydfil and Rhondda Cynon Taf aspire to work positively with each other to plan and deliver services for the benefit of citizens and communities, underpinned by the following principles:

- **Improved outcomes** for citizens based on a thorough assessment of needs
- **Responsiveness** to changing patterns of need in local communities
- **Engagement** with service users, families, carers and communities
- **Accessibility** through service delivery which enhances equality and promotes inclusion
- **Proactive approach** including a shift in focus towards prevention, early intervention, addressing social exclusion and promoting independence
- **Value for money** based on robust business processes
- **Partnership** working to deliver the best services for citizens
- **Innovation** in service design and delivery
- **Sustainable service models** in economic, social and environmental terms
- **Integration** of planning and delivery including joint commissioning and pooled budgets
- **Accountability** through a framework that achieves clear lines of decision making and reporting
- **Clear, consistent and transparent** commissioning processes

## PRINCIPLES FOR COMMISSIONING THIRD SECTOR SERVICES

Local public sector organisations are committed to operating an effective and sustainable funding framework for the third sector based on sound decision making and effective relationships, and underpinned by the following principles:

1. **Delivery of strategic policy objectives** - acknowledgement of the role the third sector can play in delivering these through innovative solutions and often being able to reach groups that public sector organisations cannot.
2. **Respect for the third sector's independence** - recognition that third sector organisations have a right to exercise independence irrespective of funding. This should be in line with their governing document and based on the best interests of the organisation and the needs of its beneficiaries.

3. **Early and constructive dialogue** - opportunities to discuss proposals well in advance of the formal application deadline and early in the budget planning cycle.

4. **Timely decisions** - wherever possible, written notification of **in principle** grant approvals for each financial year by 31 December of the preceding year and written **confirmation** of grant approvals by February following budget setting. In exceptional circumstances where this is not possible, notice should be given of an alternative timescale by 31 December;

5. **Security of funding** - longer term commitments, subject to performance, to support a sustainable approach to funding: up to 3-5 years for strategic core funding and commitment for the life of any specific projects which are funded, providing firm year one funding and clear baselines for subsequent years. A three year funding commitment will be seen as a basic minimum unless the source of funding does not allow it.

6. **Fair funding levels** - levels of funding for the sector should be determined no differently than for other sectors or agencies in relation to planning for inflation and growth. Where the funding stream permits it, increases for inflation and growth should be allowed.

7. **Full Cost Recovery** - levels of grant funding will be based on, and reflect the principles of, Full Cost Recovery; and the significance of submitting bids on the basis of Full Cost Recovery principles should be made clear to third sector organisations.

8. **Fair procurement** - the level of required disclosure on pricing and its relation to costs must be consistent across all potential providers and should be in keeping with the good practice guidance laid out in the Welsh Assembly Government's Procurement and the Third Sector: Guidance for the Public Sector in Wales (2008)

9. **Payment in advance** - provision for advance payment of grant where a clear financial need is established.

10. **Fair and reasonable treatment** - including prior discussion and reasonable notice before any policy changes or decisions that may lead to withdrawal or significant reduction of grants; reasonable timescales; and proportionate processes.

11. **Joint approach to monitoring and evaluation** - the simplest outcomes-based procedures consistent with ensuring proper use of public funds.

12. **Who does what best** - commitment to identifying where the third sector might take the lead in, or contribute to, the implementation of new policies, and ensuring that appropriate funding mechanisms are in place.

13. **Mediation and Disputes Resolution Process** - a commitment to make appropriate use of the local Compact Mediation and Disputes Resolution process (in Merthyr Tydfil) to resolve any disputes arising from commissioning.

14. **Infrastructure support** - recognition of the importance of, and need to resource, a local third sector infrastructure to underpin the third sector's coordinated involvement in commissioning.

The principles will be reflected in actions described in the sections below.

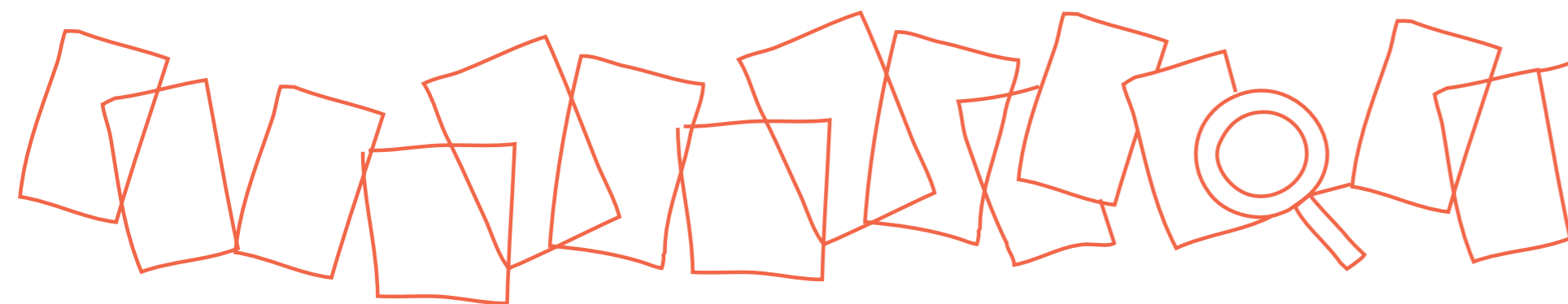
## THE COMMISSIONING CYCLE

The Commissioning Cycle has four main stages:

1. ANALYSE
2. SECURE SERVICES
3. PLAN
4. REVIEW

# SECTION 2 COMMISSIONING CHECKLISTS

In order to meet the requirement of this Code of Practice, the following checklists will have to be considered for implementation.



## ANALYSE

**PURPOSE:** To establish the best information and intelligence in order to decide what to commission. The more clarity, consensus and involvement achieved at the Analyse Stage, the more straightforward later decisions will be, and the more successful implementation of the programme is likely to be.

### CHECKLIST 1: MANAGING THE COMMISSIONING PROCESS

What arrangements need to be in place in order to manage the commissioning process?

#### COMMISSIONERS

**C1** Establish the legislation/policy background/intent for the service to be developed; and be aware of the commissioning organisation's financial regulations

**C2** Establish project management arrangements:

- A commissioning/ project management structure that involves all partners (which in some instances will already exist through a strategic partnership)
- Project plan or framework to agree the focus, scope, quality and details of the work
- Plan as far in advance as possible
- A stakeholder communication and engagement plan
- A risk assessment framework
- Project monitoring and evaluation

**C3** Ensure that everyone involved has a good understanding of commissioning, the responsibilities of the partnership or working group in relation to commissioning and their own individual role within this

**C4** Have a procedure in place for dealing with conflicts of interest involving any of the organisations involved in commissioning

**C5** Understand the multiple roles that third sector organisations play in commissioning

#### THIRD SECTOR ORGANISATIONS

**TS1** Contribute to the development of key local policies and strategies in Merthyr Tydfil and Rhondda Cynon Taf

**TS2** Know about the strategic partnerships in Merthyr Tydfil and Rhondda Cynon Taf and how to access them

**TS3** Join relevant third sector networks and forums in the area (through the County Voluntary Councils, VAMT and Interlink) and understand their representative role

**TS4** Make use of the information, training and consultation opportunities that third sector networks and forums offer at every stage of commissioning

**TS5** Consider contributing to partnerships as a member or third sector representative, and understand the difference between the roles

**TS6** Deal with any conflict of interest appropriately as a member or representative of a strategic partnership or working group

## CHECKLIST 2: SERVICE MAPPING AND RESOURCE ANALYSIS

What services already exist and how do they contribute to addressing citizens' needs? What resources are available for delivering future services?

### COMMISSIONERS

**C6** Work in partnership to develop an understanding of the number size and capabilities of third sector providers and potential providers in the market

**C7** Liaise with VAMT and Interlink, to access useful information about the local third sector in Merthyr Tydfil and Rhondda Cynon Taf

**C8** Take account of all the services that citizens use including those which may not be formally provided or commissioned by the public sector

**C9** Find out the proportion of your spend between in-house providers, private providers and third sector providers; and be able to allocate it to service areas

**C10** Analyse the strengths and weaknesses of the provider sector including:

- Service reviews (see Checklist 16)
- Providers' views and future plans
- Whether supply meets current needs
- Interviews and focus groups with service users and carers

**C11** Assess what resources are available, projected over the next 3-5 years, from each agency

### THIRD SECTOR ORGANISATIONS

**TS7** Find out what services are being commissioned by public sector bodies in your field of work and area

**TS8** Understand how your services will help deliver commissioners' outcomes

**TS9** Find out which other organisations (public, third sector or private) provide services in your field of work

**TS10** Consider how your services fit with services being provided by other organisations in the area

**TS11** Be aware of what your unique selling point is that distinguishes your services from those being provided by other organisations

**TS12** Provide evidence to demonstrate the added value you bring to service delivery by, for example, completing a Value Added Facts Questionnaire or undertaking a Social Return on Investment Analysis

**TS13** Consider talking to other organisations that are providing similar or complementary services about whether services could be provided more effectively by you working together

**TS14** Keep commissioning partners informed of changes to service delivery, e.g. as a result of a successful funding application

## CHECKLIST 3: ANALYSING NEEDS

What are the needs in the population that have to be addressed and what outcomes/benefits should services aim to achieve for citizens?

### COMMISSIONERS

**C12** Work in partnership to access/ collect relevant data to assist in understanding citizens' needs including demographic data, prevalence and incidence data and service user and community data both quantitative and qualitative

**C13** Identify any gaps in data and how to access it

**C14** Focus on outcomes, rather than on services and activities, from the outset

**C15** Use a range of approaches and methods to involve stakeholders in identifying outcomes including consistent liaison with coordinators of third sector networks and forums and tailored approaches to involving individuals and communities who are most marginalised

**C16** Consider the potential of a third sector organisation to undertake research or advocacy work especially to access socially excluded groups

**C17** Provide early warning of requests for involvement so that third sector organisations can prepare

**C18** Produce a needs analysis and consult on its accuracy with key stakeholders

### THIRD SECTOR ORGANISATIONS

**TS15** Get involved in consultation processes and other opportunities to give full voice to the needs of your beneficiaries

**TS16** If no formal consultation has been organised, give voice to the needs of your service users either independently or with other organisations or through third sector networks and forums

**TS17** Contribute to feedback on the accuracy of the needs analysis

## CHECKLIST 4: DESIGNING SERVICES

What services need to be developed and what is the best service delivery model to choose?

### COMMISSIONERS

**C19** Identify and priorities outcomes and ways of measuring outcomes by drawing on a number of sources including the needs analysis and consideration of wider economic, social and environmental benefits (known as sustainable commissioning)

**C20** Consider making use of an outcomes-based framework such as Results Based Accountability (RBA) to assist with identifying outcomes and indicators

**C21** Bring together the work undertaken so far to develop a gap analysis that provides an assessment of what services currently exist and what are needed in the future; and the basis of the service model/design that will be required

**C22** Aim to streamline services and avoid duplication by being clear about how your area of commissioning fits with other areas

**C23** Consider all of the options available for delivering the priority outcomes and assess the benefits and risks of each approach. Include:

- Giving serious consideration to in-house services being outsourced
- Assessment of whether grant funding the range of allied or preventive services provided by third sector organisations operating in a particular area (geographical or user group) might be a cost-effective way to address multiple needs
- Establishing a social enterprise (for example, where there is no market)
- Collaborative approaches such as integrated service design ,and co-production involving partners, communities and third sector organisations
- Using a third sector organisation with specialist knowledge and expertise to act as a consultant in designing service solutions
- Opportunities for self directed care, e.g. direct payments and individual budgets
- Low cost/ no cost solutions

**C24** Produce a business case for the preferred service option and consult with key stakeholders to make sure it is realistic and sustainable in the long term

### THIRD SECTOR ORGANISATIONS

**TS18** Contribute to the identification of outcomes for the benefit of individuals and communities

**TS19** Highlight the need to take wider economic, social and environmental benefits into account in order to make a comprehensive assessment about how value for money can be achieved

**TS20** Get involved in consultation processes and other opportunities to input into the design of services

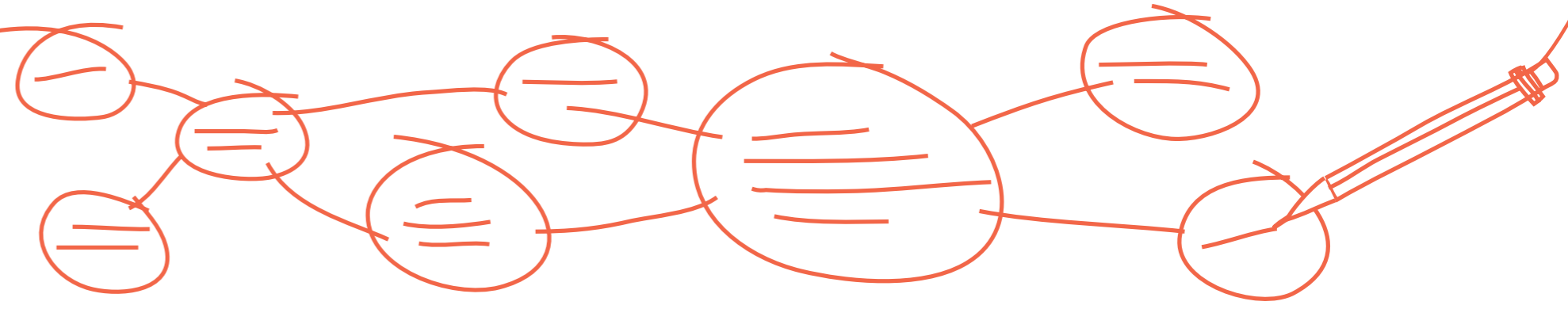
**TS21** Focus on outcomes and the needs of service users

**TS22** Consider contacting commissioners to offer your services as consultants and researchers to inform service design

**TS23** Consider promoting your innovative approaches to commissioners and discussing if they would grant-fund a pilot scheme

**TS24** Provide evidence to demonstrate the difference that preventive services make to delivering effective outcomes to citizens

**TS25** Promote tools for measuring value and assessing the costs and benefits of different service options



## PLAN

**PURPOSE:** To undertake the service continuation, re-design or reconfiguration that has been identified as the best way of achieving outcomes for citizens.

### COMMISSIONERS

**C25** Bring together the information and evidence from the Analyse Stage into a commissioning plan that can be consulted on. It should be made available at the earliest possible opportunity to allow for the widest range of providers to be involved

**C26** Make the commissioning plan available for comment, for example, through consistent use of VAMT and Interlink and other local mechanisms

**C27** Actively manage change and develop a written transition plan/ programme to include:

- Communication with stakeholders
- Reasonable timescales
- Impact assessment and risk management planning in relation to service users and carers, the provider organisation, staff, partners and other stakeholders

**C28** Where it has been decided to decommission a service:

- Provide a minimum of 3-6 months notice with an explanation of why the decision was taken (see Checklist 16)
- Understand the implications of any potential TUPE transfer of staff

## CHECKLIST 5: PRODUCING A COMMISSIONING PLAN

How will the agreed commissioning priorities be communicated to a wider audience and how will their implications be discussed with specific groups of stakeholders?

### THIRD SECTOR ORGANISATIONS

**TS26** Respond to consultation on the commissioning plan

**TS27** Have an exit strategy in place to plan ahead for what will happen if and when a financial relationship comes to an end

**TS28** Where a service is to be decommissioned, ensure:

- The process is transparent for the benefit and protection of staff and service users
- That you have established whether TUPE applies and informed the commissioning organisation that this is the case

## CHECKLIST 6: DEVELOPING A PLAN FOR SECURING SERVICES

How can processes for securing services be made more third sector friendly at the same time as being fair, transparent and non-discriminatory?

### COMMISSIONERS

**C29** Confirm the most suitable commissioning method to be used for securing the service (on the basis of the options appraisal at the Analyse Stage)

**C30** Understand why grants are an important part of the local funding mix and strive to develop a corporate approach to grant making aligned to corporate objectives

**C31** Carefully consider whether a grant or procurement should apply when funding third sector organisations, e.g. where there are innovative approaches or pilot schemes for which grant funding would be more appropriate

**C32** Ensure a continuity of engagement with service users and other stakeholders between the commissioning process and the plan for securing services

**C33** Where procurement is the preferred commissioning method, work proactively with the procurement team to ensure that the process is accessible to third sector providers

**C34** If a part B service, or one that is below European procurement thresholds, is being commissioned, consider the impact on the third sector of going through a full European Union tendering process if this is not already mandatory

**C35** Give careful consideration to the optimum length of a contract

**C36** Consider operating an "approved providers list" or framework agreement if only a small number of third sector organisations provide the service you wish to commission

**C37** Consider the benefits of:

- Dividing contracts into smaller lots to encourage a wider range of organisations to apply
- Encouraging contractors to subcontract to third sector organisations
- Encouraging third sector organisations to work collaboratively

## CHECKLIST 7: WRITING SERVICE SPECIFICATIONS

How can the detailed description of the service persuade the widest number of third sector organisations to bid or apply

### COMMISSIONERS

**C38** Develop service specifications that:

- Have been agreed by the appropriate partnership or commissioning group and that complement the wider range of commissioning/ service planning in the area
- Have been informed by meaningful consultation with stakeholders; and appropriate consultation with providers
- Use standard formats wherever possible which are proportionate to the amount of money involved, clear, jargon-free and comprehensive

**C39** Introduce a system for consistently inviting comments on draft service specifications from the third sector, for example, through third sector networks and forums and other local mechanisms

**C40** Include relevant social benefits (already identified at the Analyse Stage) encompassing the social, economic and environmental wellbeing of the wider community

**C41** Consider including the added value the third sector could offer when delivering a service as a core social benefit of the specification so that everyone has the chance to demonstrate how they can deliver it

**C42** Focus on outcomes and ask providers to demonstrate how they would address local service users' needs

**C43** Avoid being over-prescriptive in order to encourage innovation

**C44** Allocate risk to the body best able to deal with it

**C45** Where appropriate, encourage opportunities for subcontracting and consortia bids from third sector providers

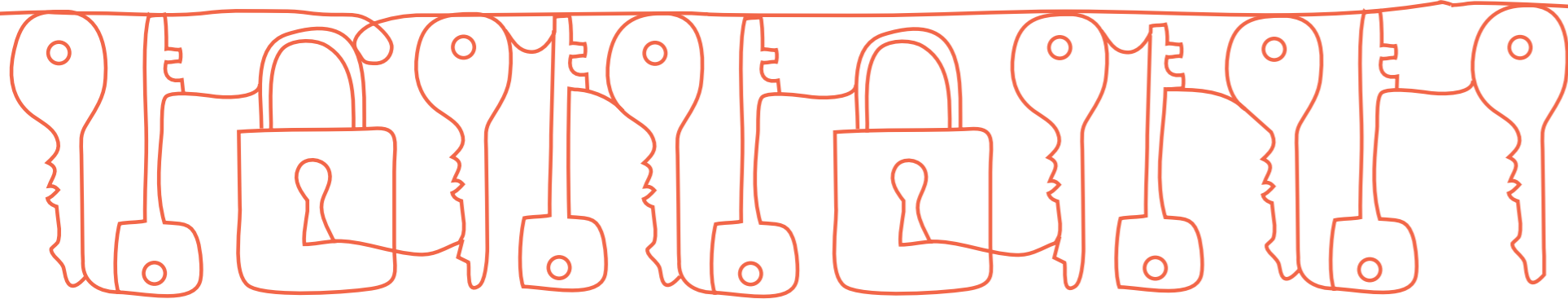
### THIRD SECTOR ORGANISATIONS

**TS38** Seek out and take up opportunities to comment on or input into service specifications

**TS39** Make commissioners aware of issues such as:

- Outcomes-based specifications
- Wider social, economic and environmental outcomes that could be achieved through the contract or grant
- Opportunities for encouraging consortium bids

**TS40** If there has been no real involvement of service providers and service users in the design of public services in your field, consider giving voice to users' needs independently or with other organisations/ infrastructure organisations



## SECURE SERVICES

**PURPOSE:** To implement the procurement plan or funding process in order to secure the most appropriate provider(s) to deliver the required outcomes.

### CHECKLIST 8: PUBLISHING FUNDING AND CONTRACT OPPORTUNITIES

How can opportunities be advertised so that they attract the highest number of potential providers?

#### COMMISSIONERS

**C46** Publicise forthcoming tenders and other funding opportunities widely and:

- Make consistent use of VAMT and Interlink and other local mechanisms
- Include third sector organisations and provider forums on distribution lists
- Make use of [www.sell2wales.gov](http://www.sell2wales.gov)

**C47** Provide as much notice as possible of forthcoming opportunities and publish the timetable for each opportunity before the application process begins

**C48** Build in sufficient time for responses at each stage of the application and tender process to encourage interest from smaller providers or consortia

**C49** Encourage key suppliers to publicise opportunities for sub-contracts where appropriate

**C50** Ensure potential applicants are kept informed and understand how the process will be managed including a contact for enquiries

**C51** Take a proactive approach to encouraging organisations to bid or apply where appropriate and especially where there is under-supply in a particular area or for a particular client group

#### THIRD SECTOR ORGANISATIONS

**TS41** Find out where contract opportunities and requests for quotations are advertised including registering on [www.sell2wales.gov](http://www.sell2wales.gov) (see Checklist 14)

**TS42** If information on upcoming tendering and other funding opportunities is not easily accessible, proactively seek information directly from the public body, with the help of VAMT and Interlink

### CHECKLIST 9: PRE - QUALIFICATION

How can commissioners be assured that applicants meet minimum standards at the same time as having a process that is accessible to third sector providers?

#### COMMISSIONERS

**C52** Be clear about when you will use a one or two-stage process and why

**C53** Make the pre-qualification questionnaire (PQQ) criteria proportionate to the value of the contract and the level of risk

**C54** Choose pre-qualification criteria carefully so as to avoid unnecessarily ruling out potentially competent suppliers who may not have an extensive track record

**C55** Take into account the quality standards relevant to third sector organisations, such as PQASSO

**C56** Consider developing a standard PQQ form to reduce administrative burdens on prospective bidders

#### THIRD SECTOR ORGANISATIONS

**TS43** Ensure you are able to supply evidence for all the requirements in the PQQ

**TS44** Ensure you have key policies in place such as safeguarding policies and measures for working with children or vulnerable adults as required

**TS45** Compile a PQQ file that brings together all relevant policies in one place

**TS46** Consider adopting a quality assurance framework such as PQASSO or the tool to support third organisations to use the Standards for Health Services in Wales

**TS47** Provide feedback to the public body, including through VAMT and Interlink on PQQ requirements

## CHECKLIST 10: DEVELOPING A TENDER OR APPLICATION PROCESS

How can commissioners ensure their tender and application processes are thorough without being too complex for many third sector providers?

### COMMISSIONERS

**C57** Consider developing a proportionate application process for small grants in line with best practice

**C58** Provide comprehensive, clear, concise, jargon-free information and documentation so that organisations can decide whether to apply. It should include

- Guidance notes
- Service requirements
- Terms and conditions of the grant or agreement
- Contract management arrangements
- Award criteria and weightings
- An identified contact person to give general advice (on process and eligibility) before an application or bid is made

**C59** Consider providing guidance on TUPE to providers; and consider supporting preferred providers to undertake assessments of TUPE obligations and any due diligence required for collaborative working

**C60** Use standard formats for tender and application documents wherever possible

**C61** Make application and bidding documents available in accessible formats on request

**C62** Signpost applicants to VAMT and Interlink for advice and help before an application or bid is made where appropriate

**C63** Consider holding briefing events for providers to explain tendering or submission timescales and their criteria for the tender or funding (see Checklist 14)

### THIRD SECTOR ORGANISATIONS

**TS48** Consider carefully whether the contract or award is right in the long term for the organisation

**TS49** Ensure that applications or tenders are for activities that are within a charity's objects and powers (applicable to charities) and that the governance arrangements allow you to submit a bid or application

**TS50** Think through the implications of winning a contract or grant for the organisation and gain the support of staff and trustees

**TS51** Take responsibility for ensuring you are eligible when applying for funding (e.g. income levels)

**TS52** Be aware of what information to look for in the tender and application documentation – and consider whether it provides all the information you need to assess the opportunity and possibly bid/apply for it

**TS53** Submit realistic and sustainable costings based on:

- Understanding the full costs of your project or services
- Including direct costs and a fair share of administrative costs (known as Full Cost Recovery).
- Understanding the need to be competitive and demonstrate the added value your service brings

**TS54** Where the funding on offer will not cover the full cost of a service, carefully assess that it is in the interests of the organisation to subsidise or enhance it

**TS55** When developing joint bids, ensure management functions and accountability for delivery between partners are clear

## CHECKLIST 11: ESTABLISHING CONTRACT / AGREEMENT AND PAYMENT TERMS

How can contract / agreement and payment terms be supportive of third sector involvement and assist with the delivery of outcomes?

### COMMISSIONERS

**C64** Have contract and agreement terms that are fair and proportionate to the scale and complexity of the contract, outcomes -focussed; and address the implementation of any social benefit commitments

**C65** Be clear about which aspects of the contract or agreement will, and will not be, negotiable following the contract award

**C66** Discuss the broad requirements of a transition plan/ programme if needed

**C67** Discuss any risks in relation to delivery up front and allocate to the body best able to deal with them

**C68** Have clear and straightforward payment terms, which should be agreed and adhered to including:

- A presumption that in the case of third sector organisations, payment in advance is preferable so long as the need for it has been established
- A schedule of payment dates or timescales within which payments will be made
- Funding agreements for 3-5 years wherever possible
- Clear arrangements for any under-spend at the end of the year

**C69** Assess whether your payment terms are flexible enough to make early or advance payments including for start-up costs

**C70** Have a clearly identified liaison person for any payment problems

**C71** Include a simple process for resolving any disputes arising from the contract or agreement

### THIRD SECTOR ORGANISATIONS

**TS56** Read the contract or agreement terms carefully and seek legal advice if you do not understand every clause

**TS57** Be clear whether the agreement is a contract or a grant agreement; and what the different legal and contractual relations are between a contract and a grant (see Checklist 6)

**TS58** Ensure you will be able to manage the terms and conditions of the contract or agreement including delivering any intended social benefits

**TS59** Make sure adequate systems are in place to manage finances and to allow funded activities to be accountable

**TS60** If you win a contract, check whether you will have to pay VAT

**TS61** Ensure that you understand payment terms including being clear that payments are dependent upon your meeting performance criteria; and how non-compliance with payment terms will be addressed

**TS62** Ensure you are able to bear the risk allocated to you in the contract or negotiate a change to the contract

**TS63** Ensure the proposed payment system allows you to deliver the services to the agreed standard

**TS64** Make it clear if you will need advance payment and have a contingency plan in the eventuality of late or delayed payments

**TS65** If the contract seems prescriptive, could you negotiate more flexible terms to make innovation possible?

**TS66** Ask questions prior to bidding/ applying about anything you are not sure of, challenge conditions you do not agree with and if they are still not right, withdraw from the process

## CHECKLIST 12: EVALUATION AND CLARIFICATION OF TENDERS AND APPLICATIONS

How can the tender evaluation criteria and weighting be sensitive to areas in which the third sector can add value and measure the bidder best able to deliver the value for money required?

### COMMISSIONERS

**C72** Will have explained the evaluation process to applicants and tenderers at the outset, including the criteria to be used and their relative importance or weighting

**C73** Reflect the social benefits detailed in the service specification in the award criteria and give appropriate weighting to core social benefits so that they can be appropriately assessed (see Checklist 7)

**C74** When establishing decision making/ evaluation panels:

- Consider including independent third sector advisers with the right skills to assess compliance with social benefits criteria
- Consider how to involve service users
- Exclude potential providers from the decision making process

**C75** Expect grant applicants to include a fair share of overhead costs in their applications (known as Full Cost Recovery)

**C76** Treat third sector organisations who bid for contracts in the same way as other bidders and do not require disclosure of costs over and above what would be required by other providers

**C77** Make use of the clarification process to work with bidders to address misunderstandings or omissions

**C78** Be aware of the potential negative and unintended consequences of reducing unit costs as a means of achieving savings and awarding contracts that seem to be priced too low

**C79** Make it clear whether match funding is a condition of the funding being made available to a third sector organisation

### THIRD SECTOR ORGANISATIONS

**TS67** Make sure you understand the award criteria and weightings and how they have been used to assess your bid. If not, seek clarification and feedback

**T68** If match funding from another source is a condition of funding, keep funders informed of progress regarding other sources and alert them to the potential consequences of any delays in their own processes

**TS69** Where you think you have not been treated fairly, consider providing feedback and possibly challenging the decision

## CHECKLIST 13: AWARD OF CONTRACT OR AGREEMENT

How can the award of contract/ agreement be supportive of all bidders?

### COMMISSIONERS

**C80** Will have informed all bidders and applicants already that feedback will be available

**C81** Provide timely feedback to successful and unsuccessful organisations once a contract has been awarded in order to promote future improvement

**C82** Refer organisations to VAMT or Interlink for assistance with skills development where appropriate (see Checklist 14)

**C83** Contact successful bidders to enter into final contract negotiation and set out the terms of agreement, which should reflect those in the service specification and tender documentation

**C84** If relevant, agree detailed transition plan/ programme in advance with providers covering transfer of staff, live data etc.

**C85** Factor any transition period into project timescales

**C86** Issue successful bidders with a contract award letter; and successful grant applicants with an offer letter

### THIRD SECTOR ORGANISATIONS

**TS70** Ask for constructive feedback, whether successful or unsuccessful, so that you can submit stronger bids in the future

**TS71** If successful, ensure that the project timescales are appropriate and allow for the transition period

**TS72** Where you are required to transfer the service to a new provider, take a business-like approach to transition arrangements and provide necessary information on request, such as for TUPE

## CHECKLIST 14: MARKET DEVELOPMENT AND CAPACITY BUILDING

How can third sector organisations be encouraged and supported to deliver public services in the future?

### COMMISSIONERS

**C87** Provide early notice of forthcoming funding and procurement opportunities for all potential providers including the third sector (see Checklist 8)

**C88** Publish a named contact for enquiries from potential suppliers or applicants

**C89** Consider holding “Meet the Buyer” events - a good opportunity for third sector organisations to form alliances with prime contractors

**C90** Consider producing a “How to do business with” guide and make it widely accessible

**C91** Offer training to potential suppliers on how to tender for public sector contracts including in partnership with VAMT and Interlink

**C92** Create opportunities to meet with providers and influence each other’s planning processes, for example, through third sector networks and forums

**C93** Make training related to strategic partnerships and workforce development available to third sector organisations

**C94** Signpost third sector organisations to sources of capacity building support

### THIRD SECTOR ORGANISATIONS

**TS73** Make use of “Meet the Buyer” events, provider forums and other opportunities to engage with commissioners

**TS74** Consider registering on the [www.sell2wales.gov](http://www.sell2wales.gov) website as suppliers to promote your organisation to the Welsh public sector and receive automatic e-mail alerts of suitable opportunities; and find out where else to look for contract advertisements

**TS75** Consider contacting public bodies for information on upcoming service needs and contracting opportunities to forecast future provision

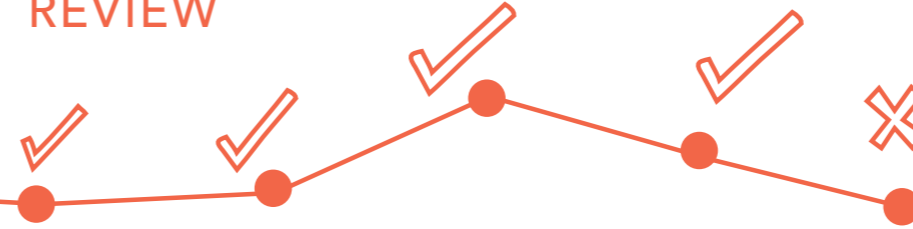
**TS76** Make relevant public bodies aware of your organisation and services, “unique selling point”, local knowledge, track record of delivery and impact (see TS12)

**TS77** Make use of third sector network and forum events and publications to promote your organisation to local public sector organisations

**TS78** Assess the areas where your organisation needs to have greater skills and knowledge and devise a plan for addressing them

**TS79** Access sources of capacity building support, including VAMT and Interlink

## REVIEW



### COMMISSIONERS

**C95** Develop and maintain positive relationships with providers

**C96** Produce a monitoring plan that is proportionate to the size and complexity of the contract or agreement and that includes required outputs, intended outcomes, and performance measures

**C97** Make use of standard monitoring forms and evaluation arrangements wherever possible

**C98** Where providers are jointly commissioned, have a standard reporting procedure and designated lead for monitoring and audit purposes

**C99** Work with providers to establish reporting requirements that focus on measuring the key outcomes including social benefits

**C100** Work with providers to develop a risk management approach encompassing identification, assessment and allocation of risk

**C101** Have a simple and pre-agreed change control process

**C102** Take a proactive approach to performance management with providers:

- Encourage them to come forward with ideas for better ways of working
- Discuss poor performance, identify how intended outcomes might be met in other ways and agree actions and timescales for improvement
- Offer direct practical support or signpost them to other sources of support such as VAMT and Interlink

**C103** Have arrangements in place for escalating concerns about contract performance

**C104** Terminate an agreement or contract early as the option of last resort

Purpose: To ensure that required outputs and intended outcomes are being met and value for money provided; and to provide information that can inform and improve future service delivery.

## CHECKLIST 15: CONTRACT AND PERFORMANCE MONITORING

How can the contract be managed in a way that delivers the necessary information about the service and the provider, fosters a culture of high performance and is also both reasonable and proportionate?

### THIRD SECTOR ORGANISATIONS

**TS80** Contribute to the development and maintenance of positive relationships with commissioners

**TS81** Make sure you are clear:

- About the form the monitoring will take
- That it is proportionate to the size and complexity of the project
- It allows you to focus on the intended outcomes

**TS82** Set up appropriate internal monitoring systems from the start to assist with timely reporting including effective measurement tools and service user and carer feedback

**TS83** If delivering as part of a consortium, ensure that all partners have appropriate and standard monitoring and reporting procedures

**TS84** Have a jointly pre-agreed process for making changes to the contract

**TS85** Take advantage of, and actively seek, opportunities to discuss service improvement with commissioners and identify ways of raising standards

**TS86** Be able to introduce innovative elements into service provision and be rewarded for doing so

**TS87** Be open, honest, timely and transparent in reporting problems and under-performance

## CHECKLIST 16: EVALUATION AND REVIEW

How can the service be judged to be successful and how can lessons be learned from it?

### COMMISSIONERS

**C105** Plan to evaluate and review services as part of the regular review cycle (e.g. once a year for a three year project) and provide good notice for doing so

**C106** Have mechanisms in place for involving service providers fully in service evaluation and review and taking into account service user and carer feedback

**C107** Encourage third sector providers to measure their preventive impacts and feed evidence into the service evaluation and review to demonstrate where early action and intervention may save commissioners money further down the line

**C108** Give a minimum of 3-6 months notice of termination, for example, where a review highlights that a change in commissioning priorities is required at the end of a contract or agreement

**C109** If the service is deemed to be effective and an ongoing priority, consider renewing or extending an agreement or contract

**C110** Discuss with a provider the impact of a funding agreement coming to an end and offer support with an exit strategy to mitigate the impact. Signpost to VAMT and Interlink as appropriate

**C111** Record lessons learned from service delivery and commissioning processes (both good and bad) and remember to celebrate success

**C112** Include third sector organisations in strategic review panels

**C113** Make engagement with key stakeholders - service users, carers, families and third sector organisations - a measure of quality control in service planning and include in reports to scrutiny committees

### THIRD SECTOR ORGANISATIONS

**TS88** Ensure service user and carer feedback is included in the evaluation

**TS89** Be responsive to feedback that points to the need for different services, including renegotiation of some of the contract terms where necessary

**TS90** Ensure identified training needs are included in evaluation reports and fed into workforce planning

**TS91** Have an exit strategy in place to plan ahead for what will happen if and when a financial relationship comes to an end; and seek support from VAMT and Interlink where appropriate

**TS92** Work with commissioners to highlight lessons learned and remember to celebrate success throughout the organisation

**TS93** Consider becoming involved in strategic review panels through third sector network and forum mechanisms

**TS94** Find out about local scrutiny arrangements, the work programmes of local scrutiny committees and how to become a co-opted member through third sector network and forum mechanisms

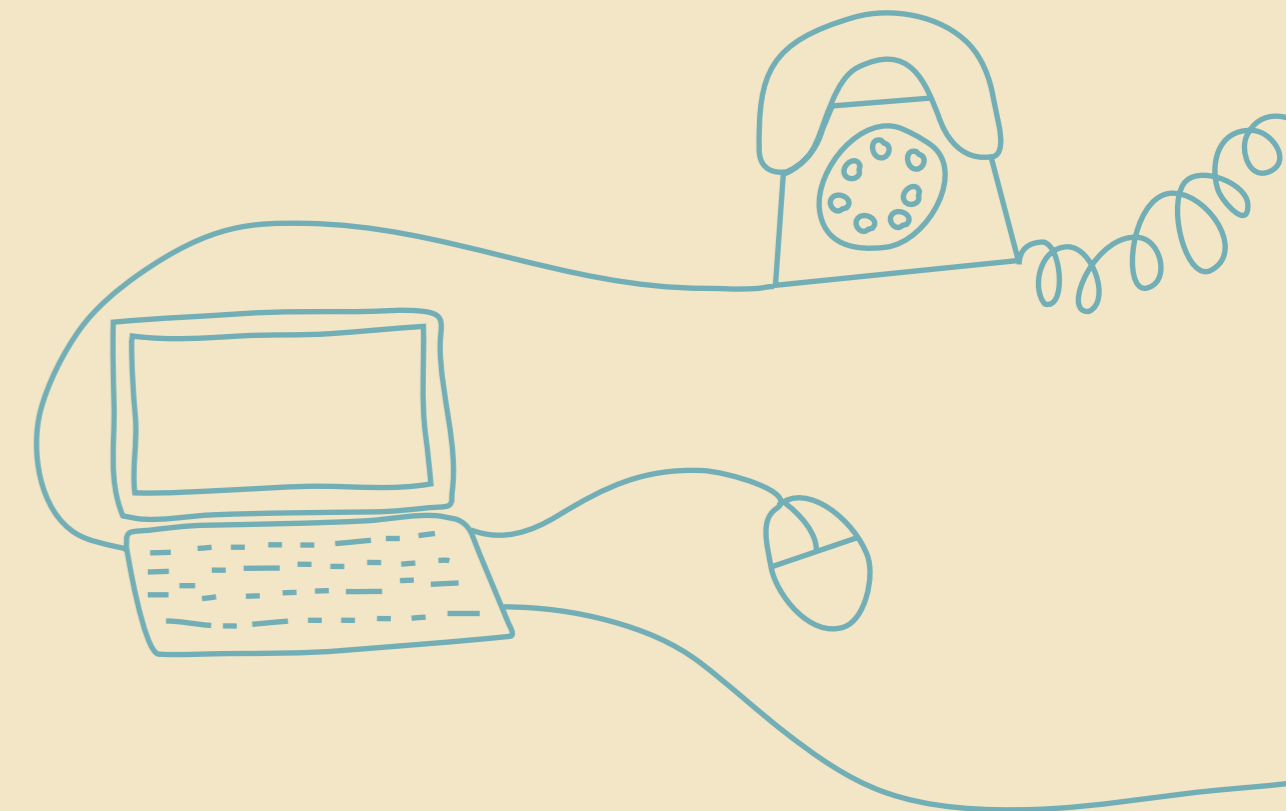
## SECTION 3

### IMPLEMENTATION AND MONITORING OF THE CODE OF PRACTICE

This Code of Practice will be circulated to all strategic partnerships in Merthyr Tydfil and Rhondda Cynon Taf and referenced by them as appropriate. For example, it should be referred to in any terms of reference and within all contracts and grant agreements and the accompanying Service Level Agreements.

The Compact Boards and the Local Service Boards will promote the Code of Practice and make reference to it as appropriate. Implementation will be monitored throughout the life of the Commissioning Policy Development Project by the Project Steering Group. Implementation thereafter will be monitored and reviewed through the Merthyr Tydfil Compact and the Local Service Boards.

Any issues arising from the Code of Practice that are considered through the Merthyr Tydfil Mediation and Disputes Resolution Process will be monitored and reviewed by the Merthyr Tydfil Compact Board.



## FOR FURTHER INFORMATION CONTACT

**Voluntary Action Merthyr Tydfil**

Tel: 01685 353900 [www.vamt.net](http://www.vamt.net)

[www.commissionaccomplished.org](http://www.commissionaccomplished.org)

**Interlink**

Tel: 01443 846200 [www.interlinkrct.org.uk](http://www.interlinkrct.org.uk)

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## APPENDIX 1: GLOSSARY OF TERMS

For the purposes of this Code of Practice, the following key definitions apply:

**COMMISSIONING:** process of specifying, securing and monitoring services to meet people's needs at a strategic level. This applies to all services, whether they are provided by the local authority, NHS, other public agencies or by private or voluntary services.

**CONTRACTING:** putting the purchasing of services into a legally binding agreement.

**COUNTY VOLUNTARY COUNCIL (CVC):** the umbrella or infrastructure organisation for the local third sector. There is one in each local authority in Wales. Voluntary Action Merthyr Tydfil and Interlink are the County Voluntary Councils for Merthyr Tydfil and Rhondda Cynon Taf respectively.

**GRANTS:** used to fund an activity of a recipient because that activity is in broad alignment with the statutory organisation's objectives. Grants given for specific purposes are known as "restricted funding" whereas grants given for core funding (grant-in-aid) are known as "unrestricted funding".

**OUTCOMES BASED APPROACH:** taking the impact, result or effect of services on the community, or of a service intervention on an individual, as the starting point for service development.

**PURCHASING:** process of securing or buying services.

**PROCUREMENT:** process of acquiring goods, works and services, covering both acquisition from third parties, and from in-house providers. The procurement process spans the whole cycle from identification of needs through to the end of a services contract or the end of the useful life of an asset.

**PUBLIC SECTOR:** the portion of the economy that is run by various levels of government.

**PUBLIC SERVICE SECTOR:** the portion of the economy run by government and non-profit making organisations.

**SOCIAL ENTERPRISE:** social mission driven organisation that aims to accomplish targets that are social and or environmental as well as financial, often referred to as the "triple bottom line".

**SOCIAL FIRM:** a form of social enterprise committed to creating employment and training opportunities for people who are furthest from the labour market such as disabled people, and that subscribe to the three values of Enterprise, Employment and Empowerment.

**THIRD SECTOR ORGANISATION:** any independent not-for-profit group or organisation that fulfils a distinct role from the state or market.

**THIRD SECTOR:** the term encompasses voluntary organisations, community groups, volunteers, self-help groups, community co-operatives and enterprises, religious organisations and other not-for-profit organisations of benefit to communities and people in Wales.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 (the "Regulations"), preserve employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.