

## Commissioning Analysis

### Purpose

Commissioning Analysis provides the evidence to inform effective and reliable decision making. Governance groups will expect sufficient evidence to support and sign-off commissioning decisions. Appropriate use of the practice outlined in this guidance will support the sign-off of commissioning decisions by formal and informal governance.

Analysis for commissioning should commence at the earliest opportunity and the time taken to conduct analysis should be proportionate to the commissioning activity and sufficient to cover all of the analysis that is relevant and required to support the project. Whilst Analysis is primarily carried out at the beginning of the Commissioning Cycle, it will continue throughout the cycle, with analysis skills being utilised in most stages. Analysis at the beginning of the cycle helps to inform the Business Case and develop a 'long-list' of options that have the potential to satisfy the needs of both the public and the organisation with the resources that are available.

Officers are expected to apply professional judgement with regards to the level of analysis that is appropriate for their commissioning activity.

The areas of analysis covered in this section are:

- Current Provision
- Identifying the Problem
- Needs Analysis
- Effectiveness of Solutions
- Financial and Economic Analysis
- Political Analysis
- Market Analysis
- Risk Analysis
- Technological Analysis

There is no definitive order with which these types of analysis should be completed, many of them will take place simultaneously in order to develop a full picture.

Not all of these areas will be relevant for every activity, and there may be other areas of analysis specific to your activity that you will need to consider. Officers are responsible for ensuring that the right analysis is undertaken for their activities.

An Analysis Template has been created to capture all of the information that Officers find from their Analysis. The template also gives suggestions of questions that need to be addressed for each area of Analysis. The guidance and template complement each other so should be used together to inform thorough analysis.

### Methodology

This section covers the different types of analysis that should be considered and what these involve. These sections can be applied to most projects but the extent to which and detail required will depend entirely on the project.

#### 1. Current Provision

Although analysis is the first stage in the cycle, it is not necessarily the first stage in the whole life cycle of the commissioning activity in question. At this point, KCC is likely to have already delivered

commissioning activities with similar outputs and outcomes. Therefore, it is important to thoroughly understand the current position before commencing the Plan phase. This will help to understand what worked effectively and what will need to be improved upon to achieve the desired outputs/outcomes.

Officers must understand the following things about the current service provision:

- What needs were trying to be met? What were we trying to deliver? What problem were we attempting to solve? Has this changed?
- What were the desired outcomes? Do these differ to what is trying to be achieved now?
- Who were our end users? Have they changed?
- What was the demand for the requirement?
- How was the requirement delivered?
- What were the resource requirements?
- What did the supply chain look like?
- How did the Supplier perform against the contract's performance measures?
- What was the cost of delivering the requirement? (See 6. Spend and Cost Analysis)
- Was the delivery of the requirement effective?

Officers should seek to engage those who were previously involved in the commissioning or delivery of the requirement where possible to understand the above from the first-hand perspective.

### 2. Identifying the Problem

Identifying the problem or opportunity that the commissioning activity is trying to address is a key step at the beginning of the Commissioning Cycle. There needs to be clarity around the problem that we wish to tackle and the ultimate aims for the activity in terms of outcomes.

Completing the initial stages of logic model development (i.e. identification of the problem and providing clarity around the intended long-term impact of the activity) should be done at this stage. The activity is then the pre-cursor to developing the full logic model throughout the Plan phase.

[Logic Model guidance](#) and a [template](#) have been developed for Officers to use to supplement their analysis. This will help Officers to ensure there is clarity on the overall needs that must be met at a high level.

### 3. Needs Analysis

A Needs' Analysis is a way of estimating the nature and extent of the needs, perceptions, and experience of a population, so that provisions can be planned accordingly. It helps us to understand how a problem can best be solved to suit the end users who will depend on this provision.

A Needs' Analysis combines Social and Demographic analysis, which are defined as follows:

- **Social analysis** should inform the design of the provisions we commission in order to satisfy the needs of our end users.
- **Demographic analysis** seeks to understand how the population and its characteristics have changed over time & to model how it will change in the future in order to estimate the demand for the provision.

The process of undertaking a Needs Analysis helps define what those needs are; how they fit in to the Council' strategic objectives; and provides some of the most fundamental information within the Business Case, enabling officers to determine how best to proceed.

**It is important to note that for large or more complex provisions, it may be more appropriate to seek the expert support of the Analytics team in order to carry out thorough Social and Demographic Analysis. Officers should consider whether this is required for their provision and if so, seek advice from the Analytics team.**

**For advice from Analytics** contact the Kent Analytics email address: [scanalytics@kent.gov.uk](mailto:scanalytics@kent.gov.uk)

**If Officers are more certain about what needs to be done and that the Analytics team is required**, they should request support using the [Work Request Form](#). Analytics usually follow this up with a meeting with the requestor to discuss what they want to use the analysis for and why.

### Stage 1: Undertake Social Analysis

Social analysis is required to understand the current size of the end user base for the provision as well as their experiences and needs. This information will inform forecasts for future end user demand through demographic analysis, and in combination with political, technological and market analysis helps inform thinking for re-designing how provisions could be delivered in the future.

Social analysis applies to more than just health and social care services. Everything that KCC commissions will have an end user whose views and experiences need to be considered in order to deliver an appropriate requirement.

Where the end users are KCC staff, the social analysis methods detailed below can be carried out to understand what the needs of the staff are, their current experiences of and feelings towards the provision and how this might differ between specific groups of staff.

There are two parts to Social Analysis:

#### **Quantitative Social Analysis:**

Quantitative methods can be a less time-consuming method of collecting precise information, therefore they are often used for projects with tighter timescales and less resource. However, enough time should be allocated for processing the data collected from this method. The **quantitative** analysis methods should seek to gain a good understanding of current end users and should examine and quantify the following depending on what is being commissioned:

- The number of end users who currently use the provision (categorised by their need if appropriate)
- Factors that might influence the needs of these end users (e.g. age distribution, geographic distribution, gender, ethnicity)
- Different end user needs and how they are currently being met
- Tools should be used to support this analysis to understand end user backgrounds, wealth, lifestyles and environmental factors where appropriate through the use of end user segmentation tools held within the Strategic Commissioning Analytics team.

#### **Quantitative Social Analysis methods:**

- Analysis of data from end user information systems – these need to be reviewed in order to consider how the information we hold on these systems will be useful to our analysis
- Surveys and questionnaires – these are a good way to understand the opinions and experiences of a large number of end users; however, they rely on asking pre-determined questions with quantifiable or categorised answers which can be analysed statistically.

Quantitative methods of analysis can be used as a starting point to determine what information needs to be collected using qualitative methods and therefore, what questions should be asked to

participants of methods such as focus groups and interviews. However, as above, in instances where open questions are used, this is usually because the issues are not known; in these cases, it may be better to undertake qualitative methods first before creating a quantitative survey.

### **Qualitative Social Analysis**

Within **qualitative** social analysis, a range of approaches can be taken to understand end user experiences and perceptions of the provision. The approach taken will depend on the specific questions we seek to ask and the time we have available. Qualitative analysis should examine the following:

- People's experiences, perceptions, satisfaction etc.
- Underlying factors - this includes descriptive views, feelings and experiences to understand what motivates people, their own solutions/assets, and whether or not something is happening in the way we expect.

Qualitative methods collect more in-depth information, therefore are more likely to be used for more complex projects.

### **Qualitative Social Analysis methods:**

Methods may include:

- Structured interviews, to gain perspectives on specific factors
- Unstructured interviews, to draw out rich intelligence in meaningful and robust ways
- Focus groups, which are less resource intensive as they will reach more people in less time
- Survey questionnaires, to gain insight into a larger number of end user experiences.

Where appropriate, ethnographic approaches should be used. In particular, ethnographic approaches can provide detailed information on the views and experiences of those with protected characteristics. Such approaches are resource intensive and time consuming and should be carried out with the support of the Analytics team. However, the information collected from these approaches can be highly informative and improve the likelihood of effective and inclusive solution creation.

### Stage 2: Undertake Demographic Analysis

From a Commissioning point of view, demographic analysis is relevant to understanding future changes in demand for provisions as the group of end users changes in size or shape over time. Commissioning of services should be informed in the analyse phase by sound understanding of how these demographic changes may impact on future demand for provisions.

If the end user of the commissioning project are KCC staff, a lighter approach to demographic analysis can still be applied to understand the likely demand for the provision. For example, we may want to consider how many KCC staff will require the provision, how often they will use it and whether the size of the group using it will expand over time.

Where the end users are the general public, the Strategic Commissioning Analytics team produce a full Kent population forecast each year using international standard cohort component modelling and informed by planned housing growth in the county. This is known as the KCC Housing Led Population Forecast and can be broken down by district and single-year-of-age. Using this as a key information resource and combining this with end user information from previously completed social analysis, the team is able to support Officers with robust demographic models to forecast future demand including "what if" modelling for different possible scenarios.

A core demographic concept is that any population change can be explained by two factors:

- How many people there are of a given age, and
- The prevalence or likelihood of people of a given age to experience some life event or condition – usually expressed as a rate per 1,000 or 10,000 population.

The Strategic Commissioning Analytics team follow these steps to produce a full demographic analysis:

- Identify the needs and characteristics of end users who use the service/product using social analysis techniques
- Identify any difference in usage by age or age group
- Explore trends in service/product usage using previous data and consider the likelihood of trends continuing
- Build a demographic model using KCC Housing Led Population Forecasts to forecast the change in population for the target age range
- Understand the possible ranges of future demand by applying different service/product need rates to the population forecast

Key scenarios for planning for future service demand include modelling the impact of any planned or proposed service change, the impacts of any legislation which may alter entitlements, the impact of new preventative approaches, etc. When considering such impacts, it is important that any assumptions made about impact are informed by robust evidence such as evaluation results of national pilots or local pilots.

### Stage 3: Consider the Public Health Implications

The Health and Social Care Act 2012 sets out responsibilities for local authorities with regard to improving health and reducing health inequalities. These responsibilities include the development of joint health and wellbeing strategies within the framework of the national Public Health Outcomes Framework and the preparation of joint strategic needs assessments (JSNA). Embedded within these imperatives is an assumption that strategies aimed at improving health and reducing inequality will also focus on local priorities and action targeted across the life course.

Prevention is a key tenant underpinning this approach and this has been underlined in the green paper 'Advancing our health: prevention in the 2020s'. There are also strong public health themes throughout the NHS Long Term Plan – these include making sure everyone gets the best start in life. While these priorities have a strong focus on the NHS, they also strongly endorse joined up working that emphasises health and social care working together.

They also underline the requirement for a strong public health strategic presence and by implication a strong public health intelligence presence too. With this in mind this standard recognises the need for sound epidemiological approaches to measuring and monitoring population health needs, conducting health equity audits and cyclical health inequalities measurement. Increasingly, population health management which brings together health and social care related data with the goal of:

- identifying specific population groups
- understanding and prioritising care needs
- refining care services to meet need and importantly to prevent health and disability and well-being deterioration
- planning and anticipating future needs

For Commissioning activities concerning public health, the Kent Public Health Observatory can provide support in carrying out relevant analysis. The team should be contacted as soon as possible

to ensure that resources can be effectively allocated. Officers can request support via email to [KPHO@kent.gov.uk](mailto:KPHO@kent.gov.uk). Officers should also consider seek advice from a Public Health Consultant in the Public Health team.

### Stage 4 – Finalise the Needs' Analysis

This stage enables all the data captured in Stages 1 – 3 to be brought together to finalise what the needs are:

- **Demographic Data:** Begin with a profile of the local population disaggregated by age, gender, ethnicity and location
- **Prevalence and Incidence Data:** Once demographic data has been collected and analysed, prevalence and incidence data relating to the target population (the particular group of people for whom services are to be commissioned) should be sourced and applied to the demographic data. This allows commissioning agencies to estimate the size of the target population, its demographic profile and the type and severity of need.
- **Risk Factor Data:** The third category of data required to undertake a Needs Analysis is data relating to the sorts of risk factors that may lead members of the target population to require services.
- **End user Data:** Finally, a Needs Analysis should profile current end users and determine the extent to which existing services meet their needs and should help estimate unmet need.

Once the data has been gathered, the completed analysis should primarily consider the following:

- The current and future needs of Kent's population.
- The distribution of need by area (needs vary considerably across Kent's twelve districts)
- The gap between met and unmet need, by area
- With consideration to points 1-3, who needs services most.

For commissioning activities which are less complex or of lower value, and where the end user numbers and characteristics are clear, Officers should make their best effort to undertake Needs' Analysis using their own knowledge, the information that is provided in this section, and the template. Where a commissioning activity is particularly high value, strategically important or complex, Officers should contact the Strategic Commissioning Analytics team in order to conduct or advise on the analysis.

#### **4. Effectiveness of Solutions**

Effectiveness is essentially the ability of a solution to tackle the problem and achieve the desired outcomes. In order to generate viable solutions for the commissioning need it is important to understand the effectiveness of possible solutions using information available externally as well as information from the organisation's previous/current provisions.

Officers should be aware of the research surrounding their service area in order to make effective commissioning decisions.

The following sources can be used to gain insight into effectiveness of potential solutions:

- Specialists and Practitioners
- Scientific research papers and journals
- Case studies and pilots from other local authorities
- [What Works Centres](#) – organisations that collect evidence on the effectiveness of provisions that have been recognised by the Cabinet Office

## 5. Financial and Economic Analysis

Financial and Economic analysis explores the feasibility and appropriateness of commissioning activity based on the likely financial and economic impacts on both the service area, KCC and the local area. It considers how the project will be funded, the likely financial impact (costs/risk) and then whether this is the best use of the available funding.

At the first stage of commissioning, it is unlikely that Officers will already have a list of options for delivery. In depth economic and financial analysis of options, for example Cost Benefit Analysis, will be discussed in the guidance on Business Cases. Nevertheless, economic and financial analysis undertaken very early in the commissioning cycle can highlight feasibility issues that may not otherwise be noticed until a large amount of work has already been completed and resource already used that may have been more successfully used elsewhere.

### Determining Funding Streams

It is important to fully understand how funding for the commissioning activity will be received before commencement into the Solution and Market Development stage of the commissioning cycle. Officers should be clear on the following:

- Timing and Frequency of Funding - Is it a one-off lump sum, one-off funding received in instalments or reoccurring funding? This will influence the possible options for delivery. When will the funding be accessible?
- Type of Funding – Is the funding revenue or capital?
- Funding Source - Is the funding internally or externally provided? Is it part of a programme? Is the funding shared with a partner?
- Requirements to Receive Funding – Does the source of funding have any specific delivery requirements or audit requirements that must be considered alongside the organisational and end user needs?

### Spend and Cost Analysis

Spend and cost analysis in simple terms refers to the process of collecting, classifying, cleansing and analysing expenditure information with the aim of minimising expenses, monitoring compliance, and enhancing efficiency. It is an integral part of the framework upon which commissioning sits.

Spend analysis should answer the question, “how much do we spend, with whom, and on what?”, enabling us to take the appropriate actions to minimise expenses and enhance efficiency moving forward.

1. Spend reporting – identifying where spend and costs lie within the organisation at commodity, supplier, and item level to identify opportunities to reduce spend and identify efficiencies as part of the commissioning process.
2. Undertaking Supplier information enrichment – enhancing data about the suppliers, their credit, parent companies, size, etc. attained through market analysis. This includes identifying any fraudulent or unrecorded information, such as
3. Supplier discovery – as part of commissioning, guidance on where suppliers should be sourced from, their performance, and contract status should be sought.
4. Enhance Control – ensure that spend and cost visibility and control is within established tolerances, ensuring that procurement legislation is upheld.
5. Benchmarking – compare key spend metrics with other local authorities.
6. What-if spend analysis – as part of the commissioning process it is sometimes required to do what-if analysis at the commodity, cost centre, and item levels.

7. Spend forecasting – utilising historical trends at commodity, and even item level. Utilised in conjunction with what-if spend analysis it can be used as a way of forecasting quarterly spend at division or cost centre level.
8. Cost to serve – enable the organisation to measure and understand the “cost to serve”.

### Resource and Sunk Costs

Resource and sunk costs are any costs that are incurred through the process of commissioning that are wider than the cost of the contract itself. These costs should be considered to understand the full life cost of the commissioning project. The following costs should be considered where applicable:

- KCC staff resource including on-costs
- Market engagement and communications costs
- Legal Costs
- External consultancy costs
- Costs related to the use of systems
- TUPE and pension scheme costs
- Other costs relevant to specific commissioning activity

Additionally, entering into a new commissioning activity could mean that a current project’s resource and timescales are impacted. It is important to consider the impact that a commissioning project will have on your area’s wider portfolio of work. If there are other significant projects taking place that will be negatively impacted, it is worth considering if this is the right time to undertake the new project.

### Fiscal Impact

Fiscal Impact Analysis (FIA) considers the change in costs against the change in revenues. Although this can’t be carried out in more detail until solutions have been developed, some basic FIA can be done earlier in the commissioning activity to understand the viability of the project. Officers should consider:

- Income – Is it possible that this commissioning activity will generate an income for KCC?
- Cost – Will the commissioning activity add additional on-going cost to the budget for the service area?
- Savings – Could the commissioning activity potentially lead to savings for KCC, either direct or indirect?

### Cost Effectiveness Related Factors

Cost effectiveness is about finding solutions that do the most for the least cost. Although these solutions might not fulfil all of our requirements, it is still important that we know what they are. Cost effectiveness will need to be considered in more detail at the options appraisal stage. However, there are some cost effectiveness related factors that can be considered beforehand to shape the solutions that are developed:

- Are there any current contracts in place that we could call-off from?
- Could this be delivered by one of KCC’s LATCo’s?
- Are there any other services targeting similar outcomes that could be adapted?
- Are there any other commissioning projects also in development that will be targeting similar outcomes that could be collaborated with?

### Macro-Economic Impacts



Macro-economic analysis goes hand in hand with market analysis to understand the structure and stability of the market that you will be entering and how this might impact your commissioning activity. First of all, it is important that you understand the external economic influences on the market in order to map out the potential risk of contracting a supplier within the market. The following should be considered at this stage:

- Interest Rates – is the market likely to be significantly affected by fluctuations in interest rates, and are fluctuations likely?
- Exchange Rates – is the market likely to be significantly affected by fluctuations in exchange rates, and are fluctuations likely?
- Inflation – to what extent is the market currently impacted by inflation levels and how is this forecasted to continue?
- Labour Market – what does the labour market currently look like for this area and how could this potentially impact the project?
- Is the market dependent on any public sector funding, grants or subsidies?

Although Officers should make their best effort to undertake economic and financial analysis using their own knowledge, the information provided in this guidance and through using the [Analysis Template](#) where a commissioning activity is particularly high value or complex, Officers should contact their Finance Business Partner.

### 6. Political Analysis

Political analysis is essential throughout the commissioning lifecycle to ensure that Officers consider the wider environment in which they are operating, and to underpin good commissioning.

KCC is a Member-led authority where good commissioning is a collaboration between Members and Officers. This is “*directed exploration*”, where Members are clear about their goals and priorities, and engage in an honest iterative discussion about how to achieve them. It harnesses the power and vision that Members derive from individual stories and anecdotes from people (constituents) about how things work.

Officers must consider two principle perspectives:

- The **National Political Perspective** and;
- The **Local and Regional Political Perspective**.

#### **National Political Perspective:**

The current political context of local authority functions and services can be explored by analysing the national political perspective and future vision. Officers should consider how the national government view will influence the desired direction and outcomes and determine the feasibility of commissioning activity. The following sources should be utilised for this purpose:

- Central Government Policy
- Election Manifestos
- White and Green (consultation) Papers
- Select Committees
- The views of Kent Members of Parliament

#### **Local & Regional Political Perspective**

The local and regional political perspective on local authority functions and services is important to understand the feasibility of delivery and delivery needs according to the vision and direction of local politics. Officers should fully understand KCC's strategic direction with regards their particular service and any cross cutting wider issues. Officers should also be aware of the perspectives of the ruling political group and the constituents that are represented by KCC's council members. The local political perspective can be understood by exploring a range of available sources:

- KCC Strategies and Policies
- The 'Corporate Memory' and previous experiences of colleagues
- Engagement with cabinet members
- Feedback from constituents through member engagement
- KCC and district committee reports
- Engagement with other local authorities, specifically district councils
- Relevant local partnerships e.g. [South East Local Enterprise Partnership](#)

It is also important that Officers fully understand KCC's [structure in relation to its political functions](#) to ensure that all relevant stakeholders are engaged in the process as early as possible.

### 7. Market Analysis

Market analysis is essential for exploring the available solutions for our requirements and having an awareness of the market that we will be striving to work with. This will ensure that decisions made throughout the commissioning cycle reflect what the market can offer and that our route to market will be destined for success.

Engaging the market as early as possible in the commissioning process will help to ensure our requirements are designed with the market to deliver outputs/outcomes as effectively as possible. Market analysis will inform the options appraisal and the commercial case within the Commissioning Business Case.

If Officers are reprocurring or recommissioning, it is important that Officers understand how the market has changed since we last carried out the commissioning process, and how new solutions can improve upon what is currently being provided.

The information that is collected will differ depending on the scope and priorities of the commissioning activity, this will be at the discretion of the commissioning officer. The amount and depth of information collected depending on the expected value and complexity of the commissioning activity and how much we already know and are involved in the market.

Officers must also ensure they understand the requirements in the Public Contract Regulations 2015 relating to pre-procurement market consultations.

### Understanding Wider Local Authority Provision

Local authorities should use each other's experiences and lessons learned in order to improve the success of local authority commissioning activity. Pre-commissioning market analysis is a good opportunity for Officers to engage with other local authorities with experience in delivering similar requirements. Things to consider include:

- Outcomes – What were they trying to achieve and how does this compare with what we are trying to achieve?
- Outputs – What did they deliver?
- Delivery mechanisms – How did they deliver this?
- Costs – What did it cost them? Did this match up with expected costs?

- Current Suppliers (internal/external) – Who delivers this for them?
- Demand – if their provision is demand related, what was demand like?
- Performance of the provision – Were there any significant issues with delivery? Was it successful? Did the requirement end up achieving the outcomes? What were the end user's experiences?
- Experiences with the market – what was their approach to procurement? How did this go?
- Relationships with Suppliers – How have they managed their relationships? Have there been any issues or any successes?
- Social and environmental factors – How did they consider these in their requirement?

Officers can find more information about other local authorities using the following resources:

- Local Authority websites
- Local Authority cabinet papers
- Central Buying Consortium groups – Commissioning Standards can provide details of these
- [The Local Government Information Unit](#)

### Understanding the Structure of the Market

To inform solution development, it is important that Officers understand the market that they will be engaging with. Factors such as risk, price and complexity of the contract will be influenced by the availability and type of Suppliers in the market. This analysis will inform your market engagement and development activities later in this phase. Officers should understand the following aspects of the market in order to prepare for solution development:

- How many Suppliers are in the market?
- Where are Suppliers mainly located?
- Are the Suppliers mainly small, medium or large enterprises/organisations?
- What type of Suppliers are they? (e.g. private, public or tertiary sector)
- What is the current demand in the market? Who else is buying from this market?
- How long has the market existed in its current form? Is the market currently developing/expanding or declining?

There are many methods of seeking out this information that Officers can use, these include:

- Online research using supplier websites
- Trade catalogues or magazines
- Supplier forums
- Trade conferences
- Surveys and feedback forms

Below are some examples of information that Officers may want to collect during this analysis. Some of this information may need to be sought through further Market Engagement.

- Appetite for provision
- Current market solutions
- Complexity of delivery
- Skills and resources required for delivery
- Current competition in the market
- Current market prices
- Market developments and changes
- Vision of the future market
- Digital requirements

- Environmental considerations and approach to achieving net zero
- Vulnerabilities to climate change and ability to adapt
- Current demand in the market
- Stability of the market

### Considering Social Value

'Social value' can be defined as the wider social, economic and environmental benefits that can be secured over and above the core requirements that are identified when services are commissioned. Where appropriate and proportionate, Officers should consider how social value can be applied to their commissioning activity. In order to do this, Officers need to understand how the market could account for social value by considering how Suppliers already deliver social value through other contracts.

Officers also need to consider the influence that KCC will have on Suppliers in the market to be able to enforce social value by considering the structure of the market and the types of organisations that will be potential Suppliers. Understanding this information will also help Officers to determine the proportionate social value ask that is realistic based on the context of the relationship with the Supplier.

### Other Considerations

Officers must be aware of other ways with which similar services are being provided to their end user, and therefore how the end user is having their needs met. The following areas for consideration should be explored by Officers during market analysis:

- a. Local charities using charity funding to provide services to meet the same need
- b. Private/commercial organisations selling the provision directly to the end user
- c. Other services that deliver against the same outcomes

## 8. Risk Analysis

Risk is the chance of something happening that will have an impact on objectives – meaning that risk can be seen as a positive threat or a positive opportunity. **Risk Analysis** is undertaken to understand what the risks are, but this is only a part of the wider process of **ongoing Risk Management**, which must continue throughout the whole commissioning lifecycle.

One of the key elements within any Risk Analysis is the Legal environment the Commissioning activity is operating within. This environment will include UK statutory instruments, UK Public General Acts, anti-discrimination law, and health and safety law. It is essential as part of commissioning to understand the implications and risks that these pose. Failure to remain informed and address these areas leaves the organisation open to not only legal risks, but additionally, reputational, and financial risks.

More information on managing risks can be found in the guidance on Commissioning Project Management.

### Consider the legal environment

- a. Statutory Obligations

KCC is legally obliged to provide services that are statutorily required by government for delivery by local authorities. With this, there will be requirements for how the service is delivered and to what level. Officers must understand if their service is a statutory service before delivery solutions are

created and should have full knowledge and understanding of the statutory requirements for service delivery. If you are unsure of the statutory requirements, or if you require assistance in interpreting those requirements, you must seek advice from Invicta Law.

Where there is the potential for statutory obligations to be outsourced as part of the commissioning activity, Officers must seek advice from Invicta Law with regards to the lawfulness.

### b. Legislation

Legislation are laws that have a range of purposes including to regulate, to authorise, to outlaw and to restrict. Therefore, there are a number of ways with which current legislation can impact and influence commissioning decision making including service delivery, rights of workforce, rights of end users, governance and reporting, and general commissioning practice. Officers must have full knowledge and understanding of the relevant legislation that may impact their commissioning activity.

Although specific commissioning activities will be affected by different legislations, the following legislation should be considered for all commissioning activities:

- a. The Public Contracts Regulations 2015
- b. Health and Safety at Work etc Act 1974
- c. General Data Protection Regulation 2018
- d. Equalities Act 2010
- e. The Climate Change Act 2008

### **Understand the Legal Risk**

Officers should be aware of the changing political and legal environment within which they are commissioning. This applies to both general procurement and contract law, and to specific service related legislation. When undertaking legal analysis, Officers must consider any potential changes to statutory obligations and legislation and how these would impact the commissioning activity. These can be included as part of the risk log for the overall commissioning project, but where there is significant risk and/or likelihood of impact, may also form part of the options appraisal.

Equality Impact Assessments and Data Protection Impact Assessments can highlight potential legal risks relating to a commissioning activity. They are mandatory assessments that must be completed by Officers at appropriate intervals. See [Sections 4.1.2 and 4.2.3](#) for more information.

### **Complete a Risk Mapping Exercise**

When undertaking any commissioning activity, it is crucial to understand, at the earliest possible stage:

1. The potential risks that may thwart the delivery of the objectives of the commissioning activity – what could happen and how could it happen. **(Identify)**
2. The impact and likelihood of those risks occurring **(Analyse)**
3. What can be done to **mitigate** each risk (minimise the chance of the risk occurring and its potential impact), and who will manage it **(Respond)**
4. How the risk will be monitored and reviewed **(Review)**

The Corporate Risk Management team owns Kent County Council's Risk Management policy setting out how we should manage risk where it occurs; this covers both "business as usual" and transformational/commissioning activity. As part of this, they have developed a [Risk Management Toolkit](#) which contains everything that officers need to identify, analyse, respond to and review risks.

This should be worked through as soon as possible within the Analysis stage of the Commissioning Lifecycle and the completed documents maintained and updated throughout the Commissioning Life cycle, in recognition of the fact that risks continually arise and rescind, with the mitigations in place to manage them also subject to constant change.

Officers can find a template for a Risk, Issues Assumptions and Dependencies log to map the risks related to the commissioning project [here](#).

### Seeking Legal Advice

Officers must seek legal advice for any commissioning activity above £1 million total contract value and are strongly advised to seek legal advice for any commissioning activity above £750k total contract value.

When requesting legal advice Officers must contact the Office of the General Counsel early and ensure they provide sufficient information regarding the contract/procurement to enable them to determine who is best placed to provide advice. Typical information will include:

- Project value and duration
- Form of Contract
- Category/Directorate
- A brief introduction on the requirement including potential legal support required.
- Timescales of the procurement and approximate timing of legal advice requirements

If you are unsure whether you need legal advice, contact the Legal Commissioning Team for their support.

[UK Government Legislation](#) – Main source of legislation for the UK and accompanying documents  
[Local Government Association](#) – For up to discussions on legislation affecting local government  
[Local Government Information Unit](#) – For up to discussions on legislation affecting local government

## 9. Technological Analysis

Understanding the current and future technological climate prevents issues relating to the quality, relevance and appropriateness of technology. It also prevents missed opportunities resulting from the effective and efficient use of technology to support commissioning activity. Technological analysis supports commissioning in several ways,

- To understand the technological solutions available to meet needs and achieve outcomes
- To support Officers to effectively and successfully procure IT based goods and services for both organisational and public use
- To help Officers to understand the technology available to support commissioning activity regardless of whether the desired output is IT based

### Technological Analysis for Service Delivery

Using social analysis, Officers should be able to understand their core services users' experiences from interacting with the service, and as a result their thoughts, feelings, needs and desires towards the service delivery. Social analysis can also highlight where there are currently issues with provision or lack of provision. This information should be used to explore potential delivery solutions that meet the end user needs and improve experiences, see section for more information.

Technological analysis is essential at this stage to begin to understand and formulate options for service delivery that can satisfy user needs in innovative ways. The **Plan** phase will cover this in

more detail. However, the following can be considered by Officers at the Analysis stage and will inform solution development:

- The desire and ability of core end users to interact with digital forms of service delivery. This can be understood by conducting further social and equality analysis.
- The range of technological solutions currently available in the market and projections for future available technology, see Market Analysis for more information
- The organisation's appetite for introducing new technology into service delivery, see Political Analysis for more information

### **Technological Analysis for Organisational Needs**

Strategic sourcing should consider technology in the wider aspect of the longer-term needs of the organisation and its partners. Analysis must include the broader view of where technology fits into the corporate portfolio of solution provision, be flexible and agile in approach to facilitate adaption where required. It is important to think about data accessibility, open standards and interoperability between systems and databases.

### **10. Environmental Analysis**

Environmental analysis considers the potential positive and negative impacts on environmental factors due to the delivery of a provision. It should also shed light on possible opportunities to innovate in order to minimise environmental impact. Environmental impacts from public spending activities are incredibly prominent in the current political landscape due to the escalating issue of climate change.

Kent County Council is working towards net zero carbon emissions including for our provisions that are delivered by external organisations. Therefore, Officers must consider the potential carbon impact of the provision from the beginning of the commissioning cycle and consider how to it can be mitigated through the process. Officers should also consider additional environmental impacts that are specific to their provision such as impacts on green spaces and water systems, waste generation, noise generation etc.

In the first instance Officers should make their best effort to carry out environmental analysis using this guidance and their own research. However, for projects where there is an environmental complexity that requires input from subject matter experts, Officers should contact the Sustainable Business and Communities team using [scc@kent.gov.uk](mailto:scc@kent.gov.uk).

For all projects, Officers should engage with the market and other local authorities to understand the potential impacts of the provision and the solutions that might be available to reduce this impacts. This will be particular important for the development of the specification.

Other sources of information might include:

- Annual emissions reports produced by suppliers in the market
- The Low Carbon Kent [website](#)
- The Ashden Report includes a list of 31 actions that councils can undertake to reduce carbon emissions which includes the carbon savings and costs. [Tools for Councils • Ashden](#)

Useful sources of data include:

Topic	Source	Description	Link
Fuel Poverty	Fuel poverty sub-regional stats	Includes LA data on no and proportion of households in fuel poverty	<a href="https://www.gov.uk/government/collections/fuel-poverty-sub-regional-statistics">https://www.gov.uk/government/collections/fuel-poverty-sub-regional-statistics</a>
Fuel Poverty	Climate Just	Free webtool to identify who is vulnerable to climate change & fuel poverty	<a href="https://www.climatejust.org.uk">https://www.climatejust.org.uk</a>
Excess winter mortality	ONS-excess winter mortality in England & Wales	Excess winter mortality figures by LA and other demographics	<a href="https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/excesswintermortalityinenglandandwalesreferencetables">https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/excesswintermortalityinenglandandwalesreferencetables</a>
Air Quality (Due to emissions from transport and household burning)	UK Air: Air information Resource	A library of data on air quality including local air pollution forecasts and modelled data	<a href="https://uk-air.defra.gov.uk">https://uk-air.defra.gov.uk</a>
Air Quality (Due to emissions from transport and household burning)	Kent Air	Data on air quality & a list of all the Air Quality Management Areas across Kent and Medway.	<a href="http://kentair.org.uk">Kent and Medway Air Quality (kentair.org.uk)</a>
Air Quality (Due to emissions from transport and household burning)	Health costs of air pollution	Tool used to quantify the potential costs to the NHS & Social care due to the health impacts of NO <sub>2</sub> & PM 2.5	<a href="https://www.gov.uk/government/publications/air-pollution-a-tool-to-estimate-healthcare-costs">https://www.gov.uk/government/publications/air-pollution-a-tool-to-estimate-healthcare-costs</a>
Travel	Gov.uk – National Travel Survey and Active Lives Survey	National walking and cycling statistics, including LA level data	<a href="https://www.gov.uk/government/collections/walking-and-cycling-statistics">https://www.gov.uk/government/collections/walking-and-cycling-statistics</a>
Travel	Travelwest	Evidence on the health impacts of different transport interventions	<a href="https://travelwest.info/essentialevidence">https://travelwest.info/essentialevidence</a>



## COMMISSIONING STANDARDS GUIDANCE

Circular Economy and Waste	Ellen McArthur Foundation	How Circular Economy can be realised through design and policies	<a href="https://www.ellenmacarthurfoundation.org/insights-for-policymakers">Insights for policymakers   Ellen MacArthur Foundation</a> <a href="https://www.ellenmacarthurfoundation.org/design-and-the-circular-economy">Design and the circular economy (ellenmacarthurfoundation.org)</a>
Green Space	Ordnance Survey Green Space Map	Depicts the location and extent of spaces such as parks and sports facilities that are likely to be accessible to the public and where appropriate their access points	<a href="https://data.gov.uk/dataset/5d009d8a-702b-4a88-bf71-d4d6df87df53/os-open-greenspace">https://data.gov.uk/dataset/5d009d8a-702b-4a88-bf71-d4d6df87df53/os-open-greenspace</a>
Flood Risk	Flood risk map	Map showing degree of flood risk (from rivers and sea, and from surface water) by place and postcode	<a href="https://flood-warning-information.service.gov.uk/long-term-flood-risk/map">https://flood-warning-information.service.gov.uk/long-term-flood-risk/map</a>
Heat risk	Heatwave mortality	Reports on the surveillance of excess mortality during periods of heatwave	<a href="https://www.gov.uk/phe-heatwave-mortality-monitoring">PHE heatwave mortality monitoring - GOV.UK (www.gov.uk)</a>
Kent area Climate risk	Mapping climate change for Kent	Map based data visualisations to show how climate change will affect the county over the coming decades.	<a href="https://www.kent.gov.uk/mapping-climate-change">Mapping climate change for Kent County Council (arcgis.com)</a>
Carbon Emissions	Greenhouse Gas Reporting Conversion Factors	Contains up to date conversion factors for fuels, vehicles, electricity to ascertain carbon emissions etc	<a href="https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2021">Greenhouse gas reporting: conversion factors 2021 - GOV.UK (www.gov.uk)</a>