



**The UK Public Sector
concept of commissioning**



CIPS Australasia



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Foreword

The concept of ‘commissioning’ has been developed in the UK public service over the last few years and is gaining traction there as a term to define public sector supply lines more broadly.

Commissioning is more end to end than ‘sourcing’, like category management. It is more service orientated rather than goods orientated, like a traditional supply chain. And it includes “make or buy” options and in-house provision, rather than just purchased solutions. In short, it is a more embracing approach to fulfilling public supply lines to citizens.

This excellent paper was written by one of the UK based CIPS professional practice team – Helen Alder. She explains Commissioning from first principles through to a number of its current applications.

Maybe there is something to learn from this UK public sector approach – not only for the Australian public service, but for our procurement profession as a whole throughout the region.

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Introduction

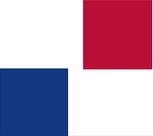
The term 'commissioning' is widespread in the UK public sector and the role of the commissioner has existed for years in most central government departments, particularly in the National Health Service (NHS). Initially the term Commissioning was used differently in health, education and social care, but mainly to refer to the contracting or setting up of a new department, institution or facility such as a school, prison or hospital. It is also used across all business sectors in the sense of "setting to work" - for example, a new machine, piece of equipment or manufacturing plant.

However, in recent years the term commissioning has evolved and is now being applied in a wider sense to describe the process in which services are provided by the public sector, in particular the commissioning of services to be procured from, and provided by, the private sector, the third sector or indeed a particular part of the public sector itself.

Local authorities use a number of different titles for commissioning but all amount to more or less the same thing, building services around the user. Commissioning tends to be used in relation to provision of social welfare related services, for example child care, back-to-work programmes, and so on. In 2006, the Department for Education and Skills developed the 'Joint Planning and Commissioning Framework for Children, Young People and Maternity Services' which was the first time the government set out the commissioning cycle (as below) to which key Government departments and other organisations in the government field signed up.



Ref: everychildmatters.gov.uk/strategy/planningandcommissioning/ In the NHS the term 'commissioning', or 'world class commissioning' as it is often referred to, is now used for all healthcare services. In effect, a Primary Care Trust will 'commission' all the healthcare needs for its population – from NHS trusts, the independent sector, third sector, social enterprises and private sector – all are now in effect 'providers' of healthcare.



The major driver in recent years has been the advent of best value regimes bringing pressures to bear on the cost of public services, building services around the user to improve the delivery of services to the public, and to obtain value for money. Indeed the perception that the private sector may be better placed to deliver higher quality, more cost effective services has also influenced this process.

In some cases the commissioners will be policy makers (civil servants or public employees) forced to find ways to reduce costs and increase value for money because of headcount or budget restrictions. In addition, commissioners can fail to recognise that markets in some of the service sectors are immature or even non-existent. They do not behave in the same way as conventional, mature commercial markets, and certainly the voluntary and not for profit sector needs to be managed differently than would be the case for the conventional commercial sector. This means managing both the market (in terms of development and management) and the provider relationships in an appropriate manner.

There is some evidence that commissioners are recognising that in some instances the third sector needs different treatment. The case study on Sandwell in 2006 <http://www.everychildmatters.gov.uk/resources-and-practice/search/IG00072/> highlights this.

Definitions

It is interesting to note that the Oxford English Dictionary defines 'commission' only as a straightforward verb or noun. The various definitions of the verb "to commission" do not include the business related activities we are discussing here. This shows that the various definitions have been brought into common use from many sources, and hence it is hardly surprising that so much confusion exists around this topic.

The Institute of Commissioning Professionals (although it should be stated this Institute is not recognised by the government) defines commissioning as: 'securing the services that most appropriately address the needs and wishes of the individual service user, making use of market intelligence and research, and planning accordingly'

This is an interesting definition as 'needs' and 'wishes' are not necessarily the same thing. For example, drug addicts might wish for unlimited supplies, their needs might be expressed in medical terms and public policy as to what they should be given could be something else! Further, this definition only includes securing the services to address needs, whereas some would argue commissioning is more about identifying the needs and shaping the services to meet that need. Also, there is much more to it than providing 'soft' services, and the service users (customers) are not always willing recipients (for example offenders under probation or in custody).

The following definition by the Institute of Public Care (IPC) encapsulates this: Commissioning is the "process of identifying needs within the population and of developing policy directions, service models and the market, to meet those needs in the most appropriate and cost effective way".

It seems there is no universally understood and agreed business definition of commissioning, nor a clear view of how it relates to the procurement of goods and services and how these various activities should be handled to ensure best quality and value.

Aims

There are different views and definitions of what commissioning is all about, some of which CIPS would strongly challenge - particularly where these are based on a narrow definition of procurement as being limited to sourcing and contracting with suppliers. This narrow view of procurement undervalues its role in the commissioning process and we believe often leads to the sub-optimal exclusion of procurement professionals from the commissioning activity as well as a failure to make appropriate use of the skills they can bring to the process. The process of commissioning is clearly linked to market knowledge and the professional activities of market and supplier/provider development and relationship management. These are key skills for effective procurement professionals, and organisations employing category management as a business process. (For more information see: www.cips.org for the Knowledge Insight on Category management) They will be aware that these key stages of the process cannot be separated from the later stages of category planning, sourcing, contracting and contract/relationship management.

CIPS believes, therefore, that the relative positioning of the two activities needs to be clarified, and agreement reached on whether commissioning is different from procurement, and what that means in practice – this is primarily the aim of this paper.

Background

Within certain political environments, delivery of public services (for example nursing in healthcare, probation officers, prison officers, and so on) is still run by public servants. This is very prevalent in Wales but not quite so prevalent in Scotland. In these instances, delivery of public services has been reconfigured so that an internal purchaser/provider market is created.

There will be a body that commissions the service required, and another that delivers. Historically, they would have been the same public sector organisation, but now may be the public sector, the private sector or the third sector. For example, the National Offender Management Service (NOMS), originally part of the Home Office but which now sits within part of the Ministry of Justice, commissions provision of services to offenders, from conviction to end of probation (end-to-end commissioning).

This includes the commissioning of PFI prisons, private sector prison services, prisoner transport, public sector prison services. The provider here is the Prison Service and includes other specialist prison and probation services, some of which are provided by the third sector.

There is a vision that, at some point, all or part of those services will be subject to more open competition. As a step towards achieving this, a programme of “market testing” public sector-run prisons is taking place. The public sector delivery of public services is what is meant by in-house. A classic example is a care-home run by a local authority. Other care-homes are privately run but they provide all or part of their services to the local authority, such as the service is “outsourced” or “bought in”.

In some instances, the term commissioning is now used within the wider process of “place shaping”. “Place shaping” is described (for example in the case of community care) as the over arching strategic framework which will define the community services required, and how these services should be delivered. Delivery will be through four methods: grants for delivery via the third sector; procurement; in-house; or by influencing the private sector (market development) to deliver the required services.



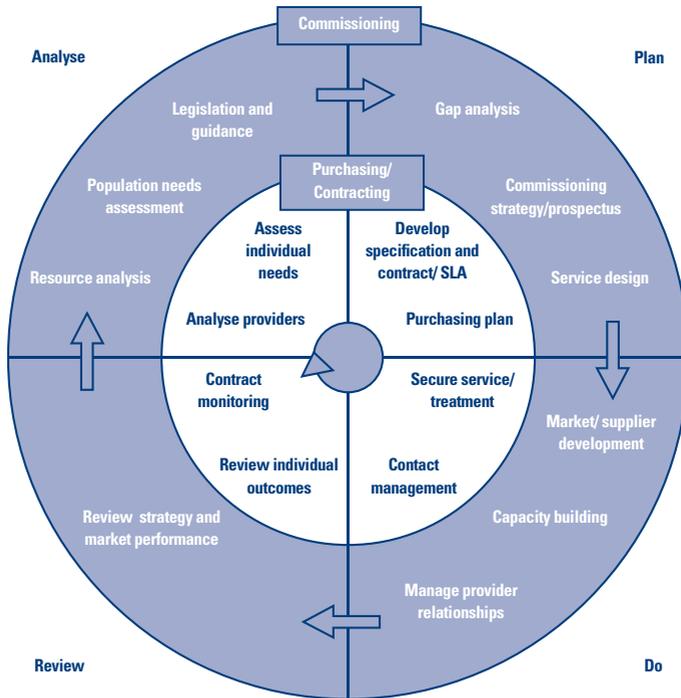
In the ‘Lyons Inquiry into Local Government March 2007’, Sir Michael Lyons defines his vision of place shaping as “the creative use of powers and influence to promote the general wellbeing of a community and its citizens”. It includes the following components:

- building and shaping local identity;
- representing the community;
- regulating harmful and disruptive behaviours;
- maintaining the cohesiveness of the community and supporting debate within it, ensuring smaller voices are heard;
- helping to resolve disagreements;
- working to make the local economy more successful while being sensitive to pressures on the environment;
- understanding local needs and preferences and making sure that the right services are provided to local people; and
- working with other bodies to respond to complex challenges such as natural disasters and other emergencies.

Different models are used to try to encapsulate what commissioning is. An example of one of the models used by people in Social and Health Care is the Institute of Public Care (IPC) model that defines commissioning and its relationship to procurement.

In the introduction to this paper we have included a model used by the DCSF. This paper will not try to reference all the various models being used, but will give examples of some of the most popular – the choice of appropriate model depends upon the application.

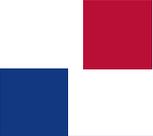
The IPC model links the commissioning and procurement (or purchasing) cycles, and is relevant across public care services such as health, education, social care and housing. It is based upon four key performance management elements - analyse, plan, do and review - and assumes that all of the four elements are sequential and of equal importance, such as commissioners and contractors should spend equal time, energy and attention on the four elements. The commissioning cycle (the outer circle in the diagram) should drive the procurement/purchasing and contracting activities (the inner circle). However, the purchasing and contracting experience must inform the ongoing development of commissioning. Essentially, commissioning of services is the context within which purchasing and contracting takes place.



A key principle of the model is that the commissioning process should be equitable and transparent, and also open to influence from all stakeholders via an on-going dialogue with patients/service users and providers. Hence the public, patients/service users and carers are placed at the centre of the model. The paragraphs below outline some of the activities that might be undertaken under each element of the IPC commissioning cycle.

Analysis - understanding the values and purpose of the agencies involved, the needs they must address, and the environment in which they operate. This element of the commissioning cycle involves activities such as:

- clarifying the priorities through reviewing legislation, national guidance and local strategies and policy statements
- undertaking population needs assessment
- mapping and reviewing existing and potential services across agencies to understand provider strengths and weaknesses and identify opportunities for improvement or change in providers
- identifying resources needed, and risks involved, in implementing change and/or continuing with the status quo.



Planning - identifying gaps between what is needed and what is available, and planning how these gaps will be addressed with available resources. This element of the commissioning cycle involves activities such as:

- undertaking a gap analysis to review the whole system and identify what is needed in the future
- designing services to meet needs.
- writing a joint commissioning strategy (or prospectus) which identifies clear service development priorities and specific targets for their achievement.

Doing - ensuring that the services needed are delivered as planned, in ways which efficiently and effectively deliver the priorities and targets set out in the commissioning strategy. This element of the commissioning cycle involves activities such as:

- supply management and capacity building to ensure a good mix of service providers, offering consumers an element of choice in how their needs are met
- developing good communications and effective relationships with existing and potential providers
- purchasing and contracting of services and de-commissioning services that do not meet the needs of the population group.

Reviewing - monitoring the impact of services and analysing the extent to which they have achieved the purpose intended. This element of the commissioning cycle involves activities such as:

- pulling together information from individual contracts or service level agreements
- developing systems to bring together relevant data on finance, activity and outcomes
- analysing any changes in legislative requirements, population need and reviewing the overall impact of services to identify revisions needed to the strategic priorities and targets.



The procurement or purchasing cycle (the inner circle) follows the same pattern of analyse, plan, do and review and consists of similar activities, but at a different level, such as contracting for a service, but could encompass the care management of a referral function of securing a service for an individual. Activities in the purchasing cycle include:

- analysing patients/service users' individual needs
- confirming the resources available for the contract delivery
- analysing the strengths and weaknesses of providers, in relation to the direction set in the commissioning strategy
- developing service specifications and deciding on contract type and terms
- making a spot purchase to implement the care plan, this is one option of the procurement strategy
- day-to-day care and contract management and communication with providers
- tendering for services and letting of contracts or SLAs
- monitoring and reviewing contracts and care plans for their continued suitability
- reviewing the providers performance.

Further information about the IPC joint commissioning model can be found in the Introduction in chapter one of the Care Services Improvement Partnership (CSIP) Commissioning eBook <http://integratedcarenetwork.gov.uk/betterCommissioning/index.cfm?pid=858>.

Whatever model is used it should encompass and take account of the following:

- clear realistic objectives should be set
- maximising value in the supply chain and the processes needed to achieve the objectives cost-effectively, and at understood and agreed levels of uncertainty and risk which need to be defined
- the time needed to plan, implement, manage and measure performance against the plan should be defined and agreed before any of the 'doing'
- tasks should be undertaken by a seamless team of people where the skills, knowledge and experience of the people to effectively perform these tasks, takes precedence over functional silos or traditional areas of responsibility.

One of the key issues for the public sector is how to deliver the services the country needs at a price the taxpayer can afford. The third sector is evolving and becoming better at helping the public sector to deliver more efficient services and greater value for money, and this will be used to fulfil a need by some organisations/markets. Increasingly it is a question of structuring services appropriately to the needs and to the market capability, and of delivering efficiently services that provide added value, rather than raising taxes to provide more services.

The third sector (the not-for-profit or voluntary sector) adds value through extensive use of volunteers and its ability to build social capital, thereby providing services that the public sector is unable to or can no longer afford to provide. (Ref: Roger Howard, CEO Crime Concern). The large-scale transfer of public housing to housing associations is a good example of how this approach works.

It is possible -though there are tricky rules under EU law about state aid - to give a grant to a third party - often voluntary or third sector - to develop or deliver a service. The traditional role of the third sector in commissioning has been to provide expert advice in the commissioning/design of services or care-paths (because reputedly they represent the views of the citizen or the special needs elements of the community, and they have no bias or pecuniary interest).

In reality, the services that the third sector helps to design may not be available from commercial markets so there has been a history of public bodies giving responsibility for service delivery to the third sector. However, this causes problems when the third sector does not have enough capacity so the private sector is then involved in an unplanned way. This often means sub-optimal services and, in the longer term, a threat to the third sector organisation which has to compete with private sector businesses. Ensuring that services are commissioned appropriately, and that markets and providers are managed effectively through development and maturity to the eventual "ideal" state, will help to avoid these pitfalls – this is certainly an area where the commercial skills of procurement professionals should be employed in the commissioning process.

If an organisation asks and pays a third party to do something for it – as in the case of commissioning services - then there is a contract (written or otherwise). Where that organisation is in the public sector, then the Public Contracts Regulations come into play. These Regulations are derived from EU legislation, so similar rules apply elsewhere in Europe. CIPS members in other parts of the world may be subject to comparable local legislation. Where the organisation is private or third sector then the usual commercial rules and laws apply, again there is a need for contract skills in this process.



The big issue for public sector organisations is that some ‘commissioners’ do not understand commercial principles or the market environment and competitive landscape. They may go straight to market, thus jeopardising value for money and putting sustainable service delivery at risk, as well as adversely affecting the market for other services, suppliers or public sector customers. In addition, commissioners often do not have relevant commercial and procurement skills and experience. In such cases Procurement may be undertaken by people not qualified or competent to grasp the business drivers (commercial or otherwise) which condition the approach needed to develop supply markets, craft specifications, draft contracts or Service Level Agreements (SLAs), design contract and performance management regimes, and ultimately to deliver value for money.

Many public services, the NHS for example, are huge, extremely complex and beyond the capability of a good manager to control. Politicians and highlevel civil servants must therefore simplify what they expect to be commissioned and managed, and how. This should always be done in conjunction with a senior commercial expert who has the acumen and market knowledge to assess what is deliverable in the current and future commercial landscape. If not, there is a possibility that the commissioners will be out of their depth and turn to expensive consultants who may themselves have never ventured into the delivery of such a complex project or service delivery.

CIPS position on Commissioning

CIPS recognises the emergence of the term ‘commissioning’ to describe a process for initiating strategic analysis of market needs for particular types of public sector human-based services (for example social care, back-to-work programmes and so on), followed by service design/specification and procurement processes (as described in the CIPS P&SM model, and Category Management Insight guide @ www.cips.org) to provide those services to deliver the desired outcomes. Further, CIPS would champion that professional procurement is a vital element of the commissioning cycle and should be managed or influenced by commercial and procurement professionals. CIPS emphasises that procurement professionals must work as part of, and inseparable from, a teambased approach, rather than always taking the lead in this area.

Where the Public Contracts Regulations apply, it is essential that procurement and governance is carried out properly, since the whole process is open to scrutiny and there are legal options open to aggrieved losers.

It is essential for procurement professionals to be involved in all stages of the commissioning cycle, including the early stages involving the ‘make/do or buy’ decision. Procurement can contribute an objective focus to help the ‘commissioner’ decide at the outset on the scope of the service to be commissioned in the light of current and future market knowledge, as well as reducing the risk of the whole project spiralling out of control with all the cost and budget implications that brings.

Both the non-involvement of procurement professionals, and involvement only from the point of sourcing suppliers will be sub-optimal. Procurement professionals will need to fully understand the rationale and needs of the commissioning process by being fully involved in, and permitted to contribute to, defining the desired outcomes of any project. Commissioners need to fully understand the value and contribution that the procurement professional will bring to the successful outcome.

Further points

Professional procurement in its widest sense – throughout the whole category management process from market analysis/service design to contract management - is a vital element of the commissioning cycle and should be carried out by procurement professionals as part of a team approach.

CIPS believes there should be a strong leadership strategy for commissioning and would stress the need for a robust stakeholder engagement strategy (SES).

CIPS believes this strategy should be driven by a professionally prepared business case where all the options, risks, costs and outcomes are identified. Commissioning strategy should be linked to business planning, overall corporate objectives and budgetary control.

CIPS believes the 'purchasing' elements of the commissioning cycle are often poorly resourced with greater capabilities and resource put into the 'assessment of need' than 'contracting' and 'contracting management'.

It is important to manage the procurement in such a way that the whole team can assess the options and see how the various potential suppliers or providers propose to meet the requirement, ways in which services could be designed and improved, how innovation could be deployed, performance could be measured, relationships managed, contracts constructed, and commercial options for payment changed and improved. There should be an alignment between commercial and procurement directors and heads of commissioning within an organisation.

Procurement professionals should work with and advise commissioners on commercial activities such as market development, supplier development and relationship management, sourcing strategy, procurement procedures, spend analysis, achieving Value For Money (VFM), performance measurement, contracting and negotiation, and contract management, regardless of the sector being dealt with.

Procurement professionals should take the lead on all sourcing, contract letting, governance and contract management activities. Where possible, procurement professionals should arrange for familiarisation training on commercial aspects and the role of procurement for commissioners within their organisation.

CIPS recognises that there are various commissioning frameworks and it will work with appropriate parties to develop these further, regardless of the sector being dealt with. Early involvement and contribution of procurement professionals to the commissioning process is essential.

CIPS recognises that there will be political differences in devolved countries, for example in England a more market-led approach to delivery is preferred to that used in Scotland and Wales.



CIPS further believes that skilled negotiations are essential throughout the process.

CIPS believes the principles of the EC Treaty need to be enshrined in commissioning contracts, including a requirement to advertise Part B service contracts (which commissioning is) in a 'suitable medium' so that contracts can be seen by all Member states (the business of proportionality applies here). (For reference see: <http://www.fordham.edu/law/pubs/filj/citeman.htm>)

Best Value legislation dictates the need for best practice in this area, and that cannot be done without procurement involvement at a strategic and tactical level.

CIPS believes commissioning bodies should make more effort to shape the market by analysing shortfalls and trying to build capacity where such shortfalls exist. This is a key area to use procurement professionals for knowledge and expertise.

Without procurement involvement, commissioning bodies tend to be reactive. This could lead to terms and conditions of contract being inferior, benefits leakage, and little attempt to plan (and forward-buy) capacity.

Procurement opens the door to better practice in these areas.

CIPS believes there is a desire for joint commissioning - a number of agencies to create a strategic alliance in order to jointly commission services which could lead to benefits in market development, competition and economies of scale. CIPS believes tensions may exist between national priorities and local needs.

CIPS believes there are quick wins where procurement can make a significant difference quickly. Temporary agency staff, meals-on-wheels, frozen meals, transportation, repair services, alarm systems, OT services, aids for the disabled, and other home care services are just a few examples of things that will yield higher rewards/returns than say, care home places where prices are set at a national level and capacity is tight.

CIPS supports the need to map a strategic commissioning framework. This could consist of: current state/service mapping/strategic future state requirements/priorities/testing innovation and ideas/examining options/implementation planning/resource allocation and budgetary management/business and IT processes /resource matching/actual procurement, in a chronological continuum.

In practice a 'commissioner' of childcare services will, for example, see his/her role as defining 'outcomes', such as what changes in outcomes for children, young people and families do we want to achieve through talking to them and others before looking jointly with other key partners (as part of Children's Trust arrangements) at service pathways, the market, supply chains, funding streams and contractual and performance frameworks, to bring those outcomes about. For examples in this area, see: <http://www.everychildmatters.gov.uk/strategy/planningandcommissioning/local-commissioning/>. The role of procurement will be at the heart of this process in helping to define these outcomes, align them with the pursuit of best value, and provide the solutions being sought.

Here the art is to create a well articulated objective requirement that allows:

1. potential suppliers to evaluate what is wanted and to frame bids accordingly
2. the procurement and commissioning team to assess the bids and select a supplier in accordance with the pre-set criteria
3. monitoring the supplier's performance is not easy for procurement to when it is simply providing an impartial input.

This shift also means that, to some extent at least, we are transferring a significant responsibility to the market. As buyers, we stop saying 'this is what we want' and start saying 'this is the change what we want you to achieve'. This will need a shift in mindset to a more 'outcome' based approach and CIPS needs to recognise that there is a significant area where skills and competences will need to be developed. Organisations may also look to 'commission' work formerly done inhouse, so there may be a cultural shift to manage – any outsourcing of an existing service could result in staff transfer subject to the Transfer of Undertakings (Protection of Employment) Regulations 2007 (TUPE) which preserve employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.

The financial strategy should ensure that the commissioning strategy is affordable and is set with the organisation's risk and assurance framework in mind. The commissioner should ensure that the service provider assessment of risk corresponds with theirs. Failure to do so is a risk in itself.

There tends to be a misunderstanding about risk management and risk transfer in the public sector because the private sector relates risk directly to financial outcomes; in the majority of cases the public sector cannot do this realistically.

Other risks in the commissioning process, some of which may have already been mentioned, may be:

- specialist procurement knowledge and contracting skills may not be sufficiently utilised throughout the commissioning process
- objectives of the service to be commissioned are not clear or defined
- the data which is required to plan, implement, manage and measure the performance against the plan has not been defined
- commissioners will fail to work with providers to sustain and improve the vision for services
- commissioners will fail to engage in constructive performance management to ensure continuous improvement.

In the NHS world class commissioning there is a strong emphasis on not only selecting the best providers (and sometimes there is little choice), but also on managing, motivating and inspiring them to produce real value for money. It is essential for procurement to possess skills such as supplier performance management, motivation, contract management, incentivisation, delivery, supplier relationship management and stakeholder management. Ongoing management will be down to a team approach - procurement with operational management and suppliers all collaborating to deliver best performance, value and innovation. Individual organisations may manage it differently, but all the above skills are required – not having these skills will be a risk both to the delivery and on-going success of the commissioning project.

Conclusion

To conclude, it is necessary to reiterate the opening paragraphs of the CIPS position - CIPS recognises the emergence of the term 'commissioning' to describe a process for initiating strategic analysis of market needs for particular types of public sector human-based services (such as social care, back-to-work programmes and so on), followed by service design/specification and procurement processes (as described in the CIPS P&SM model at www.cips.org to provide those services to deliver the desired outcomes.

Further, CIPS would champion that professional procurement is a vital element of the commissioning cycle and should be managed or influenced by procurement professionals. CIPS emphasises that procurement professionals must work as part of, and inseparable from, a team-based approach, rather than the lead in this area.

It is essential for procurement professionals to be involved in all stages of the commissioning cycle, including the early stages involving the 'make/do or buy' decision.

About the author

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Helen has worked with CIPS for 9 years and wrote this paper whilst in the role of Senior Procurement Specialist. During her time at CIPS, she has focused on a number of different areas, namely e-Commerce, sustainability and commissioning. Prior to working at CIPS, Helen was a Duputy Purchasing and Supplies Manager in the NHS and worked in Strategic purchasing and Supply Chain at RS Components.



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