In Pursuit of Outcomes: Moving from setting conditions to 'Co-Missioning'

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What an unpacking of The National Lottery Community Fund's journey into Payment-by-Results (PbR) based contracting teaches us about when and why charities and public services might need the condition-setting logics of PbR to pursue outcomes, or, to look for alternative ways to support collaboration around shared pursuit of mission.

- You may wish to follow our reflections from start to finish by reading each chapter in turn.
- **If you like to scan-read, you can use the bold paragraph openers** to preview the arc of observations across the paper
- You can use the hyperlinks in the table below to dive into the chapters that deal with the Pursuits which align most with your own.
- If upon reading the Executive Summary you want to skip straight to the 'so what' and 'where next' that's emerged from the journey, you can use the hyperlink to jump to Chapter 6.

Contents

Acknowledgements

This discussion paper draws on insight from many sources. While it makes attempts to acknowledge some of these in the endnotes, many other informal conversations as well as formal sources of insight have shaped the backdrop of thinking and analysis that sits behind the paper.

Thanks are extended to all those who have been involved in many ways in discussions and reflection over recent years which have enriched this. And in anticipation, thanks is offered to those who take forward the paper's value as a discussion-opener by exploring its contribution to the development of a new **'Co-Missioning'** paradigm within their own existing and future pioneering work and innovatory practice.

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Executive Summary

Outsourcing of public service delivery is a big task. Government procured £295.5bn of external supply in 2019/20, accounting for a third of government spending. Approaches to such outsourcing are shaped largely by the logics of managing the pros and cons that come with harnessing the profit motive and competitive market characteristics of the private sector.

Meanwhile the Third Sector plays a third, non-market way of rising to society's needs. It operates, by definition, outside of the domains of the private sector and the public sector, picking up the issues that these don't or can't, and relies primarily on community goodwill to function, not market forces or taxation. 52% of Third Sector income comes directly from the public along with countless volunteer hours.

£9.2bn (or 23%) of the Third Sector's income is however, supplied by 3% of the outsourced public service spend mentioned above, albeit provided under contracts to just 6% of the country's charities – typically larger ones. The income derived by smaller Third Sector Organisations (TSOs) from the public sector (around £6.2bn) is provided mostly as grant. Grants from the Public Sector reflect recognition of the Third Sector's mission-led values and unique, agile abilities to reach and foster outcomes in disadvantaged communities, especially where needs are complex.

Successive governments' policies over the last few decades however have sought to move away from supplying TSO s with grant in favour of a shift towards contracts. Contracting gives commissioners more control, through the conditions it allows them to set. By contrast, grant making is a trust-based, relational form of resource-sharing in support of a social goal, and for busy commissioners with pressure on budgets, making cases for allocating grant can be tough. Sometimes, co-funding from grant makers like The National Lottery Community Fund (The Fund) can help leverage grant from commissioners, as we often see in our strategic and open programmes.

Increasingly, as part of the governmental policy shift towards contracts, and as schools of thought in wider outsourcing policy have evolved, local commissioners have been encouraged by central government to consider specifying contracts in terms of outcomes rather than activities.

One favoured form of this Outcomes Based Commissioning (OBC) approach is known as Payment by Results (PbR). Setting contracts' payment conditionality on results was seen as useful for overcoming a range of commissioning barriers that otherwise prevent public services from fulfilling their social and fiscal objectives. Chiefly, PbR is targeted at helping Commissioners in situations where they consider that:

- **Commissioning early action or preventative services is unaffordable.**
- **Commissioning action on complex issues is hard to justify in the face of uncertain results.**
- **Commissioning of replication-based models is risky if providers' capabilities are unclear.**

PbR works on the premise of withholding payments to contract holders **until there is certainty** that a specified 'result' has been achieved, which may be **verified by:**

- **The release of savings, cashed following an early action service making a downstream service redundant.**
- **Evidence that a desired level of financial/social outcomes in a complex system is attributable to an innovation.**

- **Proof of adherence to an evidence-based impact blueprint from KPIs confirming fidelity has been achieved.**

Over the last decade, mindful that PbR's 'pay-later-if' premises could be difficult for smaller TSO s to work with, the Fund has made contributions into PbR payments (known as 'top-up') in several contracts issued by commissioners - especially where Social Investors have also been part of the arrangement in a role of providing upfront working and risk capital. In an administrative capacity the Fund has also supported two other government-backed programmes to supply a 'top-up' into PbR payments. All three programmes were also at the same time supporting a policy objective of growing the Social Investment (SI) market by providing the opportunity for it to deploy capital.

The discussion paper looks at the lessons learned from our experience of working with 50+ such 'PbR+capital' initiatives, commonly known as Social Impact Bonds (SIBs). It considers the benefits and drawbacks of using SIBs in the light of:

i) the internal logics that need to be upheld if the rationales for using PbR+capital and the accompanying transactional costs are to be justified in practice

ii) the real-world commissioning constraints that present challenges for SIBs in upholding those logics.

Noting that it is rare for commissioners to persist with SIBs without the bonus of a top-up scheme, the paper finds the key obstacles which SIB parties encounter in implementing PbR's logics include practical difficulties in:

- De-commissioning services and cashing savings.
- Ring-fencing payments for outcomes that may occur outside of the in-year commissioning budget period.
- Finding stable enough contexts to replicate evidence-based models with impact proxy KPIs remaining valid.
- Attributing the effect of innovations or replications in complex and therefore unstable contexts against a robust contemporary counterfactual (identifying effects that would happen anyway) as part of the payment trigger.

The discussion paper explains how the significance of these difficulties depends on the intended PbR rationales.

It offers a framework comprising of four PbR rationales. The table on the next page introduces these along with the conditions that would make them applicable (i.e., the use-cases).

PbR Use-case	**A: Cashable Savings**	**B: Attributed Result**	**C: Quality Management**	**D: Flex & Adapt**
Four reasons PbR logics might look attractive to commissioners (which, when pursued, may also generate need for working and risk capital to support delivery prior to any payments), and key factors determining **when** they are feasible.	PbR allows commissioners to contract a preventative service that can't otherwise be **afforded** in the present, **when** there is confidence that the reduction in demand it creates (the social result) will generate sufficient cashable savings in the future (the financial result) enabling commissioners to commit in the present to recompensing the provider or an upstream commissioner when cash is released.	PbR allows commissioners to derive value-for-money from contracting a service to tackle **complex** social issues where outcomes are highly uncertain, **when** it is feasible to test whether desired outcomes were caused by the innovation, by comparing results against a contemporary counterfactual (a check on what would have happened anyway), and making payments only when that is proven to be the case.	PbR allows commissioners to derive value from contracting providers to replicate an evidence-based social impact model, should they have concerns about the provider market's quality credentials, **when** the delivery context is stable enough for effective replication of a service (or value-chain component) to be feasible and therefore for fidelity to be incentivised and tested by blue-print KPIs that remain viable as proxies for assurance of knock-on outcomes, and which trigger payments.	PbR allows commissioners to support the commissioning of personalised, flexible, and adaptive services **when** contracts state that delivery of specified outcomes will trigger payment (rather than specifying the details of how services are provided), and there is agreement of how a fair test will be made of whether those outcomes have occurred and whether the intervention approach was instrumental in catalysing them.

The discussion paper uses this framework to help untangle the mixtures of objectives which Commissioners often have in mind in resorting to PbR. The typology of four PbR use-cases teases out the rationales plus the underpinning essential logics and contexts that are instrumental in realising those rationales, and which therefore must be in place.

Recognising that commissioning is often the practice of the art of the possible, the discussion paper is intended to help commissioners considering PbR to understand why and how the distinct internal logics of PbR's rationales must be upheld to achieve value for money (over and above any top-up incentive). It also highlights why and where, in some combinations, such PbR logics may conflict. The paper also helps to bring to the surface the reasons why the attraction to specifying outcomes in contract persists, even when upholding PbR logic is untenable or where commissioners aren't looking for the certainties that PbR ostensibly exists to offer. This persisting driver is characterised by the fourth PbR use-case in the Typology (D), in which PbR is used expediently as a flexible contracting work-around – and not because of a driving 'pay-later-if' PbR logic.

The paper explores how the attraction to this flexibility use-case reflects a longstanding but growing interest among commissioners in specifying outcomes, because they understand that specifying activities and KPIs in contracts can lock out services' ability to innovate, adapt and be person-led. Their underlying quest is to find a form of contract that offers flexibility. And PbR is seen, on first impressions, as the enabler. However, a fair test for a PbR payment trigger for use-case D is still likely to need to emulate use-cases A-C's logics and attend to their challenges.

If such challenges mean implementation of the logics that would make PbR worth its administrative and transactional costs can become untenable in real-world contexts, the paper argues that alternative OBC approaches are needed. Some already exist, including formal relational contract mechanisms such as Alliance Contracts. Some are being piloted. Some are being – or still need to be - imagined. Some have quietly been there all along.

The paper goes on to explore some of those alternative commissioning options. This includes considering how, when working in complex conditions, this may mean paying not so much for outcomes, as for the applied learning capabilities which can enhance public and third sector partnerships' capacity to use data – to help them adaptively and continuously sense the most significant changes needed and the emerging possibilities for wayfinding towards them. It also explores whether to support any such a 'payment for learning' approach, Social Investment may find it has different roles to those originally conceived for it under PbR.

The paper suggests that commissioners and policy makers may find it helpful to use the typology to review the scope of contexts in which they turn to PbR, or, to alternatives. For example, if outsourcing remains part of the public policy picture to the significant extent noted at the head of this Exec Summary, some commissioners may decide to continue to use PbR approaches to procure components in public service value-chains from the private market at large. If so, there may be reasons why they consider employing PbR's use-case C to assure quality of replicable activity under stable conditions (which are arguably more likely to be present in simple cause-effect value chains than in the inherently dynamic complexity of social systems). Such a component-assurance focus might still provide opportunities for deployment of SI into public procurement. If focussed on specific, reproducible deliverables in a value chain requiring socially assistive or socially produced goods, perhaps the SI opportunity is far larger than when using PbR to commission TSO s to flexibly and holistically pursue social outcomes?

For the much smaller proportion of commissioning however, which seeks out the help of TSO s as mission-locked organisations in tackling complex system issues, the typology signals that in real-world conditions, other formal relational contracting mechanisms, such as Alliance Contracts or even a Payment for Learning approach, are more suited to working in complexity and a better fit in many situations than PbR for the public sector's work with TSOs.

Contracts are important tools for commissioners in using specification to protect against profit-making at the expense of mission when working through private markets. However, in reaching out to not-for-private-profit providers, assurances commissioners seek about mission commitment can be derived from TSOs' legal set-up and governance, which set out and protect their public benefit purpose. The discussion paper explores TSO s as a range of organisational types which sit along a spectrum of asset and mission locks and of governance arrangements, reflecting the communities TSO s serve and the user-led accountability that drives their efforts.

The issues encountered by TSO s and other parties when using PbR contracts are summarised at the end of Chapter 5. The final chapter then goes on to look beneath the surface of use-case D to explore an alternative way of thinking about how Charities and Public Services can collaborate to meet the deeper relational and trust-based aspirations that belie its interest in making contracting between the two more flexible in pursuit of outcomes.

The paper concludes by considering the space that the Third Sector occupies in meeting need outside of the conventional buyer-seller and competition-based mechanisms of profit-motivated markets. It observes that given an increasing trend towards relational and trust-based forms of governmental-TSO partnership, it can make more sense for public services simply to return to a grant-based approach to sharing resource with TSOs, with a developmental evaluation approach to provide assurance and enhanced capabilities to navigate social complexity.

And it suggests that especially when it comes to working with the end of the TSO spectrum occupied by Charities, particularly smaller ones, public services may be best encouraged to approach them by stepping out of the role of a 'commissioner' (in the conventional sense of issuing contracts that come with conditions). Instead, with a linguistic twist to drive the point home, we suggest an alternative; an approach in which public services seek to partner with charities in the spirit of a shared sense of mission around social outcomes, with grant provided by public service commissioners as a contribution into a collective pooling of resources and learning in partnership with TSO parties - a new relationship paradigm, in which Public Services and Charities come together equitably, as mutual **'Co-Missioners'** with each other.

Chapter 1 – Setting the scene

(the origins of public service contracts that make payment conditional upon outcomes – and how we got involved).

PbR (Payment by Results) is a form of contracting whose conditions set incentives to pursue results. Fundamentally it's about withholding payment until the buyer gets something it wants. Unlike many conventional contracts' conditions, it focusses its specifications and payments on 'results' (rather than on delivering a pre-determined action).

That sounds very helpful to commissioners pursuing social, health, environmental or economic outcomes, especially when 'what works' as a pathway to an outcome isn't known and is dependent on emerging and dynamic contexts.

Flexible delivery is therefore a dominant reason why people are attracted to PbR. But it isn't the only driver. Other drivers include a search for savings, proof of impact and quality assurance. People may be motivated by more than one driver. Consequently, what people think they should be paid for, or how that should be triggered varies, depending on the rationale for attaching payment to 'results' in the first place. Although on first impressions the idea of withholding or even never needing to make a payment may seem appealing, it can turn out however that this is trickier than first envisaged. And there are practical reasons why commissioners may feel obliged to make payments or it is more prudent to do so, even when desired results are not achieved.

If you've found getting your head round aspects of PbR's evolving logics confusing – you're not alone. And if you are unclear about the financing arrangements that have sprung up around PbR's delayed-payment logics, then by the same token, you may want help to crystallise the different use-cases for PbR and its underpinning capital.

It's a space that can easily feel hard to navigate. And as a Social Investment Intermediary recently said to me "this space has had a lot of people talking at cross purposes". All too often people don't even know that's what they're doing. It's not surprising; most of us in this space have not had the full birds-eye view of the unfolding array of motivations and manifestations of PbR to realise that they are not all the same, especially when launching into it. And that included us at The National Lottery Community Fund (as I'll explain in this and my upcoming chapters in this Discussion Paper).

With the benefit of 10 years' experience, we've now got a long view though, and some reflections to share. It's also a time when academic discourse - and policy attention - is turning to asking whether PbR is the only way to take an Outcomes-Based Commissioning (OBC) approach to pursuing impact. And with this, questions are being asked about whether other less conditional and more relational ways of contracting and sharing resource are emerging as more useful. So, it makes sense to offer some observations. And to take stock.

Over the years, several different reform agendas have evolved behind advocates' arguments for OBC. Policy alchemists have enthusiastically sought to bundle them together. In mix, these agendas' logics can morph, and in the process, the ability to track the value-add which PbR brings to OBC arrangements can become obscured.

Stakeholders favour a variety of different terms around PbR, reflecting an evolving picture:

- **Payment By Results (PbR)** also known as **Payment for Success (PfS).**
- **Results Based Finance (RbF)** (a form of capital, used to cover the risk or patience demanded by PbR, where the investor is interested in both financial and social returns).

- **Social Impact Bonds** (combining the above two) **(PbR+RbF = SIB).**
- **Social Outcomes Contracts (SOC)** (another term for PbR+RbF which shifts external attention away from the role of finance in the arrangement, also avoiding the terminology problem associated with the word 'bond' i.e., that SIBs typically hadn't involved a conventional Bond anyway).
- **People Powered Partnerships, Social Outcomes Partnerships[1] and Outcomes Based Partnerships (PPP/ SOP/ OBP)** (alternative terms for SIB/SOC, which further obscure such arrangements' attachment to finance, but which reflect Social Investment Intermediaries' shift in focus towards highlighting their role in curating partnerships' interest in outcomes).

There's a wider-angled lens on what 'Outcomes Based Commissioning' could arguably mean too. We've found stakeholders favouring other OBC relational approaches and contracting concepts, including:

- Strategic Grants.
- Repayable Grants.
- Alliance Contracts.
- Innovation Contracts.
- Social Bridging Finance.
- Social Impact Guarantees.

This Discussion Paper looks first at PbR use-cases, then at wider modes of OBC. It'll explore what the implications are of the trend away from conditional modes of contracting towards more relational models, and how some SIBs seek to straddle that shift, especially in the light of stakeholders' deep desire for flexibility which has emerged as dominant during PbR journey we've been on.

We'll then look at the relevance to the Third Sector of different forms of flexibility-providing OBC, and the roles of grant and capital underpinning them. I'll ask some searching questions about the role of grant-making in helping outcome-focussed Charities and public services to collaborate around shared mission. And I will pose the notion of **'Co-Missioning'**, along with questions about how it could help people think through what flexible relationships between the two sectors needs to look like, and what this means for future OBC.

We'll explore whether 'Co-Missioning' offers a more apt framing for OBC than conditional contracting for outcome-focussed public servants – especially if they are seeking to design and foster flexible, equitable ways of deploying money and effort into partnerships specifically between charities and public services.

It'll be some time before our OBC programmes' evaluators' own final analysis arrives with a summation of what the PbR+capital formula has amounted to. But with 'relational contracting[2]' coming fast at you in the meantime, it's worth stepping back now to take stock of the administrative realpolitik and relational lessons PbR's use-cases and its logics have encountered, to shape any alternative OBC ideas. This Discussion Paper is intended to help you use learning from our journeys through PbR and our wider experience, to consider your approach.

It can also help to be aware of some history to understand where some of the drivers for those of us involved in OBC come from, to make your own choices about what drivers you want to see shaping how you engage with OBC next.

So let's start by setting our retrospective in context, revisiting PbR's origins, and, how we got involved.

PbR in UK public services can be traced back to the 1860s where schools were paid on exam result inspections, until overturned 30 years later following teaching unions' protests.[3] A century later (1990), PbR had become a policy instrument in the NHS, for dealing with a growing market of internal and external providers (suspended in 2020 as a response to the Covid-19 pandemic).[4]

In 2010, a Green Paper had set out government's intentions to expand the use of PbR more generally, as part of a modernising and outcomes-focussed approach to commissioning, that would increase the role of Charities, Social Enterprises, Mutuals and Coops in public service delivery, transferring power to local communities[5].

Alongside this, to grow reformed markets for investment in the wake of the 2008 global financial crisis the UK government spearheaded a G8 task force on social impact investment (SII). In 2013, the Social Investment Task Force (SITF) advocated G8 governments should take the opportunity of becoming PbR buyers of community/ Third Sector Organisations' (TSOs') services, whilst also ensuring these community organisations were capitalised by the SII markets it sought to build[6]. In one go, the idea positioned PbR to both modernise commissioned services and accelerate the creation of the social investment market. This combination of PbR+ RbF, would become more widely known as the Social Impact Bond (SIB).

The 'PbR+ RbF = SIB' idea was initially conceived in 2008 by Social Finance[7] – an organisation established by the SITF's chair[8]. The formula needed to be kickstarted with a willing capital source. In the UK, this was to come from a new wholesale SII bank – Big Society Capital (BSC) – curating the funds of the 4 main remaining high street banks' dormant accounts. Under our 2010 government policy directions to 'help strengthen and increase the capacity of the social investment market'[9], The National Lottery Community Fund (known as Big Lottery Fund at the time) was an administrative conduit for BSC's set-up. Alongside this, we also funded Social Finance to research and develop its SIB concept.

In 2010 we co-funded the world's first pathfinding Social Impact Bond (Peterborough) with the Ministry of Justice (with Third Sector providers capitalised by a group of foundations). Albeit new territory for us, it aligned with our wider interest in exploring what being an 'intelligent funder'[10] could look like. Peterborough's PbR premise was attractive for the notion that National Lottery funding could support rigorous testing of results and, conservation of funds if results were not achieved; the PbR outlay was designed to be triggered only when a comparison data set[11] confirmed the intervention had caused the intended impact.

Pursuit of certainty drove Peterborough's PbR logic and its need for a rigorous counterfactual. The comparison group approach it was based on, fulfilled the Chartered Institute of Public Finance and Accountability's (CIPFA) advice on measurement in PbR and SIB payment triggers; "it is critical that performance improvements can be attributed to the activities of the service providers". Such attribution was considered to give the concept of PbR its stamp of accountability, and in Peterborough was key at the time to unlocking co-payment from our fellow commissioner the Ministry of Justice (MoJ)[12]. Since then however, government policy evaluation guidance[13] reflects a growing recognition that outcomes are emergent and entangled properties of complex conditions. This includes acknowledgement that there are inherent limitations in those settings on the practicability and utility of traditional standardising and controlling approaches to testing for attribution. This erodes PbR's promise of certainty about attribution for commissioners.

For providers, the main benefit of the SIB was its avoidance of contractually prescribing activities, giving them more flexibility over how they pursued outcomes. It's worth noting though, that Peterborough's evaluation also found equipping providers with flexibility to achieve the difference that counted wasn't exclusively specific to the 'PbR+RbF' = SIB formula; it observed that other more conventional commissioning mechanisms could be supportive of flexible innovation – and even of rigorous accountability too[14].

Meanwhile, a cashable-savings argument for PbR was also popular among SIB proponents. That argument worked on the logic that government budgets were tied up in downstream statutory services and, that upstream early action services could only be funded if they led to the release of money from savings – generated largely by decommissioning of downstream activity. Peterborough wasn't promising to decommission the prison, but instead its counterfactual test was expected to produce evidence of sustained tangible reduction of the overall cost of its prison services[15]. Modelling payment triggers and identifying these cost reductions depended on a complex accounting system involving dynamically balancing costs and benefits across statutory and discretionary spend[16]. Part way through the Peterborough story, the weaving of its picture of cost-saving legacy became curtailed, when MoJ decided to roll out a national programme, taking a different approach. Meanwhile, hopes for more tangible cashable savings, enshrined in the Objectives of the government's 2010 Social Outcomes Fund (SOF)[17], was also embedded in our Commissioning Better Outcomes (CBO) programme application requirements (a fund we ran alongside SOF) and expected principally through decommissioning rather than complex budget switching.

In the chapters ahead we'll look at how these and other 'PbR+RbF' logics have played out and evolved post Peterborough, drawing on learning arising from our subsequent experience of co-funding 50 SIBs, and distilling this into a typology, to aid understanding of the mechanics of PbR, and inform future OBC deliberations:

- **In Chapter 2** we'll see how the cashable savings case (let's call it PbR use-case A) contends with the practical difficulties of de-commissioning services to release savings and slips into a cost-avoidance narrative.
- **In Chapter 3** we'll then explore the relationship of the cost-avoidance argument with the proofs it needed to underpin worthy-spend arguments. We'll see why Peterborough's initial plan of ensuring that payments would be for attributable results, triggered by rigorous counterfactual testing (let's call it PbR use-case B) has rarely appeared again in locally commissioned UK SIBs. We'll also look at the ability of capital to provide the patience and risk bearing needed to provide the time for results to be observed and proven - whether payment triggers are intended to test delivery of fiscal impacts like savings or, to prove social impact.

In Chapters 4 and 5, I'll then examine how and why use-cases A and B have been overtaken by another two dominant 'use-cases' in the world of OBC (accompanied by increased re-branding of SIBs as Social Outcomes Contracts, Outcomes Based Partnerships and, People Powered Partnerships):

- **Chapter 4** looks at the carrot and stick logic of PbR, involving payment contingent on specific quality or 'performance-related' effort (PbR use-case C). We will also explore why this is relevant if operational conditions are so stable that results can be sure to be replicated, in incentivising providers to adhere to blueprints or procedure, and why use-case C type aspirations are often accompanied by Social Investment Intermediaries overseeing providers' work.
- **Chapter 5** unpacks an evolving argument that has seen commissioners reach out for PbR to avoid specifying prescriptive in/outputs, to allow providers more flexibility to pursue outcomes adaptively in a complex world (PbR use-case D); and why it's an argument which indicates a need for a new commissioning paradigm.

PbR Use-case	A: Cashable Savings	B: Attributed Result	C: Quality Management	D: Flex & Adapt
Four reasons PbR logics might look attractive to commissioners (which, when pursued, may also generate need for working and risk capital to support delivery prior to any payments), and key factors determining **when** they are feasible.	PbR allows commissioners to contract a preventative service that can't otherwise be afforded in the present, **when** there is confidence that the reduction in demand it creates (the social result) will generate sufficient cashable savings in the future (the financial result), enabling commissioners to commit in the present to recompensing the provider or an upstream commissioner when cash is released.	PbR allows commissioners to derive value-for-money from contracting a service to tackle complex social issues where outcomes are highly uncertain, **when** it is feasible to test whether desired outcomes were caused by the innovation, by comparing results against a contemporary counterfactual (a check on what would have happened anyway), and making payments only when that is proven to be the case.	PbR allows commissioners to derive value from contracting providers to replicate an evidence-based social impact model, should they have concerns about the provider market's quality credentials, **when** the delivery context is stable enough for effective replication of a service (or value-chain component) to be feasible and therefore for fidelity to be incentivised and tested by blue-print KPIs that remain viable as proxies for assurance of knock-on outcomes, and which trigger payments.	PbR allows commissioners to support the commissioning of personalised, flexible, and adaptive services **when** contracts state that delivery of specified outcomes will trigger payment (rather than specifying the details of how services are provided), and there is agreement of how a fair test will be made of whether those outcomes have occurred and whether the intervention approach was instrumental in catalysing them.
PbR+Capital logic	Quasi-equity capital waits patiently and takes some risk if savings are insufficient.	Quasi-equity capital waits patiently and absorbs risk if impact is not achieved and/or attributed.	Debt capital covers cash-flow to providers (who remain subject to PbR jeopardy).	Quasi-equity capital covers cashflow. Flex needed and impact type shape capital's risk, flex, patience.
Key risks to logics (RAG)	**High**: Low prospect of decommissioning being feasible, and budget-switching is tricky. Long-term patience is costly.	**High**: Low prospects of finding suitable counterfactual test. Long-term patience is costly and tricky administratively.	**Medium to High**: Mis-conceived modelling, invoking contesting of KPIs, may lead to weakened quality and financial case (like FfS).	**Low to High**: Low case for delayed payment drives up use of near-term triggers that could become onstraints. Use of A/B/C type triggers invokes their risks.

In practice, the 50+ SIBs we've worked with don't all fit neatly within just one use-case. That can be because different stakeholders in a SIB may have come with different agendas and not all arrived at the same understanding of the logic underpinning their respective interests in the PbR. Some stakeholders approach SIBs with combinations of drivers and aspirations in mind or change their perspective on the use-case for their SIB over time as context and understanding changes.

But to distil its essential logic and examine its value, it helps to unpack PbR with these 4 use-cases. We didn't have the knowledge to develop the use-case framework when we first set out with our SIB programme. The contexts that shaped the mixture of practice and objectives from which we can now crystallise a typology to help people explore the nature of PbR logic, hadn't yet evolved. We've now identified these four, core, use-cases for PbR and offer them as tools for helping people in:

- Distinguishing the different logics which different utilities for PbR depend on.
- Clarifying where and why each of these use-cases require their logics to remain coherent and intact if a SIB is to deploy PbR and to call on capital effectively, retaining a cost benefit case for using PbR+capital.
- Weighing up the risks of mixing use-cases if the PbR logics are mutually disarming.

Let's be clear: Some people are comfortable with the mix of logic they can end up with once all the different interests and agendas have been played in. Commissioning is an art, and often of necessity the possible wins over the perfect. Some SIB arrangements arrive at trade-offs. These may not be immediately apparent amidst SIB parties' evolving approach to meeting their interests in PbR and the pragmatics of its implementation. For many stakeholders the complex machinery of SIBs is also hidden in the background anyway, and their attention is focussed on the important work and dedicated effort of providers working on the ground in communities. They may not become much aware of the SIB unless its payment terms produce problems or unless the capital provides contingency for unplanned decisions. Taking a closer look through this Discussion Paper at the logics and the realpolitik of using PbR and its accompanying capital in SIBs, enables those who are interested to consider the implications and benefits of those trade-offs, and to asses where, when, and why getting the logic right, matters.

The PbR logic typology is intended to help Commissioners and VCSEs work out what serves their needs best, to think through ways to execute their objectives and consider whether this points to careful application of PbR, or instead towards other approaches to OBC. The typology is a logic-based tool to support those assessing their future options. Using it to spot risks to logic may also them help identify where unwanted trade-offs can arise, (whether from the challenges of meeting the demands of PbR logic or from a mix of more than one use-case working against itself) and, whether more straightforward OBC arrangements can avoid them. It also helps us as a Fund to reflect on the effect of the grant money we have spent alongside commissioners as co-payments for results.

Use-case D is also a springboard for looking differently at how to rise to the call for flexible commissioning. Noting that PbR's delayed payment isn't so much part of the rationale for use-case D as an inconvenient by-product from a desire to give providers freedom, raises important questions. When, how and why is it reasonable to expect the conditionality of contracting to facilitate a liberating, trust-based commissioning tool? Might grant-making sometimes more aptly do so, enabling up-front payment especially for shared-mission partnerships between public services and charities? Given charities are entities inherently purposed to play a role where market solutions fail, what are the future policy implications for structuring money, relationships and learning to support learning-driven pursuit of outcomes between them? Does such OBC need a more equitable paradigm than procurement's 'buy-sell' mode of relating?

I'll unpack this in the next four chapters, before wrapping up the Discussion Paper by exploring how future alternative OBC approaches that involve Charities could be usefully guided by the notion of **'Co-Missioning'.**

Chapter 2 – In pursuit of… cashable savings

Use-case A: PbR+'Results-based Finance' unlocks cashable savings. Can it? Does it? Why?

The introduction to this Discussion Paper (Chapter 1), outlined a typology for PbR's problem-solving claims: from our work with 50 PbR-based initiatives, it proposed that 4 key 'use-cases' sum up the PbR agenda. The Paper unpacks the logic of each use-case, exploring in the light of both reality and logical analysis why living up to PbR's logics can be challenging and, the lessons we are learning about arrangements that shift between or mix them (which can happen if people become attracted to more than one driver). It also considers why capital is offered alongside PbR's use-cases to support their feasibility, and how its terms can affect operational logic, costs, and benefits.

By the end of the Discussion Paper, we'll review how our PbR journey points to need for a different paradigm of convening and curating future public service. The paper offers in the concept of **'Co-Missioning'** as a potential framing to aid discussions exploring what that paradigm might look like for partnerships between the public sector and charities.

In this chapter we start by unpacking what I'll call 'use-case A': the cashable savings case. As we saw in Chapter 1 government saw the pairing of PbR and social investment into a powerful binary instrument (a Social Impact Bond), as a way to meet several policy objectives with one swoop. The 'PbR+capital = SIB' concept was set to be a big and initially, persuasive case, for the following reasons:

- The PbR logic at its heart was that Commissioners of statutory services would experience far bigger demands on their budgets if they continued to plough large amounts of money into expensive acute-care to the neglect of preventative care or early-action services[18]. **PbR would allow commissioners to wait for early action to generate savings, before paying retrospectively for that early action work.**
- **Using capital to service the PbR's logic enabled commissioners with otherwise insufficient funds to double-run early action** alongside acute care, to cover setting up early action, until it started to sufficiently reduce the flow of demand into downstream services.
- Notionally, **attribution of results to the early action could be proven through robust testing of causality** (the main facet of use-case B logic as we'll explore further in Chapter 3). But, on the a basis of an assumption that prevention would curtail demand for downstream services, a more conceptually straightforward litmus test was expected to earn the prize of 'use-case A' payment. I.e., **downstream acute care services – or chunks of them – would be decommissioned, and this would both be the trigger for and the means of cashing the money that would enable acute care commissioners to reimburse the early action work and its attendant capital costs**
- This was also seen as a helpful step along the way to addressing the problem of money getting stuck in acute care manager's budgets, often described as **'tackling the wrong pocket problem',** which arises when some acute care commissioners stand to benefit from reduced demand, but don't have a remit to commission the early action to reduce it.

On the face of it, the resulting case for PbR+capital makes sense, but 'wrong-pockets' add complication. The need for capital to service use-case A's PbR logic applies for public services, whose overall funds are currently already fully committed I.e. who supplies the capital needed, depends on whether it is just the downstream commissioner – or both the up and down stream commissioners - who have no available funds.

Let's consider what happens if the upstream and downstream commissioner both sit in the same organisation, and neither have budget for a desired early action service. The benefitting downstream department would be responsible for de-commissioning and releasing savings from any acute service that was no longer needed following upstream early action. Here, some external working capital would help downstream commissioners to mandate the upstream commissioner to contract the desired service: its purpose is to break through the financial tautology that it was argued would otherwise exist i.e., that until savings are released (by early action), the self-same early action to create those very savings can't start.

But what happens when the commissioner that stands to accrue savings sits in a different organisation to the early action commissioner?

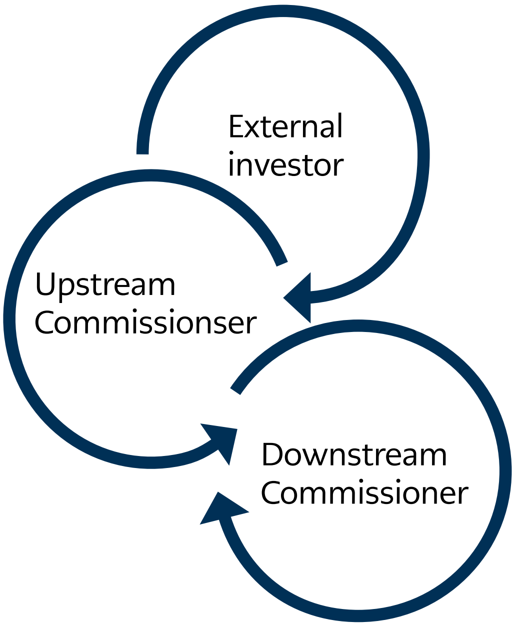
- If the upstream commissioner's existing commitments mean there's no cash available for a new service, then, as above, external capital from a third party is needed to service an agreement between the up and downstream commissioners, to resolve their wrong pocket problem. This agreement must be clear for a SIB to launch.
- But if the early action commissioner is already using (and therefore can find its own funds for) a prevention service, and seeks reimbursement from an external commissioner which stands to collect the savings, no external third-party capital is needed. In this version of the wrong pocket problem, it's transactionally more elegant and efficient to cut out any external investment in a SIB arrangement for this situation; i.e., the public body holding the contract with the prevention service and currently paying for it, should, arguably, be understood to be acting itself in the role of 'quasi-investor' in the SIB.

The latter aspect of the role-logics for resolving the wrong pocket arrangement can get lost in translation it seems to me, as a latecomer to the field with the benefit of proverbial hindsight. Perhaps it was less obvious amidst all the different parties' enthusiasms (including ours) for the multi-objective policies of introducing PbR+capital, and the incentive offered by SIB stimulus programmes. And many Expressions of Interest in SOF and CBO initially came from providers and investor intermediaries, rather than commissioners. In response to lessons (illustrated in the CBO evaluation's LOUD report[19]) about attrition from the pipeline, we'd then made it clear that commissioners were expected to take over preparations at the full application stage. Like their SIB partners, Local Commissioners were strongly incentivised by these SIB 'top-up' schemes' offer of co-payment. Whether those commissioners who requested the top-up co-payment were effectively anticipating playing the 'co-commissioner' or the 'quasi-investor' role in a SIB, seems to have been missed along the way as SIBs evolved.

For some, use-case A role considerations were not chief among the considerations shaping design. Most prospective SIBs' commissioners have struggled to progress with building internal support for their application to top-up schemes. With hindsight, the lack of resolution of the wrong-pocket issue was likely one feature of this where release of savings was a key goal, and certainly later exacerbated problems for some SIBs that went ahead without downstream commissioners' buy-in. As the LOUD report acknowledged, commissioners' economic deliberations were complex and dynamic, with savings considerations coming in and out of focus. But, for the remaining quarter of CBO applications that did progress[20], the CBO top-up offer was too good to drop (not least combined with the 'buzz' surrounding the novelty of SIBs[21]).

When is an external investor needed?

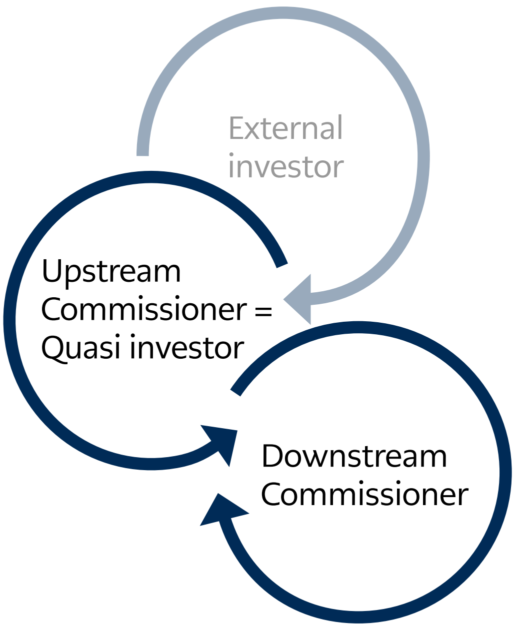
No Upstream or Downstream funds for prevention

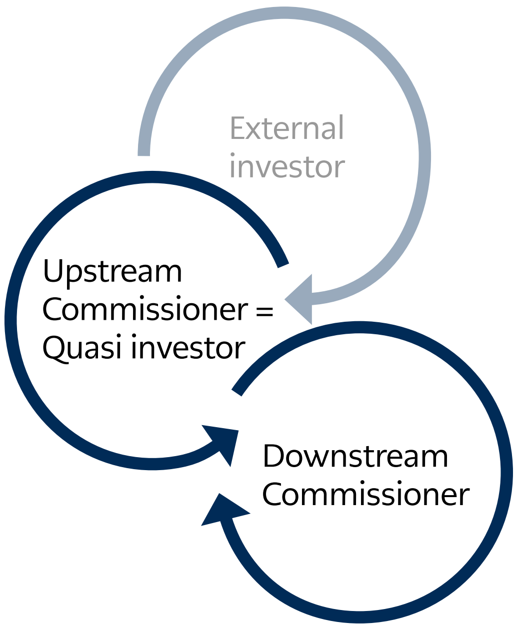


Need for external investor can occur whether **Commissioning Departments are both in the same organisation, or in different organisations.**

Downstream savings (cashed from **decommissioning** enabled by Upstream work) are passed back to Upstream Commissioner and repays the external investor.

No Downstream funds for prevention





For different public bodies:

External investor not needed.

Downstream savings (cashed by Downstream Commissioner from **decommissioning**, enabled by Upstream work) are passed back up to Upstream Commissioner.

For departments in same public body:

External investor not needed.

Downstream savings to statutory budget (enabled by Upstream work) are passed back to Upstream department through budget switching accountancy, upon **decommissioning, or causal evidence that Upstream work has fungibly reduced demand on statutory budget allocation.**

In savings-based SIBs it's critical Commissioners are clear which role they occupy in wrong pocket problems. In SIB programmes expecting external investors to play the investor role, and top-up schemes appealing to local commissioners to apply as co-commissioners, there's a danger of that clarity getting clouded amidst the attractiveness of the offer to local commissioners and the search for deals by investors' intermediaries. This risks leaving local commissioners (who often have a discretionary upstream role) financially exposed if they are unable to find a downstream co-commissioner willing and ready to later transfer savings to them to cover the lion's share of the payments. That risk became evident in CBO as upstream commissioners increasingly acknowledged that the cashable savings case was unviable (as we'll see below), especially once interest that had initially been expressed by downstream commissioners (e.g. by Clinical Commissioning Groups) waned. Mis-casting wrong-pocket commissioning roles also adds an extra and potentially unnecessary cost element into the mix (in the form of external investment). But even in cases where commissioners are positioned to sit in the relevant role in a cashable savings-case SIB, they can face a bigger challenge.

A fundamental problem is it's very hard to shut down acute/ downstream services (or even chunks of them). Indeed, commentators issued warnings about cashability as early-on as 2013[22]. And so, although CBO's SIB applications had initially focussed on cashability and wrong pocket savings[23] cases, of those that eventually launched (most took 2-3 years to get over the line), almost none ended up with evidence of savings baked into their payment triggers. Just one CBO SIB (a travel training SIB) held promise for making decommissioning possible and releasing tangible savings. But by launch, it had stopped short of making even 'micro' de-commissionings part of the payment trigger. Real-world complexity worked against this simple idea. It's been much the same for the Life Chances Fund top-up programme we're currently administering for government.

Payment regimes that were directly dependent on cashable savings, mostly proved too complicated and largely fell out of the SIB concept in practice. One CBO SIB sought to buck the trend, but with an altered logic; its savings were not cashable through decommissioning. The NHS' Newcastle Gateshead Clinical Commissioning Group agreed to link 70% of its PbR payments for savings directly generated by Ways to Wellness (WtW). WtW sidestepped the cashability and decommissioning aspects of use-case A. There was no 'wrong pocket' issue because the early and acute care service responsibilities both sat with the CCG. The savings case for payment was linked to costs avoided rather than to savings cashed and released. But for the CCG the financial benefits, in the face of pressure on its acute care waiting lists, were tangible and near-term enough to commission the service upon the evidence of reduced demand. A comparison group was set up to verify that savings were attributable to Ways to Wellness' social prescribing[24], albeit one that experienced challenges along the way.

Shrugging off the problem of decommissioning, PbR's shift to cost avoidance invokes another use-case logic. Using a water engineering metaphor, cost avoidance is about making difficult budget management choices over whether to spend on actively attempting to dry out a pipeline of demand flowing into acute services' financial and operational capacity, while also managing holding-tank reservoirs of waiting lists, knowing there are other pipelines flowing into them from other sources too. Neither the reservoirs nor the downstream acute treatment services will ever be decommissioned; the pressure and spill-over in the system will just be better controlled.

It's a tough balancing that requires persuasive proof of early action's impact and value in system regulation, as was intended by Ways to Wellness' counterfactual (and as was intended in Peterborough). Balancing of system and pipeline pressures in services is all about relative risk reduction, and so in PbR accountability terms demands strong proof of the risk abated. Moving PbR's arguments away from cashability to cost avoidance, needs underpinning with attribution rigour, along with the capability of all parties to understand the systemic design of the financial logic in SIBs to reduce the risks of gaming and/or plain confusion.

But that's a use-case that tips us out of use-case A and into use-case B, which is concerned with shifting the financial risk of early-action to investors, until there's certainty the system-pressure risks to commissioners have been sufficiently reduced by impact-focussed intervention. Does the metaphor for controlling pressure hold or is it confounded by complex variables? Is producing that certainty-based accountability easier said than done? In Chapter 3 we'll explore this, and whether Social Investment sourced from intermediated capital can wait out and tolerate the risks of rigorously providing commissioners with water-tight reassurance of impact.

Chapter 3 – In pursuit of... results that can be attributed to innovation amidst complexity

Use-case B: PbR ties spend to attributable impact only. Can it? Does it? Why?

In the previous chapter we looked at use-case A – the 'cashable savings' case and at how its dependence on decommissioning of acute care services to generate cashed savings for repaying investors for early action services is a tall challenge in practice and, ultimately, for the SIBs we've worked with, impracticable.

We also saw how some SIB's pursuit of tangible savings placed PbR conditionality on proof of cost avoided. This brings us into the territory of use-case B in our PbR typology, which is all about generating certain proof that impact (economic and/or social) is attributable to an activity before releasing commissioning money.

As we'll see in this chapter, in a nutshell, use-case B PbR logic predicates payment on 'attributed results' logic:

- in which it's critical that this impact can be rigorously attributed to the activities of the service providers…
- ...as payment for activity is justified and triggered by retrospective (after-action) proof of its impact[25].

This creates a case for PbR providers to be supported by social investment capital (via a SIB), especially when:

- charitable providers can't afford to take on the risk of PbR, and so need a quasi-equity safety net to participate.

Managers may seek reassurance about attribution, to help justify public spending, especially if they translate assurance as meaning a service must be tested not only for being a good cause (by examining its expressed intention) but also for certainty about its proven, attributable effects (after it has been delivered). There are two approaches by which commissioners seek such certainty: looking for it 'before' or, 'after the act'.

Use-case B's utility lies in waiting for 'after-the-act certainty' before making payment, for situations where there's lots of uncertainty both about the likelihood of an outcome and about what's going to prove to be the right approach to achieving it.

Use-case B is about generating high quality proof in a complex world, evidencing whether any impact observed following a contracted intervention is attributable to the work it did and therefore merits triggering payment for it, as we'll explore further in this chapter. It sets out to offer Commissioners '**after** the act certainty' that they'll only pay for interventions so far as they have delivered a specific social impact or a specified payoff (such as fungible avoided costs), which wouldn't otherwise have occurred (known as the counterfactual). It's worth taking a moment here to note the contrast with a form of 'before-the-act certainty' that features in use-case C (which we will look at in Chapter 4) - and sets out to derive assurance from checking that providers are following a blueprint for success laid down by already existing evidence. Use-case B needs, however, new evidence.

Use-case B's PbR's logic of 'after the act certainty' depends on building a counterfactual test into payment triggers, with the assumption that counterfactual design is feasible. Payment is only to be triggered once it has been proven that any observed effects experienced by intervention users (positive or negative) are not attributable to something other than the intervention. For example, as advised by The Chartered Institute for Public Finance and Accountability[26], control group data was seen as a good way to test causality and, to protect the providers in PbR if external forces created barriers to impact that were outside of their control.

There are theoretically several ways to design a counterfactual to test attribution, depending on the number and nature of other factors or wider context that could influence or impede a change in people's lives. When all else is constant, a simple benchmark from the past may do. But in complex social realities that's rare and counterfactual testing feasibility becomes problematic. The dangers (in use-case B PbR terms) of not using (or being able to construct) a sophisticated enough counterfactual test of attribution in practice, are principally that:

1. commissioners might pay for effects their intervention wasn't responsible for
2. their providers might not be paid for impacts that they did cause but which were masked by the effect of known - and unknown - wider contextual factors.

The intended benefit of counterfactual in dealing with external effects is contentious: SIB stakeholders often report they fear it would do the opposite of protecting them; and academics debate whether water-tight counterfactual design is possible or relevant in complex scenarios[27].

In practice investment intermediaries rarely bake such a counterfactual test into a SIB payment trigger – not least because it can sometimes mean waiting several years before impact can be evidenced (and therefore demands high patience from both investors and commissioning budget-managers). Despite the reassurances that a viable counterfactual could offer investors (for example when, by accounting for adverse context, a contemporary counterfactual can reveal that low numbers of outcomes are still a major achievement), it's a consideration that can be outweighed by intermediaries' – and sometimes commissioners' - preference to keep the amount of capital exposure small and recycled frequently through shorter-term payments. Practical barriers to any interest in counterfactual-based triggers can emerge during SIBs' development stage too, e.g.: when relevant population data looks too difficult to access; if counterfactual data must be created by first recruiting a comparison group (turning out to be disproportionately expensive or unfeasible); and for reasons including ethics and sample size etc. It can be expensive to set up, and may not be worth it, for example if the numbers of people involved and/or the likely rates of impact mean the impact may be too weak to detect against comparison data sets.

SIB stakeholders seeking certainty may paradoxically start to lean away from use-case B's counterfactual logic in the face of the challenges around implementing counterfactual tests. We've seen this in a leaning towards the role of proxies – which are also used to test fidelity of replication of evidence based models, and seen in use-case C's 'before the act' logic of reassurance. Such stakeholders (still incentivised by the prospect of SIB top-up funds, but struggling to design tests of impact) look to borrow the idea of using proxies for impact – indicators of progress according to a hypothesis of success – which will in their view give enough comfort. This can be especially appealing where the prospect of payment for attributable impact is a tricky and long-range commitment, but theorized proxies look achievable, easier to test, and likely in the short-term. For the parties for whom use-case B's certainty about impact in a complex world is still the prize however, that may not always be wise (we'll see why below).

Negotiation about what makes a payment trigger a suitably rigorous test of certainty can lead to subjectivity - perhaps especially so in the heat of the moment when chances of adherence to use-case B logic start to fray, yet momentum to launch a SIB is building through other drivers. The causes and consequences of this can be easier to see in retrospect, than amidst the churn of stakeholders and outlooks that characterise the convoluted period of a

SIB's development or, mid-flight re-negotiations. Problems born of difficulty in implementing a suitably rigorous use-case B counterfactual, or from resorting to weak proxy models, may breed pressure to re-negotiate - for example, in cases where performance drops without a robust way of accounting for external influences and or/ due to initial optimism bias (a trend observed by CBO's evaluation[28]). If commissioners in such cases of low scenario performance resolve to stick to agreed PbR payment terms, but there are relatively small sums of capital offered into circulation (investors typically provide a capped facility, which is drawn down judiciously), investors may be unwilling to allow more drawdown where there is apparent 'underperformance', resulting in cash-flow problems, which may be unjust and counterproductive. If, however these scenarios result in renegotiations leading to revised triggers, involving proxies and even outputs, this can further weaken the cost-benefits to commissioners who'd originally set out to search for certainty about impact.

Use-case B's 'after the act' certainty is enticing at face value, but tricky to achieve in the cold light of day. In Chapter 2 we saw that use-case A's promise of freeing up cash usually founders on the rocks of the reality that acute care services aren't easily decommissioned. This can produce spill-over cases from use-case A, where aspirations for leveraging cost-avoided savings from downstream commissioners then rest on use-case B instead. But this means the design of impact measures and of their respective contemporary counterfactual, control or comparison groups in the payment trigger must be super strong. If not, it can risk breaking the confidence and willingness of commissioners to hand over fungible savings – or at least make it hard to defend the business case that there are any. Use-case B's promises of providing certainty that spend will be triggered only once a specific social or economic impact is delivered solely by the intervention, is significantly hampered by the conceptual and practical difficulties of counterfactual testing. And its fiscal viability is also challenged in the UK environment by another key technocratic stumbling block…

…UK public bodies set and in effect must contain spending commitments within a 12-month envelope. That's a fundamental problem when contracting for the kinds of impact that take longer than a year to achieve and/or detect. Despite best intentions, a PbR contract now for conditional (and therefore unpredictable) payments several years ahead, isn't necessarily going to be upheld, despite best intentions. Even an outcome that is proven to avoid costs landing in the next year doesn't mean those savings can be made tangible and released in the annual budget setting cycle. The 12-month envelope delimits when money is tangibly real rather than notional.

This makes Commissioners yet more likely to propose or accept projects with nearer-term PbR triggers. This can also help reduce investors' exposure, by ensuring they are repaid early, or that they can recycle smaller amounts of capital, and in turn may make the capital input cheaper.

But such short-term triggers' near-term convenience may not meet commissioners' need for use-case B assurance effectively if they are in effect the proxies described earlier. Such proxies may only deliver reassurance under use-case C's before-the-act certainty that an underpinning blueprint can be faithfully and fruitfully replicated, and that its proxies remain a valid test of impact[29]. In messier realities though, as encountered in our Realising Ambition programme and as we've also seen from our learning[30] with the Human Learning Systems movement[31], 'past-evidence-based models' typically resort to much more on-the-job-creativity in emerging contexts, ranging from adaptation to continuously innovatory practice, than the notion of fidelity to blueprint KPIs suggests[32].

If use-case B was backed up with a strong counterfactual, then it'd be a natural home for creative flexibility in pursuit of outcomes in complex and dynamic environments. Providers could then do what they liked, so long as the outcomes could be verified (the black box approach). But as we've seen, counterfactual and technocratic challenges get in the way, creating a vicious cycle of design challenges for use-case B and driving those who may aspire to hold out for long term impact, towards nearer-term proxy triggers instead. The desire for course-corrective ‘black-box’ flexibility however persists – and we’ll look further at a use-case that seeks to speak to this goal in Chapter 5. But for many SIB stakeholders the difficulties of use-case B paves a way into use-case C, and a focus on incentivising providers to apply effort into near-term markers of progress and/or observance of quality standards.

In Chapter 4, we’ll follow the implications of applying use-case C style assurances of well-placed effort instead which feature near-term KPIs as part of carrot-and-stick quality-control. We’ll also look at how this use-case inserts the intermediary role of the ‘performance manager’ into the logic, in a bid to improve performance and planned circulation of capital - and brings in with it another argument for the role of social investment in the ‘PbR+capital’ formula of a SIB.

Chapter 4 – In pursuit of... replication quality through management of KPIs

Use-case C: PbR provides quality management assurance. Can it? Does it? Why?

In this chapter we look at how some commissioners' pursuit of certainty takes them into PbR's use-case C, where they turn to KPIs, often seen as proxies for longer term benefits, as assurance of a model's replication quality, and a way to drive up provider implementation effort and accountability and to drive down the financial risk of sunk costs.

A search for 'before the act certainty' often drives commissioners or funders to seek evidence-based models which promise high degrees of confidence that both the model - and its effect - can be replicated into new contexts. In 2012, The National Lottery Community Fund (then known as Big Lottery Fund), had launched its Realising Ambition programme, as part of our interest in exploring replication and innovation[33]. We had sympathy with the notion that relentless insistence on innovation could overlook sound existing practice. Realising Ambition was charged with checking out whether blueprinting fidelity to an intervention model could provide commissioners and funders with 'before the act' certainty to fund 'more of the same'.

The prospect of 'before the act' certainty is also an appealing proposition for investors too who back ventures that want to scale up, or who want to buy into and sell replicable models to commissioners who are attracted to those models yet are dubious about reliability.

CBO also hoped that testing outcome-focussed initiatives might also help deepen bodies of evidence about 'what works'[34] while at the same time relieving providers of the financial risk of engaging with PbR. As part of a strategy to foster outcome focussed system change initiatives, we'd launched a new suite of programmes in 2013[35]. Unlike its fellow programmes in the suite, CBO required applicants to use PbR to drive pursuit of outcomes.

Meanwhile our Realising Ambition initiative studied blueprints working with fluctuating real-world contexts in people's lives and in the systems around them. It found changes in operational environment invariably occur and confound attempts to replicate impact. Levels of 'before the act' confidence about replication must be highly tempered, with significant trust placed in practitioners' skill in the art of adaptation around a model's core[36] or, in the performance management of the suitability of their efforts.

In this chapter, we'll unpack PbR's use-case C's assurance that providers have supplied sufficient apt effort through use of Key Performance Indicator (KPI) triggers. These set quality service level or progress markers, usually associated with following an evidence-based model (or potentially used to demonstrate compliance with a prescribed role in a value chain). These are then to justify and trigger recompense. The role of PbR's withholding of payment in this way is to inject jeopardy to drive providers - especially those motivated primarily by the bottom line - towards the prize of meeting KPIs. Commissioners need to weigh up the transactional costs of using such PbR – and the costs of any working capital that providers may need and would pass on in their pricing – to decide if their uncertainty about provider performance warrants it.

Some SIBs offer providers debt-based working capital – preserving commissioners' PbR jeopardy-principle. Debt however is naturally going to be seen as more tolerable by those providers which are already highly confident about achieving the KPIs, but just need the working capital while they await their payments. Commissioners need to be aware however that if providers are confident enough to use debt, this would suggest (from a logic perspective) that the jeopardy function of PbR (and therefore the SIB) may not be needed by the commissioner in the first place, (unless both the provider's and investors' confidence is highly inflated, which can be the case[37]).

Other use-case C style SIBs supply providers with the quasi-equity like capital (as for use-cases A and B too). But quasi-equity de-risks providers (through the mechanism described in the glossary) - and so appears at first to work against use-case C PbR logic. However, if the jeopardy is then transferred to the investor, it generates a need for performance management by their intermediary, to protect the chances of return of capital.

A quality-management narrative therefore becomes the focus of use-case C's role for 'PbR + quasi-equity'. In a lateral-thinking package, by re-positioning some or all use-case C's intended PbR financial jeopardy into an intermediary-led function of provider management and performance scrutiny, investment intermediaries are sometimes cast as performance-managing prime contractors.

The terms of payment for performance-management roles in SIBs however vary. In some SIBs it can be arranged as a separate fee (and may therefore present a sunk cost). More commonly, in use-case C style PbR logics, investment intermediaries may take payment out of capital they've intermediated from investors. Meanwhile their quasi-equity investors stand at-risk, to be repaid if surplus over and above all operational and management costs is achieved from any outcome payments. Alternatively, intermediaries may share this jeopardy with investors, taking a performance management reward as a cut from any surplus distribution. Sometimes a performance management function may even be provided pro bono by investment intermediaries as a loss leader cost in their pursuit of developing a wider portfolio of SIB investments and returns.

Use-case C's performance-management may also be used by commissioners to delegate parts of their role (and with it, the oversight of management of public money) to the investment brokerage community. Reasons for doing this may feel more pressing when commissioners have low capacity to curate a market of supply chains sourced in the private sector or, of candidates to replicate a licensed model, which they need and want to see functioning effectively. Even though some such licensed models may operate under licensing that requires standards to be met to the satisfaction of accrediting bodies, commissioners may want chances of success proactively maximised. As we saw in Chapter 3, if those chances depend on issues determined by factors that are out with fidelity to the blueprint, then use-case B logic is the more apt PbR solution. But if implementation conditions are so stable that assurance can come from the role of a prime in focussing providers' effort on applying a fidelity model well, to achieve the upper reaches of its known bandwidth of efficacy, then use-case C may be relevant.

Some commentators however flag the potential risks of delegation and 'financialization' of public service oversight to finance intermediaries, from the perspective of risk of further weakening of both public services' in-house capability as a commissioning function and of their relationship with their local supply base[38]. Where this delegation also means investment intermediaries are allocated governance and control functions over the operational decisions and performance of Community Sector Organisations (CSOs) - whose defining charitable remit is to step in precisely where the state and market do not stretch or have failed to be effective – an illogical mismatch or mis-ordering of interests may arise. Unchecked, it brings inherent risk of subordinating the radical responsibility for social mission that is upheld by charities and their regulators, to financial markets' interests. (We'll look at addressing the risk of subordination in Chapter 6.)

Is such a quasi-commissioner cum investment-intermediation role equitable? It is more easily reasoned to be so perhaps, if intermediaries' investors, as in the world's first SIB, Peterborough, were all charitable foundations themselves, who operate with CSOs' interests at large locked into their missions and risk tolerance. But when SIBs were first developed as an investment instrument a key goal was, instead, to create a market for privately capitalised social investment as we saw in Chapter 1. Meanwhile, we've seen some investment intermediaries set themselves or their SIB-scaling spinouts up as social enterprises. If that is intended to serve as a guarantee that CSO providers' interests will be put above any private financial return interests which intermediaries must curate, what should these new intermediaries' governance look like to assure this? Before this becomes a trend with un-addressed implications for delivery-CSOs' governance and agency, there's room for transparent discussion about how governance of the intermediary functions in SIBs should work into the future, particularly where their performance manager or quasi-commissioner roles are oriented towards generating financial returns for private investors.

Many Commissioning Better Outcomes (CBO) SIBs were conceived by investment intermediaries – who set up special purpose service vehicles for selling SIBs to commissioners, often intended to promote blueprints, using the 'before-the-act' certainty these offer that if managed right, results are more likely to be replicated. In some cases, their use-case C style proposal was based on the logic of performance-improving the value that a commissioner could derive from CSO providers whom it already commissioned. In others it was about persuading Commissioners to work with unfamiliar providers and/or their unfamiliar models of early action. We've seen however that some commissioners might theoretically have been just as happy to contract directly and conventionally with such providers, using standard service level agreements. However, it seems the top-up contribution offered by CBO as a SIB stimulus programme, was likely persuasive enough for them to use PbR, especially where the prospect of quality assurance enhancements (even with the capital and management costs attached), looked worth the contractual complications.

Use-case C style triggers range from payment for outputs, such as engagements, to near term outcomes – often with the intention that these serve as proxies for longer-term hopes of sustained impact for individuals and for significant reduction of system pressures[39]. The CBO evaluation's in-depth reviews illustrate this range. At one end, in the interests of keeping things simple, especially where several commissioners might be potential stakeholders, we've seen the trigger can be a single near-term proxy, to make the concept more saleable and equitable to a growing club of commissioners. Alternatively, at the other end there may be a rate card, including a range of KPIs, to encompass the breadth of interests across different types of commissioners and the benefits or assurances they are willing to pay for (notably, one SIB has also used KPI triggers to help leverage wider piggybacked philanthropic donations too.) Sometimes, a proxy is paid for at prescribed progress-points, to reward interventions when they maintain a participant's engagement or, lengthen the period over which signs of change for an individual (considered indicative of longer-term benefits) are observed. Keeping such triggers near term and/or simple is also a strategy to get to a scale of income that may help expedite recovery of high value core operational costs. It can also help fuel an ambitious intermediary-led SIB vehicle to cover its overheads in finding new deals for the service model it promotes.

Evidence reviews challenge arguments that long-term impact is well served by shorter-term proxies, noting studies which show negative correlations and identify gaming risks[40]. Commissioners who want water-tight assurances about longer-term impact would be well advised as explained in Chapter 3 to consider their needs for rigour carefully and whether these can be met by use-case B style approaches to PbR. Those who have opted instead for use-case C type logic have, effectively, for better or worse, already made mental compromises and decided that nearer-term KPI payment triggers (often with the safety belt of a payment cap) are the administratively pragmatic way forward. We've sometimes seen those choices can later generate as much concern as confidence however, if performance or baseline or eligibility threshold tolerance issues arise and come under local scrutiny, as evident in several of the CBO evaluation's in-depth reviews.

We've heard it argued that use-case C's performance-management of KPIs reduces costs sunk into contracts. By contrast to Fee for Service arrangements (in which Commissioners may not opt to track outcomes of any sort), proponents consider that PbR offers a way of more usefully assessing and optimising value for money, using costed **performance** KPIs, often described as cost-per-'outcome'. To calibrate the price attached to such KPIs, SIB tariff-setting calculations have for example, divided desired efficiencies or past standard contract fees by past service user numbers, or, been benchmarked against past rates for spot-purchase services. In some such business cases, we've also seen deadweight used to discount outcome tariffs, based on past failure rates in cohort trials elsewhere. But as described in Chapter 3, comparing what happens in the present with the past, is not necessarily a fair test (for any party) of the influence and exerted by contemporary external issues which can affect the achievable volumes or real-terms costs. And as above, if the KPI is anything less than an attributable outcome, value for money questions arise.

Cost-per-outcome pricing can at face value look relatively easy to appraise, but the maths of KPIs can get tricky especially where individual progress payments may sit on a rate card along with payments for things like engagement. Some argue that making payments for outcome proxies conditional upon engagement payments being achieved first, reflects full participation, minimises sunk costs and offers a correlation test (if not an attribution test). Meanwhile, some SIB proponents argue any sunk costs pale in significance when separately contrasting Social Return On Investment to the overall 'cost-per-outcome' of a SIB. It becomes a complicated picture for a commissioner appraise, especially if both intangible and tangible costs are being weighed up, and not least when also factoring out the temporary benefit of subsidy (from SIB top-up schemes). However, if commissioners want more fiscal value assurance than the efficacy-blindness of traditional Fee-for-Service payments, they must be robustly satisfied that their PbR cost-per-outcome case is super soundly designed and understood. PbR Commissioners also need to be alive to a more complicated set of due diligence considerations than it may at first appear, if they are using 'PbR+capital'.

Output KPIs may help to minimize the amount of capital in circulation and its exposure to risk. From an investor point of view this makes sense, but use-case C commissioners need to assess whether:

- Any output KPIs they'll pay for paradoxically render them at risk of sinking costs into outputs if these are followed by low performance on the tougher outcomes they seek.
- KPIs based on engagement are being used to get SIB payments flowing swiftly; this merits scrutiny as, while it may suit investors - and also commissioniners who, as we saw in Chapter 3, in effect need to work with predicatable annualised spend -, it may mean that the payments end up designed to be too highly predictable, i.e. the antithesis of the point of PbR!
- Any output based KPI payment design arrangements need double checking – to ensure they don't inadvertently result in an over-convoluted version of a traditional Fee for Service contract's spec.

Payments for engagement may also be used to act as cash-flow canaries; this is important when public bodies supply clients into a service, indicating whether commissioners are making sufficient and suitable referrals to ensure the SIB can at least achieve break-even for providers, investors, and intermediaries. They're also a reminder that the performance of many commissioned services hinges on the cooperation and performance of the commissioning public body itself. Too often the public body's role in creating a suitable operating environment - for example by providing appropriate referrals - goes awry.

Some SIBs have been curtailed or choked soon after launch when the referral pipeline modelling doesn't stand up. Occasionally, SIBs have tried to build in minimum order arrangements and associated penalty clauses to guard against commissioners dropping their referral side of the bargain, but invoking these clauses can lead to soured relationships.

In some cases, minimum order engagement payments are made upfront as advance block payment. Some providers in PbR contracts have advocated there needs to be more of such upfront payment from commissioners, accounting for the majority of payment, so that the PbR regime itself only accounts for a small percentage of the deal with commissioners. This signals a plea among some community sector providers for a move away from wholesale PbR to 'just enough PbR' (and correspondingly just enough capital) in situations where this would help to bring commissioners on board and maintain everyone's day to day attention on outcome indicators.

Some investors may use KPI 'canary' warnings to reconfigure investment decisions. This may mean they increase cash flows – especially if they perceive extra investment will stem a problem which their scenario planning hadn't accounted for. It may however trigger renegotiation of PbR pricing if there isn't already enough contingency in the tariff to make supplying extra capital feasible or sufficiently low-risk. By contrast we've seen some SIBs are ready to stick with original tariff terms and write off any losses of their capital; but that's more likely to occur when the primary investor is a charitable foundation seeking only to recycle some (rather than all) of a grant pot deployed as quasi equity, or when an investment intermediary sees advantage in running a loss-leader for deployment of a wider quasi-equity investment pot. Let's remember though, in the original logic of use-case C, where the jeopardy principle is key, debt is the more appropriate form of capital, so such loan investors may be very wary of increasing the debt, if PbR performance is low.

Decisions about capital management may be influenced by considerations wider than an individual SIB. Most locally commissioned SIBs in the UK have been facilitated by one of just two investment intermediaries managing pooled outcomes funds, charged with deploying these across many deals to maintain and ideally improve on the real-terms value of the principal capital pot. Although the limited scale that the UK SIB market has reached means losses from it by commercial investors is still small-fry, the ambition had been to match the potential enormity of public spending on outcomes[41] with the scale of investment markets. (This was also accompanied by the ambition that SIBs would be a market-tradable asset class[42]).

Such market goals and principles inherently drive commercial capital managers to spread the costs of losses to their investors, across wider sets of deals - and therefore in the case of future SIBs this would likely be done through the pricings of the outcomes levied across a portfolio. Arguably therefore, it stands to reason that whilst some individual SIB commissioners may avoid sunk costs by not having to pay when the outcomes they seek fail to be delivered, others commissioners may find themselves paying more than their share for their own SIB's success, especially those paying out for median to high results, or asked to renegotiate tariffs or to pay for output triggers (sunk costs).

The SIB concept as a national commissioning system, doesn't necessarily guarantee to de-risk taxpayers overall therefore in the way the premise of PbR would ostensibly imply. Given the opposition we've noted among some commissioners to the role of private sector supply markets in public service, will commissioners gravitate to other novel commissioning tools in search of a non-extractive solution? Some critics of SIBs have proposed alternatives, such as Social Impact Guarantees (SIGs)[43] which offer an insurance-based underwriting formula and, like SIBs, look likely to be tested using philanthropic rather than return-oriented capital initially. So it's yet to be seen if SIGs – especially if commercially provided – will be any more likely than SIBs to provide a straightforward or more value-efficient level of de-risking for all commissioners seeking use-case B or C assurances about impact.

Interest in PbR and capital alongside it seems piqued while 'top-up' offers commissioners extra money - not least to cover the extra SIB overheads, including any use-case C style performance management offered by investment intermediaries. Its end doesn't always leave SIB intermediaries out of a job. We've seen one such intermediary use its use-case C style SIB experience gained under top-up schemes to subsequently win a role as a quality and performance advisor for a national roll out of a licensed model under conventional commissioning. It'll be interesting to observe this role, given their primary corporate remit was that of a finance intermediary.

Ultimately, we've typically seen commissioners cut out the complications and costs of PbR+capital and return to more familiar approaches to contracting when access to SIBs' 'top-up' co-payment contributions end. Sometimes that's because there are in-house alternatives or, local charitable providers are well known and trusted. Sometimes use-case C style SIBs may have successfully grown commissioner confidence in a provider's offer and its quality credentials. Some such SIBs have been part of campaigns (using a variety of tactics including the SIB) to influence government policy, and together with these tactics, have completed their purpose.

We've also seen changes in national funding policy in favour of evidence-based models mean that some SIBs' utility has been cut short. We've heard worries expressed by proponents of some such evidence-based models that national rollouts done through conventional commissioning will lose important features developed during SIBs. Concerns include observations that if the payment model for the national scheme doesn't offer the financial headroom that the SIBs did, the rolled-out schemes may result in a version of their models that cut out some of the quality-assuring dimensions which a SIB fostered (such as staff retention incentives, or degree of intensity, or tailoring of work with a service-user). Our past learning about blueprints, and the degree of need for adaptation we've seen in SIB projects, suggest that any national roll-out schemes will need to be mindful of the degree of contextualisation and localisation that their evidence-based models need, if they are to have traction.

As SIBs close, a legacy narrative is growing among some stakeholders, about a need for flexibility. In part, that narrative reflects the culture of re-negotiation that has emerged out of the inherent difficulties encountered in implementing PbR's A-C logics. Such flexibility is popular not least for affording responses to unfolding data and understandings of the contexts in which providers and intermediaries are operating and seek to quality-assure their SIBs' approach. As described however, changing tariff terms can make overall value for money judgements about a SIB less scrutable. Nevertheless, flexibility has become part of a wider and emerging narrative about the value of the concept of 'relational contracting'[44], which sees stakeholders from a range of perspectives hailing 'flexibility' as a good thing, but without always being clear whether the helpful flexibility sought relates to use-case B's black box outcome payments, or, to the renegotiated sets of triggers sometimes seen in use-case C style SIBs. Those who are studying the rise of the notion of 'relational contracting' have noted that underlying the clarion call for more flexibility, is a growing dissatisfaction among some stakeholders about the narrowly constraining and value-compromising prescriptiveness of conventional activity-based fee-for-service contract specifications. But as we've seen, the near-term and output-based performance KPIs that shape use-case C style PbR or evolve in negotiations following design difficulties with use-case B, can also usher in similar constraints. And perhaps that's why a fourth, flexibility-based use-case for PbR, has grown in conceptual popularity.

I'm calling this 'use-case D' PbR and will explore it in the next chapter where I'll also begin to ask whether, on closer examination of the goals of 'relational contracting', PbR is slowly giving way to a different relational paradigm and, whether capital may be better purposed in supporting services that need such flexibility, when it's decoupled from PbR.

Chapter 5 – In pursuit of… flexibility

Use-case D: PbR allows flex & adaptation toward outcomes. Can it? Does it? Why?

This Discussion Paper has been unpacking the logic of PbR's use-cases, exploring them in the light of both logical analysis and realpolitik, to understand why living up to PbR's logics can be challenging and, to note the lessons we are learning about arrangements that shift between or mix them (which can happen if people become attracted to more than one driver). It also considers why capital is offered alongside PbR's use-cases to support their feasibility, and how its terms can affect operational logic, costs, and benefits.

In Chapters 2 and 3 we've explored issues encountered by the PbR logics of use-cases A & B. We've seen how, in the context of UK locally commissioned SIBs, use-case A for PbR (promising cashable savings) foundered on the challenge of de-commissioning, and how use-case B (promising certainty of spend only on attributable impact) is hampered by practical challenges with counterfactual testing and short-term budget horizons.

In Chapter 4 we saw why use-case C's logic hangs on robust models and reliability of contexts that providers must rise to, at-risk, to enable commissioners to avoid sinking costs into poorly replicated or reasoned models. We saw how general optimism bias, and instability of the contextual environment around replication, along with the search by investment intermediaries for roles and returns, can complicate use-case C's carrot-and-stick logic. Although its focus on KPIs generates lots of data, out-sourcing of commissioning and contract management can also render commissioners in a position of increased detachment. Commissioners may also find themselves, along with providers, increasingly uncertain of cost-benefits of the SIB mechanism, especially where the maths of use-case C payment-trigger design is complicated, even if the overall feeling is one of being supported. This may be why we – along with other commentators – have noted that while Commissioners may close their SIBs with an upbeat report of events, they rarely resort to using PbR of their own volition again if they can find other options.

In this chapter we look at ongoing calls for flexibility that increasingly dominate PbR use-case narratives. As interest in PbR arrangements recedes (for reasons just summarised and illustrated by Chapters 2-4), we find our journey through PbR pointing to the need for a different paradigm of convening and curating future public service. That paradigm is not about waiting for something (savings or proof) or about performance-managing pre-defined standards. Signalling this, use-case D's focus is on flexibility, and on an endeavour to detach PbR from the rigorous burdens of proof seen in use-case B. But use-case D's association with PbR and the implications of its outcome-contracting 'pay-later-if' logic exposes it to both familiar and new challenges. As we'll see, it may need a radical repurposing, away from the objectives of accountability and towards those of providing a run-way, ultimately directing money and growing appetite instead into trust-based wayfinding towards impact. This however raises at least three sorts of questions: about the relational bases on which commissioners can make that trust-basis for contracting work; about whether PbR or alternative forms of conditional contracting are therefore needed or, whether other outcome-focussed options might suit; and about whether capital has a role to play. We'll explore all this here. In the final chapter, I'll offer in the concept of **'Co-Missioning'** as a potential framing to aid discussions exploring what the new paradigm might look like, especially when it comes to partnerships between the public sector and charities.

Use-case D is a resort to PbR as a work-around – to escape the constraints of conventional contracts. This chapter explores why, along with the issues arising from use-cases A-C, SIB stakeholders are increasingly attracted to this use-case – more despite than because of the 'pay-later-if' aspect of its PbR logic. The appeal lies in its offer of a more relational approach, perceived as achievable by contracting on an outcome basis because that is seen as less prescriptive and more liberating than an activity-based contract specification.

Contractual terms are increasingly seen as obstacles to achieving social good. Many stakeholders inside and outside of the world of SIBs advocate the need for looser, more flexible contracting. To be effective, services in the domains of health, wellbeing and social policy need more freedom to work through evolving understandings of what matters to individual service users, and of their contexts within local system complexities and dynamics. Commissioners are acknowledging it's hard to know or specify in advance exactly what 'good' should look like; services need flexibility to develop personalised service pathways with individuals and, to innovate system-shifting solutions to barriers they encounter across those pathways. So instead of fixing contracts to inputs, activities or outputs, people are experimenting with ways to tie contracts to suitable pursuit of and/or achievement of social outcomes instead. The emphasis is, implicitly, on providing assurance about how the suitability of the flexible and pathfinding intervention around the service user will be maintained, as things change. I see this as a new take on what 'accountability' will mean into the future.

The outcome-based use-case D function of PbR however still presents a need among contractors for de-risking to help them handle the consequences of PbR's 'pay-later-if' logic. Let's remind ourselves briefly of the basic general PbR logic intentions and constraints that sit as inherited and potentially excess and frustrating legacy baggage in the background of use-case D from use-cases A-C, and may inevitably affect its pursuit of flexibility. In Chapters 3 and 4 we saw how:

- The interest in a use-case B 'black box' approach to flexibility, in which anything goes activity-wise in pursuit of the agreed outcomes, was already a key motivator, but:
  - Came along with the principle of withholding payment until outcomes were caused and proven.
  - The challenges of the rigour required to test attribution of outcomes and to trigger PbR's pay-only-if payment logic (not least when impact falls outside of annual budget cycles) mean use-case B's flexibility has been hard to operationalise in practice.
- This can influence resort to use-case C type PbR instead, but which presents a further challenge because:
  - It uses nearer-term indicators (instead of use-case B's more patient outcome measures and counterfactual tests), even though nearer term proxies for impact can often paradoxically make PbR terms look more like the constraining elements of Fee-for service (FfS) contracts.
  - Such proxies' suitability relies on some way of checking whether their relationship with actual impact still remains valid.
  - It works on a jeopardy rather than trust basis, and puts focus on performance management to drive attention onto KPIs that earn income.
  - Evaluation of value for money is tricky.
  - The absence of a counterfactual leaves performance un-contextualised and providers unprotected.
  - Stakeholders often therefore seek renegotiation of triggers and tariffs.

Use-case D aspires to be somewhat like use-case B's 'black-box' premise, but with the baggage stripped back. At heart, its interest in flexibility is an attempt to address a core question: Can PbR help commissioners empower providers to flexibly probe, sense and course-correct, for better pursuit of outcomes in a complex world? This is a question that moves attention away from the 'accountability' aspects of use-cases B & C and towards the pursuit of 'assurance' that the way things are being contracted and done, won't get in the way of doing what matters in a complex, messy, and contextually emergent world.

Let's explore 3 emerging potential responses to use-case D's key question, and how these variants may work through different configurations of money, relationships, and learning:

D1: A relational contracting approach – renegotiating while blending conceptual facets of use-case B with C.

D2: Capital for smoothing and flex – supporting black-box flexibility (which may be more useful without PbR).

D3: A potential PbR-like phoenix – i.e.: a small amount of 'pay-later-if', but for 'applied complexity-capability'.

As part of looking at these variants, we'll also ask whether there is merit in considering any further alternatives to satisfy the objective of supporting services to work flexibly through the complexity around people.

D1: A relational contracting approach - the flexibility to renegotiate PbR terms.

Relational contracting as an idea has origins outside of PbR and themes in common with the question core to use-case D's flexibility goals. You can read more about the growing interest in it among academics and practitioners by following the endnote[45]. That interest is piqued partly by a growing number of formal relational contracts in the commercial world and their potential for application in the public sector[46]. At its heart, formal relational contracting is a 'container' for a paradox; i.e., ostensibly it's a contract (which means its function is there to set terms that can be resorted to, if trust breaks down), but in practice it's an agreement that works much more as a petri dish for growing a set of mutual understandings that are continuously developed and varied as an ongoing collective exercise in building the trust between parties (supplanting a contract's prime focus on specifying liabilities). Culturally, this flexible and active assurance-building approach is very different from the accountability model that more conditional forms of contracting, including PbR, grew out of, and in which commissioners (as buyers of services) held providers (as sellers of services) to fixed terms, before money changed hands.

D1 describes a PbR version of relational contracting, with seller-buyer commissioning dynamics, but, with the buyer in a reactive mode, to allow a flexibility of terms. I.e., the commissioner is frequently asked to renegotiate the deal (you might call it a hybrid between PbR and formal relational contracting). As illustrated in this Discussion Paper, such PbR based renegotiations teeter on what the parties are willing to tolerate. D1.'s relational contracting premise works by reshaping the design of the tariff and payment-trigger (or group of triggers on a rate card), recalibrating trade-offs. On the one hand, the D1 approach reaches for KPIs that constrain activity to relatively near-term measures - creating a sense of reassurance for commissioners about use of quality or performance controls and, limiting exposure to risk for investors. Yet with the other hand, it also reaches for outcome indicators that allow flexibility around activities, but without Claim B's counterfactual-testing rigour and ability to account for the effects of changing external context. D1's open-ended attempt to blend facets of use-case B PbR (outcome-like specifications) with use-case C PbR (output-like specifications), seeks to find (sometimes with several bites of the cherry) sweet spots to balance satisfying some commissioners' need for assurance along with providers' need for flexibility. It's an exercise in the realpolitik art of compromise, speaking flexibly to the idea of accountability through measuring and paying for what feels, at any one time, like it will matter and be feasible when the chips are down. When everyone's on board and have their needs met, it's experienced by some as a win-win-win.

But this D1 cocktail of parts of use-cases B&C can leave commissioners trying to fathom complex arguments - which is all the trickier when personnel change during the contract. For reasons already set out in this Discussion Paper, the negotiations, and re-negotiations, can soon lose support if performance against them looks lower than hoped for. Once Commissioners have already set out on a PbR contract and paid some money over, such renegotiation is highly likely but also increasingly hard to scrutinise or navigate in value for money (VfM) terms. It can too easily leave commissioners resigned to a choice between undesirable compromises. For example, proposed revisions to payment triggers may lower VfM for the commissioner but, may be sought to help rescue the service or, in SIBs, to protect its financial backers. That's a choice commissioners may make, counterintuitive as it may seem, in order to avert what may feel like a worse VfM predicament politically, such as: walking away from the costs and hopes commissioners have already sunk into initial payments for inputs and outputs (such as user engagements or assessments); or, of walking away from costs and hopes ploughed into outcome payments, when there's reason to worry that triggers don't accurately reflect providers' efforts or changes in the macro environment. The role of capital meanwhile becomes less about risk-bearing, and more about straightforward cash-flow for servicing the 'pay-later' aspect of the PbR deal as part of the work around.

D2: A flexible finance arrangement – for working adaptively while keeping payment smooth.

D2 describes a role for use-case D focussed capital that works flexibly to smooth out commissioner spending. It may, or may not, accompany D1. It's about playing in finance specifically to support outcome-oriented services to be adaptive, through flexible cash flow. The more a payment regime is predicated on the black-box case for flexibly pursuing outcomes, the more that flexible cash-flow is needed to help providers iteratively path-find their way to results. But that flex is something commissioners can find difficult to organise if the required financial bandwidth exceeds what commissioners can muster at any one point in time and, also, because public service finance teams need predictable (and ideally relatively smooth) spend profiles. The reasoning behind D2 style capital is it would work as additional capital for commissioners, who make it available to providers alongside the budget that commissioners already have to offer them. It widens the bandwidth that Commissioners can make available, keeping their budget deployment smooth while enabling them to cover fluctuating delivery cost profiles. This investment effectively provides a financial service for public bodies who want to support charities and social enterprises with more flexibility. Curiously, however, that's not how we've usually heard the case for capital argued as part of narratives about flexibility. Policy around use of such flexible capital may do better to recognise that the value of external capital lies not so much in solving a problem that sits with providers, but more in solving a problem that originates within Commissioning bodies. As the discourse evolves around relational contracting, there's an important opportunity for exploring how this capital function should be presented, structured and appraised.

The role of a smoothing function also puts a different (and arguably more useful) angle on social investment than the arguments originally fostered under the PbR logic of New

Public Management (NPM) theory. It could work alongside PbR – perhaps more likely as part of the 'just enough' PbR approach some providers have advocated. But logically speaking, its deployment doesn't need to be contingent on the use of PbR, and if decoupled, the VfM of the capital's role in servicing flexibility could perhaps be more easily evaluated. Looking at the role of capital in a post-NPM way could pave the way for Commissioners' interests in flexibility to avoid the drawbacks of NPM[47]. As ever though, there are questions about the appropriate source of capital, whether Social Investment sources or other. In cases where there is a high risk that Commissioners may struggle to repay a such a capital facility, public services may need to be ready to tolerate higher interest rates if the capital comes from investors that need to see their portfolios break even or grow. Alternatively, from a concessionary Social Investment perspective, Commissioners could look more specifically for quasi-equity solutions from highly risk-tolerant investors or, in more limited cases from grant-makers who want to encourage commissioners to explore new discretionary services. It's also not inconceivable that DIY capital solutions might be an option; we've heard it mooted that by pooling underspends, commissioners might also be able to collectively create their own flexible spend investment funds themselves, in preference to defraying underspend with hasty buying-sprees before a year-end.

De-linking such capital from PbR averts the issue that PbR can be expensive in capital terms. I.e., under PbR logic, as much capital must be supplied as the amount of payment that needs to be withheld pending results. As we've seen in this Discussion Paper, for use-cases A & B, this can demand a lot of patient capital. In use-case C it can be less for near-term triggers, but the costs of performance management usually have to be covered too. Under a D2 arrangement, the focus instead is on providing just enough capital facility to widen the bandwidth of budget around the cashflow which commissioners can already make available upfront or in regular payments. In this way, it could make more efficient use of capital draw-down and improve overall contract VfM.

Commissioners still need to consider how to structure contracts with the flexibility to pursue outcomes if investors' D2 ancillary offer is decoupled from PbR. Some innovators are suggesting novel ways forward, such as Social Impact Guarantees (allowing outcomes focussed specification)[48]. Some commissioners have been exploring Alliance Contracts[49] (allowing an outcomes focus, but with the focus of the contract specification being on the relational approach to collective pooling and adaptive deployment of resource and effort). Innovation Partnerships[50] are also beginning to be used offering a way of supporting smaller pathfinding collaborators, including third sector organisations, to help work out ways to tackle social problems. Social Bridging Finance[51] (not actually a finance product) uses ideas akin to Innovation Partnership, but with a philanthropic trust supporting the initial phase. Commissioners and commentators exploring formal relational contracting are beginning to examine the pros and cons of such tools. Commissioners using them so far tend to be those with a strong sense of a new way forward, or the need for it. All of these may or may not benefit from D2 style capital; it depends on circumstances. For commissioners who are wary of SIBs, financiers moving beyond use-case A-C will need to be clear about their logic in supplying capital which, perhaps, might take the form of D2. But are we seeing signs that the cases made for capital are leaning more towards enabling flexible cashflow, or perhaps more towards backing system-learning as the route to flexibility? Are sights moving towards a third variant on the theme of use-case D's search for flexibility (D3) – and is it set to become a phoenix from the original results-based PbR premise?

D3: A PbR-like phoenix – supporting flexible pursuit of outcomes with 'payment for learning'.

D3 describes a scenario in which we could conceivably see a move towards Payment for Learning – with a focus on guiding flexible practice in a dynamically complex world. This reflects a potential confluence of interest in use-case D's core question about flexibility, with the interests of a movement[52] of commissioners and practitioners who think that pursuit of outcomes is best served by active generation and use of learning, to guide actions amidst complex social realities[53]. At the same time as proponents of relational contracting are exploring the novel contracting approaches just noted above, this movement is pointing to two base ingredients they consider key in the assurance sauce for underpinning any novel trust-based and flexible practices: complexity-capability and applied adaptive system learning. These two competencies are seen as essential for navigating towards outcomes amidst the dynamic, entangled, and emergent nature of the messy complexity of peoples' lives and the systems around them. In many ways such aptitudes are manifest in the reflective practices that many providers use. But to use them at scale, on a continuous basis and to keep pace with the capabilities and speed of change of an increasingly digital world, these competencies will increasingly need to be built on methods, capacities, skills, and technologies that currently are not yet widespread, and need stimulating. This movement of practitioners across the public and third sectors are working on fostering a new wave of 'human systems learning' capabilities. And at the same time, some of them increasingly argue that the new paradigm of contracting needs to use payment for learning to usher in mainstreaming of the paradigm. If commissioners need more than peer encouragement and conceptual education to put their toes into the water of this idea and jump into resourcing complexity-capability, there's some key questions to ask.

If D3 is about payment for applied adaptive complexity-capability, what will it end up looking like? Does 'payment for learning' simply mean paying for capacity to learn up front? Or will it be interpreted as a payment-approach based on structuring all - or perhaps just some of - the service level contract's payment around competent use of suitable complexity-capable learning tools and methods? And does rewarding enhanced reflective practice, generate a need for underpinning capital? Would this be sought if Commissioners aren't already confident enough about the world of complexity-capability to jump straight into paying for it up-front? And if so, how much of the payment logic would be focussed on capability-building and fostering the culture for deploying these skills and tools in core practice? In other words, does paving the way to a D3 style approach to flexible and learning driven pursuit of outcomes generate a need for a new form of finance to support a radically different phoenix of the 'pay-later-if' premise? If so, who would drive such design-thinking? Would it be commissioners, or investors looking to shift away from PbR's drawbacks to date? The LOUD report[54] cautioned that commissioners need to be in the driving seat of contracts. So if D3 were to involve a pay-later-if logic to attract tentative commissioners, does that imply they are by the same token perhaps less likely to be ready to drive it, raising a red flag? Meanwhile, the social investment market is beginning to pick up on government guidance[55] on complexity-competencies. Some Intermediaries' papers and appearances at events, which look at aspects of systems change/ building/ strengthening, indicate they are looking to develop offers into this space.

For those who might be exploring D3 type approaches, there are some points that wider learning suggests bear careful thinking about. Here are some of them:

- **Complexity-capable tools can't (and don't claim to) bring absolute certainty about results.** Instead, they deliver the in-flight insights that help service-crews navigate through the emergent nature of the contexts they are working in by continuously probing, sensing and responding. They reflect the recognition in some areas of social policy discourse that there is no value in predicating payment on achieving a future level of certainty that realistically is unattainable, and that there is more sense in paying instead for constantly generated and applied complexity-capable learning (using methods that also offer lines of sight to both sought and unexpected impacts). The question then, is should that learning be paid for up-front, applying the trust of a relational contract or, retrospectively with a PbR style 'pay-later-if' D3 conditionality?

If the latter, what is the 'if' – and will the test of the 'if' justify both the 'pay-later' trigger and its call for capital?

- **Beware payment mechanisms that blend or slip between evolving logics for withholding payment.** As we've seen throughout this Discussion Paper, blending may lead to curdling of logics. Constructing logic-test tools, like the use-case A-D framework which underpins this Discussion Paper, could help stakeholders become alive to the key logics, underpinning assumptions and, to any incompatibilities or tensions between them.
- **Don't over-egg any D3 payment conditionality in a commissioned contract.** In line with advice we've heard from providers during our CBO experience and to avoid overcomplicated and inefficient cash-flows, it is important that any payment solutions which are based on incentives and/or delayed payment, are limited to a minor ('just enough') proportion, sufficient only to overcome financial or motivational barriers to progress towards enhanced ways of working (on the part of the providers or, the commissioners). For similar reasons, D3 style arrangements to support learning, should arguably be an ancillary minority contribution alongside other standard advance direct payments for funding services' other core costs (e.g., using trust-based grant, or minimum service level agreements). There's then a secondary question about whether providers may (or may not) need a small amount of capital, with working/risk/patient/flexible characteristics, to service the small proportion of conditional payments for D3 learning.
- **Commissioners may need their staff and providers to first attain complexity-capable competencies.**This may demand significant initial investment, time for training, and onboarding of technology. Here, larger amounts of highly patient and flexible social investment may be needed by Commissioners too, e.g., D2's flexible capital with its attendant smoothing function.
- **It's natural that any capital will be structured to manage down risk to investors.** Our experience in SIBs has illustrated how investment-risk calculus in PbR+capital arrangements can sometimes affect power dynamics e.g., when the balance of relationships slips out of win-win-win mode - even when investors themselves are socially motivated and not seeking to do more than preserve capital in the overall pot across their portfolio of investments. For the purposes of appraising the dynamics and value-in/ value-out that could accompany any of use-caseD's arrangements (D1 - D3), it's important for everyone to understand that if they are backed by a capital pot which comes from a source that cannot be eroded or must seek a return on investment, then questions need to be asked about whether it and the premium that may come with it, is suitable for the payment terms chosen by providers and commissioners and proportionate to their objectives.
- **There's an ecosystem-health consideration that any D3 approach would need to design for.** If it's argued that finance needs to be a feature in the form of a D3 payment-for-learning arrangement, commissioners must carefully consider capital's effects on provider market-shaping. Sometimes, finance intermediaries have sought to structure SIBs to champion a wider eco-system of community organisations in delivering collective impact. But we've also seen some investment intermediaries develop a strong position in the SIB world by selecting and/or creating their own social enterprises as vehicles or primes for winning contracts and to scale them to utilise finance. From an ecosystem point of view, if D3 depends on capital pots which need to adopt market-commanding strategies to secure viability from an investment perspective, it comes with the risk of starving and shrinking any parts of the wider local community sector not favoured by investment intermediaries. If commissioners are interested in exploring systems change by combining fostering complexity-capable

ecosystems with D3 approaches, it's important they structure procurement strategy to favour equitable eco-system-building.

- **Infrastructural market shaping and power dynamics also need to be carefully considered** if intermediaries see D3 style solutions as a way of reimagining their use-case C performance management role. As explored in Chapter 4 the role of capital in SIBs has sometimes been more about enabling intermediaries to take the position of the quality-manager-of-choice for commissioners. Meanwhile, there's a lot of talk in the complexity-capability world about the role of learning partners. The latter includes an argument for a focus on growing local learning infrastructure, to manage data and analysis using new complexity-capable techniques. A 2023 conference looking at Relational Public Services[56], concluded by recommending this function needs to be developed and offered locally by universities and local publicly owned institutes and partners in community infrastructure. Perhaps providing start-up capital for locally owned 'complexity-capable applied learning' capacity-building infrastructure, is where the attention for the role of capital needs to be turned and be co-designed next? But if so, on what terms, and from what kind of capital source? How patient, and how risk-bearing would it need to be?
- **There's also a fundamental skills-equity principle D3 may not solve, demanding fresh thinking.** As the LOUD report reminds us, where transformation in commissioning isn't led locally by commissioners, their buy-in is more likely to be superficial, fragile, and transitory. So, it follows that Commissioners must be as, if not better, versed in the value of 'complexity-capability' than those they commission if commissioners are to commission it well and stick with it. But this poses a conundrum. How can Commissioners buy complexity-capability, if they themselves don't yet feel confident in understanding or managing it?

A procurement based buyer-seller approach to commissioning might not always be productive. If the systemic transformation that's needed must come from all parties adopting a complexity-capable collaboration around money, relationships and learning across the public and third sectors (a 'MoReL' partnership, if you like), then an equitable 'in-it-together' dynamic is called for (rather than a transactional one). When it comes to working with the voluntary and community sector, there's a case for public services to set out on a journey into complexity-capability alongside its community sector partners, outside of procurement, e.g., using grant. Instead of being about the commissioning of complexity capability, the dynamic needed is one of commissioners jointly working out how to collaboratively become complexity-capable partners with their local public-service support-network of charitable allies. In Chapter 6 we'll explore why this suggests commissioning's quest for flexible, learning-driven system-change may need to explore the idea of **'Co-Missioning'**, to discern how to work with CSOs in that new partnership paradigm.

Takeaway Points in addition to Table on p.13

Allied Risk Factors for PbR+Capital logic

A: Cashable Savings

1. Decommissioning may depend on total success across a large cohort of service users, and a change in demand that may take years to achieve or be transient.

2. Investor appetite for a long-term wait before any principal is returned, is low.

3. Downstream commissioners may be unable to uphold (or remember) promised release of savings from decommissioning or switching budget flows, if this were to occur outside the current budget period.

4. Upstream and downstream commissioners may not have agreed an appropriate wrong-pocket deal.

5. SIB stimulus schemes with a mission to increase deployment of investment (e.g.: co-commissioning or 'top-up' schemes like the SOF/CBO/LCF programmes), may drive an investor into the mix when downstream commissioners should play that role.

6. Budget switching strategy requires proof of causality of savings, to trigger their release.

B: Attributed Result

1. Parties may not understand the protective role of a counterfactual test, or how to design a suitable one.

2. Counterfactual may be difficult and costly to set up.

3. Without a suitably robust counterfactual, parties may fall back on benchmarks and scenario planning developed during modelling, but modelling is often vulnerable to over-optimism about efficacy, demand or system conditions, weakening justification for making or withholding payments.

4. Counterfactual data may be unreliable.

5. If multiple providers are involved but unequally supported by a SIB, a need for fair contribution analysis may complicate attribution analysis.

6. Commissioners may be unable to commit to or uphold a promise of payment for an impact that occurs outside their budget cycle period.

7. Commissioners may find they need their spend within or across budget periods to be predictable and/or smooth, reducing their appetite for making payment conditional on unpredictable impact (despite desire to avoid sunk costs), potentially leading to break clauses or caps that increase risk and cost of capital.

8. Cost of capital rises with patience and may also rise if the investor's wider portfolio of SIBs is small or high in overall risk.

9. Investors may seek to reduce capital exposure by favouring projects where impact payments can be achieved in the short term rather than those with long-term triggers or, may propose short-term proxies rather than wait for long term proof.

C: Quality Management

1. Unreliable modelling (and remodelling) can arise from: context variation; optimism-bias tendency across all parties; and high churn /low capacity of commissioning teams who don't often drive initial business-case design.

2. Near-term KPIs may eliminate case for working capital debt.

3. To help recoup capital and costs expended in finding SIB deals, investment intermediaries may offer a performance manager role which, depending on how they are paid for it, may drive up their need for minimum orders or renegotiation of payment triggers if performance is low.

4. Engagement/ output/ KPI tiggers, payment caps and minimum orders, may reduce scrutability of quality and incentive and increase sunk costs.

5. Charity providers may find their interests and governance subordinated to the for-profit interests, market behaviours and effects which they exist to ameliorate, impacting VCSE willingness to act as a public service supply ally.

6. Preservation of capital may, at a system-wide level, make some 'sunk cost' inevitable?

D: Flex & Adapt

1. Relational contracting (D1) invokes renegotiation of terms based on a sense of 'what matters now' - but this can make line of sight to value and rationale for deploying PbR+capital hard to track and may result in loss of cooperation later if not all parties' needs are met by the PbR terms in practice.

2. Capital required for 'D1' PbR can be reduced by near-term triggers, but these can risk a race back to FfS style constraints.

3. Projects operating under use-case-B-like PbR terms may generate highly unpredictable calls on capital and increase its exposure and cost – which may be unnecessary and present low VfM if commissioners fundamentally just want to allow providers flexibility and are sitting on funds which they wish to give to providers but can't until an outcome is triggered under the PbR arrangement.

4. Capital for PbR is not designed and described as a facility to help commissioners offer contractual flexibility while spending predictably (and instead is presented as a solution for a provider problem).

5. The PbR design may not adequately reflect how learning behaviours may be a stronger impact signal than untested outcomes or proxies.

Mitigations: numbers relate to Allied Risk Factors

A: Cashable Savings

1-3. Find funders/ philanthropists willing to provide highly patient and risk-bearing capital that works more like repayable grant.

4-5. Ensure commissioners are clear about their up/downstream role in a PbR arrangement.

5. Identify whether a SIB investor is needed or not (also see mitigation for 1-3).

6. Move to use-case B.

B: Attributed Result

1 & 3-5. Educate parties on attribution-testing before they attempt SIB design or select their OBC tool.

2. Find funder willing to cover counterfactual test costs.

2&5. If attribution and/or contribution testing is not feasible, explore whether other OBC tools (e.g.: Alliance Contracts) can adopt sense-making technology to guide pursuit of impact with providers and commissioners sharing pain/gain of operational decisions and risk.

6-7. SIGs are untested but offer to help commissioners keep spend predictable whilst also reducing their risk of sunk costs – but only if a counterfactual can be independently facilitated and the premium kept low (by a philanthropic insurer or through there being enough SIGs for insurers to spread risk across).

8-9. Find a source of highly patient and risk bearing capital, e.g.: in the form of repayable grant (from grant-makers who don't rely on returns 'of' or 'on' capital).

7-9. If interest in use-case B is driven by need for 'proof-of-concept' of a fidelity model and its replicability, look at tools like Social Bridging Finance (if commissioner can patiently commit to post-proof adoption of the tie-in contract's terms.)

1-9. If ability and will to follow use-case B logic is low, review suitability of use-case C or D logics, as relevant.

C: Quality Management

1. Educate all parties on modelling in PbR before they attempt SIB design or select their OBC tool.

2. Ensure any role for capital is visible to all and justified.

3. Ensure costs of raising deals are visibly factored into tariff setting. Keep performance management role independent of capital interests.

4&6. Ensure all parties have capacity to engage fully in design and scenario testing (in its widest sense), with open discernment between parties of calibration of 'just enough PbR', and ensure that in delivery all cashflow is fully transparent to all parties.

5. Apply principles of The Compact between government and the VCSE in designing approach to procurement, to protect VCSE remit and agency.

D: Flex & Adapt

1-2. Alliance Contracts, Innovation Partnerships, Social Bridging Finance, SIGs may offer alternatives.

3-4. Decouple capital from PbR and deploy it instead as D2 - a marginal capital 'smoothing' facility - available to commissioners to support ad hoc cash flow alongside regular up-front payouts from commissioners to local providers of delivery and learning services (aim is to help commissioners keep their spending predictably smooth while widening bandwidth of providers' spending flex and, to keep costs of capital down).

5. Switch payment trigger to deployment of learning practice (D3) which uses complexity-capable tools – or **'Co-Mission'** the initiative and its complexity-capable practice with grant.

Chapter 6 – ‘Co-Missioning’

A new paradigm for an equitable approach in a complex world

Reflecting on our work with 50 PbR-based initiatives and drawing on insights from both our wider strategic funding and our learning from external sources, this paper has set out 4 key primary use-cases to sum up the PbR agenda in the context of UK local public service commissioning and the pursuit of outcomes. Chapters 2-5 illustrated how essential assumptions underpinning these use-case often can’t stand up when their commissioning agendas land in real-world contexts, and explored a deeper dominant quest for flexibility.

Looking closer at the areas of fragility in PbR’s underpinning logic, this Discussion Paper explored how narratives about the purpose of PbR (and of the capital that supported its use) have morphed - and may possibly again with this quest for flexibility – and why it can be fficult for people involved to maintain a birds-eye view of the value that PbR can add or detract. The teasing out by this Discussion Paper’s typology of the four use-cases, offers a means to reflect systematically and, to help add clarity to PbR’s underlying use-case objectives if people seek them or are asked to get involved in them by partners in the future. The Discussion Paper has illustrated why narratives about PbR rationales can morph when their logics contend with real-world contexts. We’ve seen why it can be practically very difficult, both to realise and to evaluate PbR’s intention of withholding money until the benefit of an expected result (of released cash/ impact/ quality/ adaptive practice) is fulfilled, with its underpinning logic and assumptions maintained intact. And we’ve noted that the nature of the resulting shifts across use cases A-D are symptomatic of an undercurrent of deeper interest not in PbR as it was originally conceived, but in its role as an outcomes-based workaround – albeit a problematic one – of the perceived straightjacketing imposed by conventionally specified contracts.

PbR’s shifting sands belie a wider desire to flexibly support social actors to work with real-world complexity through partnerships that pool resources (of all kinds) and work with complexity-capability. We’ve yet to see whether actors in the SIB field will offer further iterations of the PbR+capital formula into responding to that desire. Chapter 5 drew out some key issues that any designers, advocates, or consumers considering potential evolutions of PbR’s ‘pay-later-if’ premise and allied capital must consider if they want to tackle complexities in social need. It also explored why decoupling their ideas from PbR may help to transform public service, by enabling even more flexible collaboration around use of resources and learning.

This final chapter reflects on public service delivered by the third sector and why ‘Co-Missioning’ may help as a more apt paradigm for supporting this than procurement models, and, where this leaves PbR.

Delivering public service is ostensibly the job of government and its agencies, national and local. So, you may have been wondering “Why has the Fund been so interested in commissioning and, in disentangling lessons from modes of it that involve the ‘PbR+capital’ formula?”. The answer lies in the implications of the phenomenon of governmental public service being delivered through the commissioning of others rather than through public bodies’ own teams themselves (including through SIBs). We’re interested in how this affects community sector organisations and their stakeholders - not least because where outsourced public services are discretionary (i.e., additional rather than statutory) they can overlap with the Community Fund’s interest in collaborating with the third sector in tackling challenging social outcomes. Many of our programmes have attempted to strategically influence how commissioners engage with our third sector audiences, but usually as a legacy effect. In SIBs, we sought to bring that influence forward through a grant-aided co-commissioning 'top-up' approach. It's brought us closer into understanding commissioning realities and important reflections.

A key learning area for us is: what drives how commissioning interacts with the third sector, and why? To understand the third sector's place in the commissioning picture, and what, in support of that, our own role should be in future, we need to bring to bear our increasing understanding of the origins of commissioning – especially the procurement conventions that gear it towards the private sector and market characteristics. It's important context from which to consider lessons for supporting the liminal but critical role of the third sector. Our CBO evaluation's study of the Political Economy of Commissioning will also bring further insight.

A key issue we and others[57] are reflecting on, is how outsourcing raises important accountability questions for public bodies, driving the way they engage with markets. To follow accountability through into procurements, officials cascade delivery responsibilities, enforcing expectations through contract terms. It's a big job to look after this outsourcing to the market at large, which overwhelmingly involves working with and seeking advantage from competition between private business. Government spending on procurement in 2019/20 was £295.5bn – a third of all government spending[58]. But does the enormity of this exercise obscure other modes of commissioning and social accountability that could usefully bring important alternative non-commercial players into addressing some of the knottiest social problems and, into working with the most disenfranchised communities?

A minor (not inconsiderable) amount of outsourcing is procured outwith the dynamic of commercial markets i.e., from third sector. This raises the question, 'is procurement (built on buy-sell market ethics) appropriate as a tool for engaging with this sector?'. Government analysis of Charity Commission data indicates 3% of the procurement budget (£9.2bn in 2020)[59] is spent on procurement of Charities and the intention is to grow this. So, what does this mean for Charities who, as the core of the third sector, exist (by sectoral definition) to meet social need where the market of private sector suppliers fails to affordably cater directly for sections of the public's needs, and where the state can't (or decides not to) extend its services to meet those needs either?

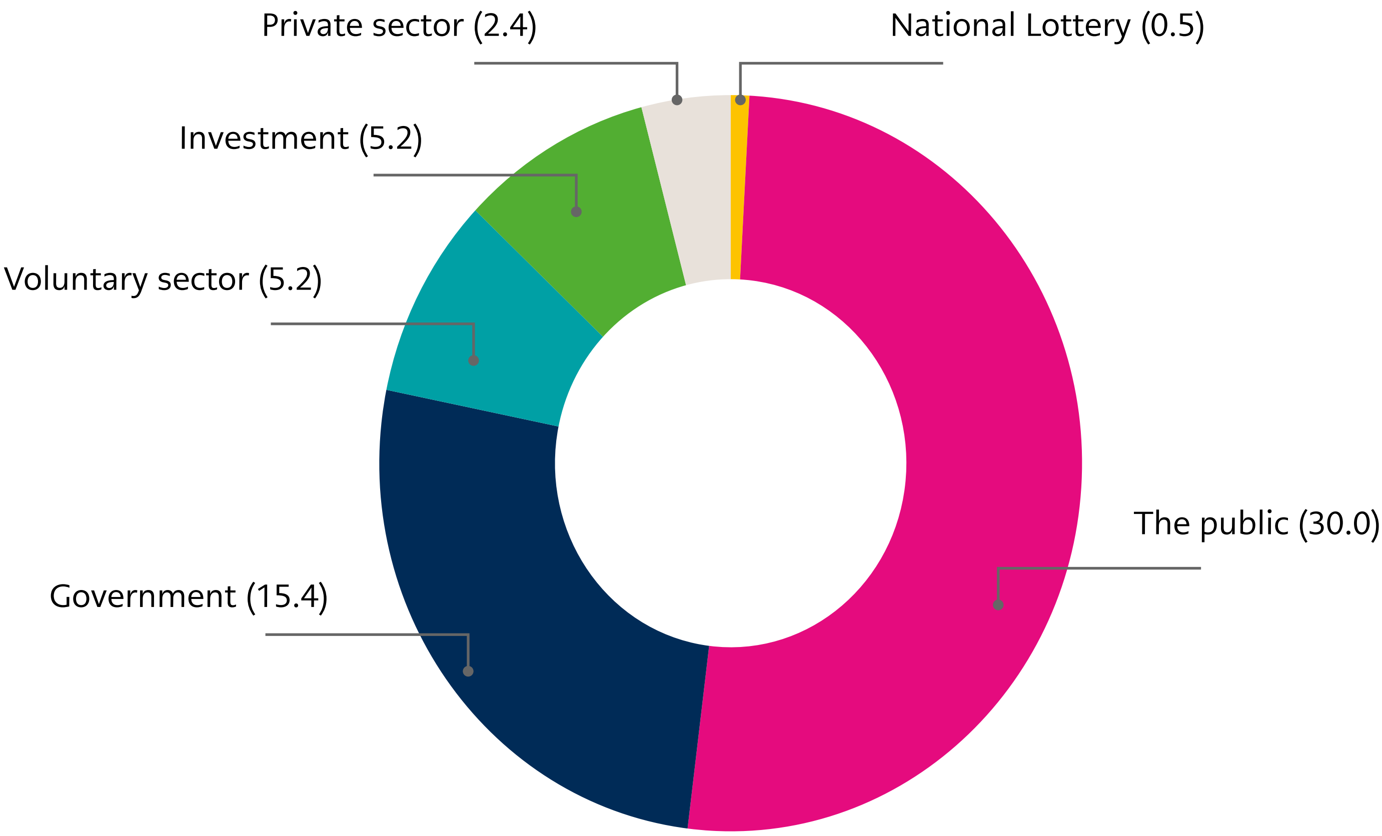
Money from the state makes up a minority proportion (a quarter) of registered charities' overall income. This comes either as the contract income above - the case for just 6% of Charities, who also attracted £3.8bn of grant income from government too or, just as grant (the case for other charities, who received £3.9bn of government grant, but most of this - £2.5bn - went to bigger charities turning over more than £10m per year)[60].

With limited input from government grant and/or contract income[61], Charities, especially smaller local ones, operate outside of the market's for-profit drivers, raise funds largely from a public support base, and pick up the mantle of accountability to the dispossessed where others, including the state can't. Hence the label 'third sector'. When taking this and the larger non-governmentally sourced part of the sector's income which it brings to the table, is a focus on contracts helpful, or distracting from a more important picture?

Half of all voluntary sector income comes from the public, followed by a quarter from the government

Voluntary sectory income by source, 2019/20 (£bn)

Source: NCVO Charity Commission



Smaller organisations get a greater share of their income from the public

Income by size and source, 2019/20 (%)

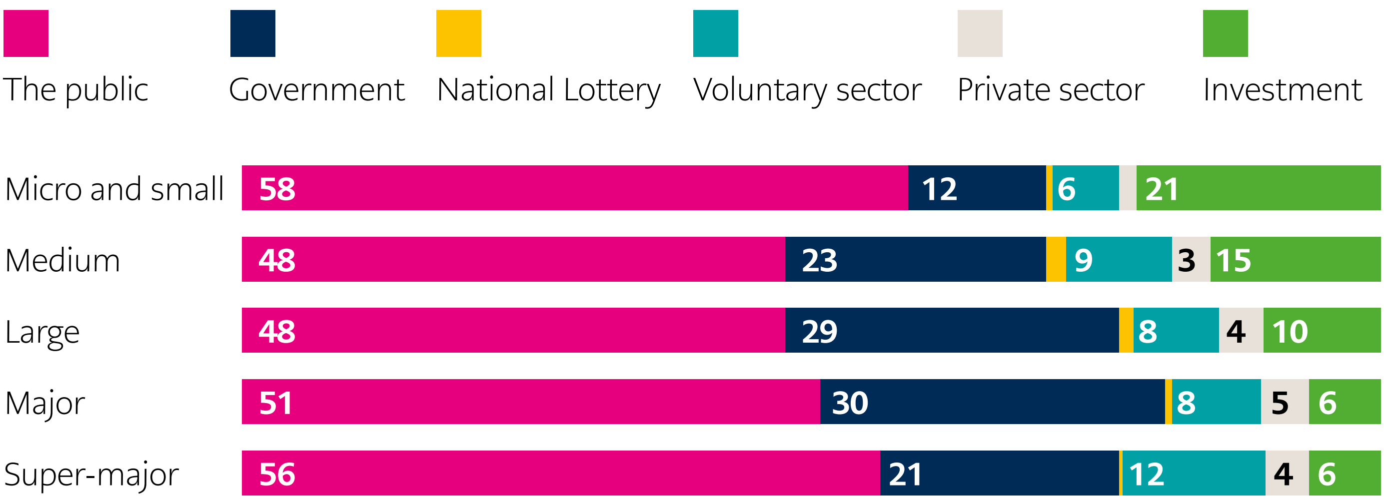


Image source: Income sources - Financials | UK Civil Society Almanac 2022 | NCVO

Through the third sector, there's a whole swathe of public service that is done for free in market terms. Charitable action is primarily most widely expressed in the work of the countless (literally) number of volunteer groups who aren't even sizeable enough to feature on the Charity Commission's register. Volunteer power is also the cornerstone of registered charities too, of which there are 169,812 in England and Wales alone[62]. Charities, formal and informal, embody the voluntary generosity of citizens, both in fostering civic and cultural flourishing, and, in the safety net they provide to people left behind by the market and the state. It's also important to note that even when Charities work for public bodies under contract or grant, they tend to do this work below cost; 59% of charities delivering government contracts subsidize this with other forms of income[63].

And often that's because third sector organisations are largely borne out of a sense of duty to communities which they serve and are accountable to. When government research last checked[64], it found that around half of charities, and especially smaller ones, were membership-based organisations with voting rights baked into their governance. Such members may include local public bodies, other charities and sometimes companies, but on the whole, membership charities' governance consists of accountability to significant numbers of community members including beneficiaries. This community membership helps to keep charities grounded in their social mission and accountable to communities for their asset lock, through the way they maximise, discharge, and protect funds (most of which they raise from the public) for public good. Even for those without this community membership, Charitable accountability works through executive boards (mostly consisting of volunteers from the community of benefit) under charity law and, complying with their Charity Commission registration by reporting for the discharge of their unique social purpose for their area of benefit.

The public and third sectors are symbiotic. The boundary around what the state does and does not do, flexes with political direction and, with the money it has available. Along with it therefore, Charities' dedication to filling the gaps flexes too. Many would like to do themselves out of a job, but the reality is one of ebb and flow of demand for the job they can help deliver alongside government. This is accompanied by an undercurrent of perpetual interest among commissioners in Charities' credibility with service-users and, the agility, resourcefulness and (not least) resources that Charities can bring to the table.

It's little surprise that government is always keen to work with the third sector. But what is more of a surprise, to me at least, is that despite the many years of discussion about the Compact[65] between government bodies and the voluntary sector (with similar themes re-visited by NESTA[66]), the Compact's underlying concerns - and especially implications for the role of public services as grant makers - haven't been more front and centre in discussion about the pros and cons of the use of procurement[67] in pursuit of outcomes and social value. Swooped up alongside the private sector in interpretations of commissioning convention and therefore procurement law, Charities often remain treated as if they were (or should become) part of the open market.

Charities put beneficiaries' interests as their guide star, not market forces – something that's implicitly acknowledged in the Social Value Act. The Act is there to provide some degree of counterbalance to how procurement evaluations are designed to respond primarily to the competitive logics and priorities of a market drawing from the private sector. But is it right to treat these non-market entities as though they should function like one - especially when Charities are being asked to bring unique social value to the table which public agencies themselves and market providers can't? To take the thinking behind the Compact seriously, commissioning with Charities arguably needs to be better understood – and conducted – as an act of collaboration, not a buy-sell dynamic, in which public services' grant-making plays a part.

Co-Missioning:

A sharing between the third and public sectors, of capability, resources, learning, decision-making and accountability, in a collaborative and equitable pursuit of outcomes around a Mission in common.

That's why as headlined by the title of this paper it may make sense to shift to a paradigm of 'Co-Missioning'. When Charities are asked - or even propose - to pool their resources on the table with public agencies to meet social need through a shared sense of responsibility, my observation is this collaboration could do with being re-cast. Putting a distinctive linguistic slant on commissioning discourse, **'Co-Missioning'** would help set the tone for recognition of the reasons why the tools of procurement have no natural place in this act of shared mission, and why instead, an informal relational mode of mutual contracting does. **'Co-Missioning'** would also help serve as a reminder that for the part of the commissioner, placing resource (monetary and in-kind) on the table, needs to be offered in just as collaborative and generous a spirit as the offer from Charities.

Some commissioners readily underpin pooling of Mission and resource by offering grant and, might do so more, if they felt they had permission or, felt that it wouldn't bar them from re-opening dialogue with grantees if needs in public services changed. Many Commissioning team members however, especially those who sit in procurement departments and default to a buy-sell paradigm, are more reluctant and understandably hard wired to ask (through a market lens) how grants can support a more conventional dynamic of accountability to the commissioning body. With a **'Co-Missioning'** lens, that question however can take on a new dynamic, as under its logic, accountability must be two-way, and trust based. Quietly, the trust-based approach is a strong instinct; the ratio of grant: contract income from public bodies to Charities is about 1 : 1.2 [68]. But the New Public Management pressure on Commissioners to find ways of moving spend into procurement, and the New Public Governance shift from a focus on outputs to a flexible pursuit of and accountability for outcomes[69] has led some to focus on making the PbR agenda – and latterly a use-case D PbR agenda - the new default. So, whilst grant remains a popular way of enabling mission and asset locked collaborators (i.e., charities and the state) to share a public resource to support flexible pursuit of outcomes, it may become too easily overlooked as an alternative, in the policy discourse about 'procurement' of outcomes. It's worth getting behind the skin of the urge to reach for procurement and the positive aspects of SIBs people were drawn to, to check whether, when and how grant could be a simpler means to scratch the same itches, with fewer problematic side-effects.

A procurement lens on commissioning risks a misperception that only PbR can bring outcome accountability. Grant deserves a place too in that quest. It offers a valid way of supporting commissioners to work together with the third sector driven by insight and impact in a complexity-capable fashion (as discussed in Chapter 5). It offers a way to partner, with mutual accountability, around the knottiest social issues that other service solutions can't alone. Grant is also relatively cheap to administer, so it's a commissioning tool that, along with relational contracting alternatives to PbR, arguably needs yet more attention, and, more transformative, use.

The rise of Social Enterprise may be one reason why a procurement lens is driving how the relational discourse is evolving. Social Enterprise operates in a quasi-market space, because of the way it straddles the public sector, private sector and the third sector. This straddling brings confusion as it's not clear to everyone whether this field is intended to grow, beyond a liminal position of bridging these sectors, into a position of taking over or transforming any one of these sectors. While views on this vary, some parts of the Social Enterprise field do work to commonly agreed principles[70]. However, some of the actors leading the global drive for impact-investing who are also campaigning for an increased procurement focus on the social value of outcomes-based contracts, see the end game as one in which all enterprises become 'Purposeful Businesses'. And in that sense, it's mainstream private sector companies which are the ultimate target for socially and environmentally purposed capital[71]. Meanwhile, commissioners' decisions about deployment of grant versus use of procurement, gets more complicated when factoring all this in along with the legally undefined (in the UK) field of Social Enterprises (SEs). It's why 'mission+asset' locks start to become important distinguishing features.

Social Enterprises select from a range of legal forms and incorporation to identify their social credentials, some more explicitly identifying an organisation's intention to be socially enterprising than others and, reflecting different end-game agendas. At one end of the spectrum this reflects the intention that all businesses become socially enterprising – a recipe for saving the planet from unsustainable growth. At the other end, it's more about a subsection of dedicated individuals working with and through economically disadvantaged communities, where the market of private sector suppliers, public services and charities are all too thin on the ground. This subsection of SE exists to create localised business solutions to servicing local need at or below cost, with the help of external grants and voluntary input. On another axis, at one end it's about public services spinning out mutuals to break enterprising staff free from the inertial mass of cumbersome corporate process, and at the other it's about finance brokers spinning out community interest companies so that shareholders can invest in overtly socially or environmentally purposed activity. On another axis, some will have cooperative forms of membership governance, and others will have no more than a couple of directors. Etc. There are many ways to characterise the different motivations, forms, and end goals of SE.

These different characteristics of Social Enterprise beg questions about how Commissioners should engage with them, including 'does the **'Co-Missioning'** argument apply to all types of Social Enterprise?'. The 'VCSE' acronym (Voluntary, Community & Social Enterprise) doesn't include the word 'Charity' - possibly because Charities may fit the bill of all three of the acronym's dimensions - and has become perhaps too readily used as a general term to describe what is a non-homogeneous field. To answer the question above ('does the Co-Missioning argument apply?'), we need to split out the component parts of the 'incorporated' sub-set of the VCSE. In doing so, it's easier to see for whom, where and why **'Co-Missioning'** is relevant. To unpack this, let's look at some of the SE variables.

The answer to the question 'does 'Co-Missioning' apply here?' is largely an unqualified 'yes' for charities. And it's worth noting a point of clarity about the primary driver for the 'business' status of incorporated charities; i.e. that when a charity starts to employ staff or take on other liabilities or assets, it needs to incorporate (become a company with its own legal standing). A charity's status as a 'business' isn't so much about whether it wants to be enterprising, it's about its need to limit Trustees' liability. Many such charities end up with a Companies House profile which therefore may see them counted, rightly or wrongly, in estimates of numbers of Social Enterprises. Some incorporated Charities do conduct trading (i.e., enterprising) activity to some extent - whether selling to the public to raise funds to subsidize their core mission (an alternative to their main income generated through donations) or under contract to government as collaborators. In doing so, they still occupy a space outside of the competitive for-profit dynamics of a market of private suppliers, not least from the perspective of the social good and otherwise unmet need they are uniquely set up to deliver and given how their governance delineates and protects this. The governance-locks around their purpose and funds warrant treating them differently to private sector focussed markets.

Some 'SEs' however expressly operate in markets for outsourced elements of public service or supply chains. It's where many purpose-aspiring businesses (from the perspective of a very broad-church definition of SE) may expect to leverage the lion's share of their income, whilst attending to - and winning support for - their socially or environmentally conscious ways of operating. And if we consider the intention which, for some people, sees every business eventually becoming a socially and/or environmentally purposed enterprise, then it's clear that the **'Co-Missioning'** concept will not apply to most of those; and not least as most of them will not be seeking to address the complex social issues that confound markets and even the state. For the bulk of 'businesses-turned-social', it is procurement tools (and not grant) that will be suitable for dealing with supply chains, products, and services. But where such Social Enterprises' resilience is low or their scale is insufficient, and their heightened social value is nonetheless sought, commissioners may decide to think strategically about how subsidy, through grant or blended finance, may be offered appropriately to organisations positioned along the social-private spectrum of interests – taking note of relevant factors such as whether their governance comes with or without any form of asset or mission lock and why that's so.

Some Social Enterprises don't - and can't - operate in the open market though – particularly where their business models are set up expressly to address levels of disadvantage that otherwise prevent people's equitable access to for-profit goods and services. These often locally grown SE business cases and cost-based models need to be carefully detected and evaluated in pre-procurement planning for soliciting social value; this can give commissioners opportunity to think out of the usual box and take advantage of available procurement powers[72] to engage thoughtfully with these SEs, for example providing targeted grant subsidy or specifying social value credentials or removing tender pre-qualification barriers.

If there's a strong case for a 'Co-Missioning' paradigm underpinned by grant, where does this leave PbR?

Reasons may remain why novel procurement mechanisms like PbR and SIBs might sometimes be appropriate as a commissioner's tool of choice, depending on the issue to solve for, and who is helping to solve it. E.g.:

- When working with supply chain providers who must attend first to their profit motives, use-case C style PbR may be important (see Chapter 4).
- As discussed in Chapter 2, government departments looking to resolve 'wrong-pocket' problems with local commissioners to support preventative interventions, may be able to carefully combine use-case A and use-case B, to enable switches between budget silos; that's **if** they are willing to stick to the deal for the necessary duration, and **if** they can trace attribution (rare for reasons discussed), and **if** they can assign upstream budgets (or find highly risk-tolerant capital) as the 'investment', to properly service the PbR logic.
- Where complex social issues demand interventions that are more flexible and innovative than commissioners are pre-disposed to, use-case D type PbR and accompanying capital solutions may be apt for working with some types of SE - **if** led locally and carefully structured (as indicated in Chapter 5).

However, using 'pay-later-if' mechanisms with Charitable partners should only be done with very good reason, for reasons discussed in this paper, and, crucially, with careful attention to: maintaining the logic's integrity; evaluation of its cost-of-capital; and careful management of the power dynamic implications discussed. As the LOUD report cautioned those keen to try out or promote SIBs: "These advocates must share an understanding around exactly what the nature of the problem is that the proposed SIB will solve, how the SIB will tackle the problem, and why a SIB mechanism is best suited to doing so."[73]

Other novel tools too may help Commissioners take a relational and flexible approach to pursuing outcomes as partners with Charities and asset-locked Social Enterprises, such as those we've touched on in this Discussion Paper, including Alliance Contracts. In the Alliance Contract approach, all parties agree the outcomes they will work towards and the basis on which they will cooperate to collectively examine counterfactuals, test assumptions, manage decision-making and deploy resources - sharing pain and gain equitably together. Like grant, depending on how it is developed and structured, it can provide an opportunity to shift away from the buyer-seller dynamic, towards a more in-it-together **'Co-Missioning'** mode. One where the principles upon which circumstances will be navigated equitability and decisions made, are worked out at the outset. In other words, instead of a use-case D1 type SIB approach (see Chapter 5) of starting by agreeing fixed PbR terms only to re-fix the terms ad hoc whilst relying on sunk costs to capture cooperation, Alliance Contract parties explicitly start out with designing the relational basis on which the parties will flexibly share resources and deal with the uncertainty of complexity and the behavioural issues which they all overtly acknowledge can inevitably put trust under strain.

The choice of approach should be guided by which mode it is more appropriate for Commissioners to adopt - buyer, or, collaborator and co-learner in navigating complexity. As we saw in Chapter 5, Commissioners may need help to develop their own complexity-capable practice along with their **'Co-Missioning'** partners, as part of a mutually accountable drive towards facilitating learning-driven system shifts. As a Fund, we've been considering options for our role in supporting this. We're looking widely at taking contextual lessons from our own work (including those explored in this Discussion Paper) and from others', including (but not limited to):

- the Robertson Trust's journey with Public Social Partnerships and Social Bridging Finance, as exercises in building trust and confidence between charities and communities and their commissioners
- Llankelly Chase's lessons on Learning Partnering, for navigating and stewarding systems in complexity
- the rapid cycle testing practices evolving out of our Replication and Innovation initiative
- international variations on the themes of impact bonds and impact guarantees
- the community of exemplars which is evolving into a Human, Learning Systems movement in public bodies and the third sector, and Collaborate CIC's study of working in complexity[74].

We're considering where we might help more by working as an 'investor' as perhaps only a grant-maker can. During our previous strategy, we helped build the social investment market by subsidising finance intermediaries to offer blended finance and develop SIBs. Our focus now may shift down a level, to community organisations and locally led partnerships whose needs lie beyond what the now more mature social investment market offers. We're considering the roles they may need grant-makers like us to play in directly providing them with highly patient capital that comes with no-to-low expectations of capital return.

This may include structuring grants in novel ways, to help public and third sectors develop 'Co-Missioning' as a community-led approach and, to grow their buy-in and capacity for complexity-capable applied learning. That could simply include supporting relationships between those who are already streets ahead with this and those who are tentatively approaching the starting blocks. Or it might involve developing tapered **'Co-Missioning'** tools, to stimulate such capability in public and third sector collective impact partnerships who are less confident but open to feeling and sustaining their way forwards. Perhaps it could mean lending super-patient capital to help in the (rare) cases where downstream cashable de-commissioning may be feasible and key to action. It could maybe involve directly co-funding, financing, or insuring carefully designed arrangements where the risks of community-led innovation and long-term impact measurement rigour need carrying by super patient, non-extractive capital. It may involve thinking deeper with communities and government about what Charity and Social Enterprise are for, what this means for relationships with them, the use of grant as a **'Co-Missioning'** tool, and how we all pay our parts in designing 'relational public services' with communities.

For sure, our future role will focus on approaches that recognise it starts with community[75]. in line with the ethos that underpins our new strategy's intentions. As we consider how we'll play these out under four Missions to 2030 (focussed on supporting communities to come together, be environmentally sustainable, help children and young people thrive, and everyone to live healthier lives) we're thinking anew about **how** we'll fund, as much as what.

Glossary

Additionality: The principle that distributors of The National Lottery proceeds should only spend money on projects that would be unlikely to be funded by government or devolved administration.

Alliance Contracts: A form of relational contract between one or more commissioner and an alliance of providers who deliver a project or service, in which all parties share risk and take collective ownership of opportunities and responsibility for the service, and in which any pain or gain financially is linked to the performance overall of the service rather than the performance of individual parties, and decisions are driven by a set of agreed principles.

Attribution: The process of evaluating changes in relevant outcomes to identify the extent to which they can be attributed to (i.e., be proven to be caused by) an intervention or investment.

Cashable Savings: The tangible funds released by an outcome which causes a reduction in spending, which are made available for reallocation to a new budget, and/or for repayment of the costs of the initiative which led to the outcome.

Causality: The influence through and extent to which an event, object, state, action or process contributes to production of another.

Commissioning: The cyclical process by which public bodies assess the needs, aspirations and assets of people in an area, determine priorities, design and authorize and/or contract appropriate services, and monitor and evaluate their performance in order to direct resource into meaningful and efficient support.

Co-Missioning: A sharing between the third and public sectors, of capability, resources, learning, decision-making and accountability, in a collaborative and equitable pursuit of outcomes around a Mission in common.

Complexity: The inherent nature of a system or model composed of diverse, entangled components, whose interactivity is self-organising, nonlinear, non-proportional, and whose expression is dynamic, emergent, adaptive and unpredictable.

Complexity-Capability: The skills, methods, technologies, tools (and the capacity and agency to utilise them) necessary to navigate complexity with sufficient insight to continuously stimulate or take actions that nudge the disposition of a system or aspects of it towards desired states.

Complexity-Capable Public Services: Public services which build their Dynamic Capabilities within public service systems to operate with Complexity Capability, by fostering Stewardship Capability, Coordinative Capability and Adaptive Capability[76]:

- **Dynamic Organisational Capability:** Ability to integrate, build and reconfigure internal and external competences to address rapidly changing environments.
- **Adaptive capacity:** The ability of public service systems to adapt to or pre-empt changes in their operating contexts, facilitated by positioning learning (rather than control) as the engine of improvement.
- **Coordinative Capability:** The ability to shape patterns of interaction to mobilise and interpret the requisite knowledge, resources, and procedures necessary to improve outcomes, requiring actors to develop and act on a critical systemic awareness of the opportunities which may exist beyond their immediate organisational or role boundaries.

- **Stewardship Capability:** The creativity, resilience and adaptability of public services in navigating uncertainty, through the capability of public service professional to act as responsible stewards of publicly-valued outcomes.

Counterfactual: A test of what outcomes would have occurred anyway without the intervention which is intended to produce the outcomes.

Decommission: The process by which a commissioned service (or component of it) is shut down, or a contract is ended.

Discretionary Services: non-statutory services that are delivered by government or public services which they are not required to deliver by law/statute.

Innovation Partnership Contracts: A form of contracting in which a commissioner partners with an innovator to develop and produce a product or service to meet a need which cannot be suitably addressed through solutions available on the market. The commissioner has the option to purchase that product or service from the providers if it meets agreed performance levels and costs. Commissioners may choose to approach and appoint more than one partner to participate in the R&D phase but may subsequently only purchase one/ some of the solutions.

Outcomes Based Commissioning (OBC): A range of commissioning approaches through which a commissioner organises the configuration of money, relationships and learning for working through a service providing partner, where the objective is to maximise the value that can be derived from a service by commissioning it to pursue desirable outcomes.

Payment by Results (PbR): A form of contracting whose conditions specify results which must be delivered by the contracted service provider, which when proven to have occurred, trigger payments to the provider from the contract commissioner. PbR is also known as Payment for Success and is one form of Outcomes Based Commissioning.

Public Services: the umbrella term for statutory and non-statutory services provided by the government such as schools, hospitals or the police either directly or through contractual arrangements. These can be statutory (required by law) or discretionary.

Quasi-equity: An investment that reflects some of the characteristics of shares, but without the investee offering up equity to the investor. Rather than paying back set amounts, the investee's repayments to the investor depend on performance, such as income or profits or savings.

Realpolitik: an approach taken to policy development and implementation that is driven more by circumstances and pragmatic factors than adherence to the ethical, ideological or design-logic principles of solving the original problems that the policy was tasked to address.

Relational Contracting: An approach to commissioning that specifies mutual goals and establishes the basis on which governance structures and process will be used to foster trust and to keep the parties' expectations and interests aligned over the long term. A formal relational contract is legally enforceable and can be useful for highly complex relationships in which it is impossible to predict every what-if scenario; the relational contract focuses on specifying the mode of governance to be upheld to enable the discernment and agreement of pathways for pursuing shared goals rather than pre-specifying required actions or outcomes.

Repayable Grant: A grant which is offered to support an organisation's purpose which it is agreed will become repayable (in full or in part), if and when circumstances make it possible for the grant-holder to do so, and the grant holder's values drive its interest in contributing to maximising the financial resources available the wider sector it is part of.

Results Based Finance (RbF): a form of capital, used to cover the risk or patience demanded by PbR, where the investor is interested in both financial and social returns.

Social Bridging Finance: A grant-making mechanism in which a philanthropic funder agrees with a commissioner and a charitable provider that the funder will pay for the R&D and proof-of-concept pilot phase of an initiative, and that the commissioner will then continue to fund the service beyond the pilot phase into the long term, provided that the proof of concept has been achieved.

Social Impact Bond: A contracting arrangement combining **PbR** and **RbF**. (SIBs are also known as Development Impact Bonds in the international aid sector and by a variety of other names developed by investment intermediaries.)

Social Impact Guarantee: An Outcomes Based Commissioning arrangement in which a commissioner pays a provider upfront to deliver a service with the expectation that they deliver agreed outcomes. If the provider fails to achieve or make the required contribution to the creation of outcomes, they are charged by the commissioner. As part of the SIG a funder (or insurer) acting as an underwriter agreed to pay any such charges on the behalf of the provider. The funder may or may not require that the commissioner pays them an insurance premium to enter this arrangement.

Social Investment: the supply of finance to support a social purpose, under terms that make it in some way repayable, and may include a premium to provide the finance supplier with a profit or to support long term preservation of the value of the funds in the source pot of finance.

Statutory Services: Services that government or public services are required to provide by law.

Third Sector: The sector that is distinct from the public sector and the private sector, for the way it operates on a non-governmental and a not-for-private-profit basis. It exists to meet social need equitably where those other two sectors' governmental and private-profit drivers cannot or will not do so. It is an umbrella term that covers different types of socially purposed organisations with a range of structures and purposes, including charities, voluntary groups and civil society organisations, and includes social enterprise organisations with asset and social mission locks.

Use-case: a specific situation or premise under which a mechanism or arrangement could potentially be used, describing the enabling conditions and basis upon which the arrangement's users would interact with it, for its inherent utility to be realised.

Endnotes

1 Health – Outcomes for all | Big Society Capital

2 Relational contracting (ox.ac.uk)

3 Berry, George (1970). Discovering Schools. Tring: Shire Publications. ISbn 0-85263-091-3."Leader". The Times. No. 24364. London. 1862-09-30. p. 6. "Payment by results: what a great Victorian idea!". Times Educational Supplement. 16 April 2010. Retrieved 4 May 2016.

4 "The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012". Legislation. gov UK. HMG. Retrieved 4 January 2017."First ever tariff hike agreed for troubled trust". Health Service Journal. 23 July 2015. Retrieved 24 September 2015. "Tipping point for the tariff". Health Service Journal. 18 November 2019. Retrieved 8 January 2020.
"Payment by results suspended". Health Service Journal. 17 March 2020. Retrieved 24 March 2021. Hunt, Jeremy (2022). Zero. London: Swift Press. p. 176. ISbn 9781800751224.

5 Modern Commissioning: increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery (publishing.service.gov.uk)

6 Government leads global co-operation to grow market for social investment - GOV.UK (www.gov.uk)

7 Social outcomes contracts & system strengthening: A... | Social Finance

8 A Technical Guide to Developing Social Impact Bonds | Mission Investors Exchange

9 BIG_Policy_Directions.pdf (publishing.service.gov.uk)

10 https://www.instituteforgovernment.org.uk/events/launch-connecting-policy-practice-people-powered-change

11 Peterborough Social Impact Bond: an independent assessment (publishing.service.gov.uk)

12 The SIB was curtailed when MoJ policy changed and it introduced a new PbR programme, Transforming Rehabilitation, operating under different terms.

13 Handling Complexity in Policy Evaluation - Magenta Book 2020 Supplementary Guide - CECAN

14 The payment by results Social Impact Bond pilot at HMP Peterborough: final process evaluation report (publishing.service.gov.uk)

15 https://westminsterresearch.westminster.ac.uk/download/

16 Ford DN, White III RJ.Social impact bonds: The goose and the golden eggs at risk. Syst Res Behav Sci. 2020;37:333–344. https://doi.org/10.1002/sres.2632

17 CBO_guide.pdf (publishing.service.gov.uk)

18 We've used the terms early-action and preventive synonymously – partly influenced by our funding of an 'Early Action Task Force'. Early Action Task Force - Community Links (community-links.org The deciding time: prevent today, or pay tomorrow: second report of the Early Action Task Force | The British Library (bl.uk)

19 loud_sib_model.pdf (piru.ac.uk)

20 ECOTEC Report template (tnlcommunityfund.org.uk)

21 This was discussed in a forum for Social Investors convened by BSC in September 2019, in which the spending of capital by intermediaries prior to making deals with commissioners was described as analogous to housing developers' pre-planning permission costs.

22 Adrian Brown The flawed logic of cashable savings risks undermining Social Impact Bonds | The Social Enterprise Magazine - Pioneers Post

23 Solving the Wrong Pockets Problem (urban.org)

Government efficiency savings, 2021 - GOV.UK (www.gov.uk)

Measuring the benefits of your service - Service Manual - GOV.UK (www.gov.uk)

24 The Ways to Wellness SIB had two payment triggers.The second of these was designed to cover 70% of outcome payment, with the CCG standing to pay a maximum of £332.50 per patient per annum; the maximum amount was due to be paid if there was a 22% reduction in the annual secondary care costs of a cohort of patients from the treatment group compared to the patients in the comparison group. Payments were on a sliding scale according to the annual percentage difference in costs between the treatment group and the comparison group.

25 Chartered Institute of Public Finance & Accountancy.Accounting for payment by results schemes including social impact bonds. 2012.ISbn 978 1 84508 349 6
Outcome-based payment schemes: government's use of payment by results - National Audit Office (NAO) insight

26 Chartered Institute of Public Finance & Accountancy.Accounting for payment by results schemes including social impact bonds. 2012.ISbn 978 1 84508 349 6

27 The end of impact. Toby Lowe recently argued that 'it is... | by Thomas Aston | Medium

28 Commissioning Better Outcomes Evaluation 3rd Update Report (ox.ac.uk)

29 Overview: Strategies for Causal Attribution: Methodological Briefs - Impact Evaluation No. 6 (unicef-irc.org)

30 A Whole New World — Funding and Commissioning in Complexity - Collaborate (collaboratecic.com)

31 Our Story | Human Learning Systems

32 ONE: Introduction in: Harnessing Complexity for Better Outcomes in Public and Non-Profit Services (bristoluniversitypressdigital.com)

FOUR: Complexity as a service reform trajectory: dynamic capabilities for better public service outcomes in: Harnessing Complexity for Better Outcomes in Public and Non-Profit Services (bristoluniversitypressdigital.com)

33 Tavistock Institute of Human Relations (tavinstitute.org)

34 CBO_guide.pdf (publishing.service.gov.uk)

35 Strategic investments in England | The National Lottery Community Fund (tnlcommunityfund.org.uk)

Launch of Connecting Policy with Practice: People Powered Change | Institute for Government

36 Home - The Confidence Framework

37 CBO-3rd-update-report.pdf (tnlcommunityfund.org.uk)

38 Warner, M.E. (2013) 'Private finance for public goods: social impact bonds', Journal of Economic Policy Reform, 16(4), pp. 303–319.Tse, A.E & Warber, ME (2018): The razor's edge: Social Impact Bonds and the financialization of early childhood services, Journal of Urban Affairs.

39 The CBO evaluation's In-Depth Review reports explore 9 SIB initiatives and include descriptions of rate cards and payment triggers. Lessons from Social Investment | The National Lottery Community Fund (tnlcommunityfund.org.uk)

40 Warner, M.E. (2013) 'Private finance for public goods: social impact bonds', Journal of Economic Policy Reform, 16(4), pp. 303–319.Tse, A.E & Warber, ME (2018): The razor's edge: Social Impact Bonds and the financialization of early childhood services, Journal of Urban Affairs. Gaming in Targetworld: The Targets Approach to Managing British Public Services on JSTOR

The Performance Paradox in the Public Sector on JSTOR Reviewing and theorizing the unintended consequences of performance management systems (cranfield.ac.uk)

41 Managing public money: p 28 MPM_Spring_21__without_annexes_040322__1_.pdf (publishing.service.gov.uk)

42 sib_report.pdf (socialfinance.org.uk)

43 https://investinresults.org/chapter/social-impact-guarantees-could-enable-pay-success-contracting-scale-more-rapidly.html

https://ssir.org/articles/entry/social_impact_guarantees_the_next_evolution_in_outcomes_based_funding#

44 Relational contracting (ox.ac.uk)

45 Relational contracting (ox.ac.uk)

46 A New Approach to Contracts (hbr.org)
Complex Contracting: Management Challenges and Solutions - Brown - 2018 - Public Administration Review - Wiley Online Library

47 https://policy.bristoluniversitypress.co.uk/harnessing-complexity-for-better-outcomes-in-public-and-non-profit-services

48 https://investinresults.org/chapter/social-impact-guarantees-could-enable-pay-success-contracting-scale-more-rapidly.html
https://ssir.org/articles/entry/social_impact_guarantees_the_next_evolution_in_outcomes_based_funding#

49 Lambeth Living Well Network Alliance - LH Alliances

50 Innovation Partnerships: An effective but under-used tool for buying innovation | by Claire Gamage | Challenging Procurement | Medium
Stepping from Procurement to Partnership | by Julian Blake | Challenging Procurement | Medium

51 What we've learned from Social Bridging Finance | The Robertson Trust

52 About Human Learning Systems | Human Learning Systems

53 A tour around the latest Cynefin iteration – Chris Corrigan In 2014 our Head of Learning introduced Fund colleagues to the Cynefin Framework.This is a summary of it from a more recent version.

54 Microsoft Word - The LOUD SIB Model.docx (ox.ac.uk)

55 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879437/Magenta_Book_supplementary_guide._Handling_Complexity_

in_policy_evaluation.pdf

56 Complexity Outcomes Conference

57 E.g. Motives for Measurement Peer Learning Group (archived) (ox.ac.uk) Procurement of Government Outcomes (POGO) Club (ox.ac.uk)

58 https://researchbriefings.files.parliament.uk/documents/CBP-9317/CBP-9317.pdf

59 VCSE Procurement (publishing.service.gov.uk)

60 VCSE Procurement (publishing.service.gov.uk)

61 Income from government - Financials | UK Civil Society Almanac 2022 | NCVO 20210331 - Tussell - DCMS report on UK Public Sector Procurement through VCSEs (publishing.service.gov.uk)

62 Sector overview (charitycommission.gov.uk)

63 State of the Sector 2020 - NPC (thinkNPC.org)

64 RS7 - Membership Charities (publishing.service.gov.uk)

65 The_20Compact.pdf (publishing.service.gov.uk)partnership-working-toolkit.pdf (ncvo-app-wagtail-mediaa721a567-uwkfinin077j.s3.amazonaws.com)

66 people_powered_commissioning.pdf (nesta.org.uk)

67 The role of Voluntary, Community, and Social Enterprise (VCSE) organisations in public procurement - GOV.UK (www.gov.uk)

68 VCSE Procurement (publishing.service.gov.uk)

69 Policy Press | Harnessing Complexity for Better Outcomes in Public and Non-profit Services, By Max French, Hannah Hesselgreaves, Rob Wilson, Melissa Hawkins and Toby Lowe (bristoluniversitypress.co.uk)

70 All about Social Enterprise | Social Enterprise UK
Home - Social Enterprise Mark

71 The rise of impact: Five steps towards an inclusive and sustainable economy | Impact Investing Institute

72 E3M | The Art of the Possible in Public Procurement

73 loud_sib_model.pdf (ox.ac.uk)

74 https://www.humanlearning.systems/case-studies/&sa=D&source=docs&ust=1702913113257713&usg=AOvVaw3rnfC6ljp2W92ACJDQK6qf

https://collaboratecic.com/insights-and-resources/a-whole-new-world-funding-and-commissioning-in-complexity/

https://collaboratecic.com/insights-and-resources/exploring-the-new-world-practical-insights-for-funding-commissioning-and-managing-in-complexity/

75 The National Lottery Community Fund Strategy 2023 – 2030 | The National Lottery Community Fund (tnlcommunityfund.org.uk)

76 French, Hesselgreaves, Wilson, Hawkins, Lowe (2023). Harnessing complexity for Better Outcomes in Public and Non-profit Services. Policy Press Shorts Policy & Practice ISBN 978-1-4473-6411 Policy Press | Harnessing Complexity for Better Outcomes in Public and Non-profit Services, By Max French, Hannah Hesselgreaves, Rob Wilson, Melissa Hawkins and Toby Lowe (bristoluniversitypress.co.uk)

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