

Public Services (Social Value) Act 2012

Briefing for VODG Members

March 2012

Background

The Government is committed to opening most public services up to competition and a plurality of suppliers.

It is also committed to a greater role for the social sector – social enterprises, employee co-operatives, charities and community organisations – to manage a range of public services.

Staff are being encouraged to set up social enterprises, mutual and co-ops to “spin out” from the public sector. They are being encouraged to pursue the right to supply public services through proposing that their employers allow them to take over the running of public services.

The Government wishes to move rapidly to the greater personalisation of public services and to a system of “payment by results”.

It is introducing legislation to enable social organisations to challenge the public sector for the right to supply services currently delivered and managed within the public sector.

The Government position was set out in the “Open Public Services” White Paper in the summer of 2011, in a range of ministerial statements and departmental actions.

These approaches are being adopted across the wider public sector including the NHS, police, criminal justice and local government. In the case of local authorities there is little difference on these issues between the political parties.

The social sector including charities, voluntary and community organisations often feel that through their services they can create greater social value than the business and public sectors. However, there is no consistent means of defining, measuring or taking social value into account when a public body is commissioning and subsequently procuring public services.

All too often public bodies when procuring public services place great emphasis on price when selecting suppliers. Service quality is also taken into account but few procurers have taken added social value and social impact into account.

The need to end the failure to address social impact through public procurement was a key reason for Conservative Member of Parliament Chris White to introduce his private member’s bill “Public Services (Social Value)” which has recently been enacted. The Bill was sponsored by MPs from all parties and supported by the

Government though it did require some amendments, which some commentators believe diminished the full potential of the Bill. The Act has been welcomed by across the social sector and by public sector commissioners and procurement professionals.

What is social value?

When money is spent on a public service there can and should be additional gains for the community and society. These could be local employment, local sourcing of materials and goods, apprenticeship and training programmes for disadvantaged groups, employment standards and practices for employees – for example the payment of the “living wage”, co-production that empowers service users, the use of sustainable products and much more. These will be different for different services in different places. The public sector and the tax payer get a social return on the expenditure and not simply an economic one even though the social impact should be quantifiable and certainly has to be measurable.

When a social sector organisation is contracted to deliver a public service it may decide to re-invest any financial surpluses into other community or social initiatives rather than to pay dividends to shareholders as might happen in the business sector. This re-investment can be regarded as added social value.

The public sector can use public procurement and the payment of public services to drive local economic regeneration – this would be an added social value.

In the case of services to people with disabilities a service that empowers service users rather than one that delivers unto them or which patronises them could be regarded as a service that adds social value.

However, social value is not simply what a provider from the social sector wants to claim that it is – there has to be agreement between the public sector client and the providers. Equally it would be wrong to assert that every service delivered by the social sector offers added social value simply because of its sector location or that the public and business sectors cannot themselves add social value.

It is very important that throughout a procurement process the public sector client is clear about the social goals that it expects to see and how it will measure these. There is a risk that this element of the process will be either so bureaucratically complicated that it deters innovation and some potential suppliers from bidding or that it is simply paid “lip service” to.

Social outcomes, benefits and dis-benefits should always be critical to procurement decisions as much as price and direct service quality – though they should never be an excuse for a failure to secure value for money. Procurement should be based on the pursuit of value for money, public value, quality services and social value. There will always be a balance to be struck between these. There should be transparency about how such balance are decided and the consequences of such decisions.

How and where will the Act apply?

The Act applies in England and Wales but not Scotland or Northern Ireland.

It applies to central government, its non-departmental bodies and agencies, the NHS, local authorities, the police, fire and rescue authorities, housing associations and the criminal justice system.

It only applies to all public service contracts but not public works contracts.

All public bodies will still have to secure value for money – see above - but the Act enables them to take a wider range of factors into account when determining “the value” element of the “value for money”. They must take value for money and social value into account throughout the whole term of the contract and not just adopt a short term approach.

The Act does not override the EU public procurement regulations but is compatible with them. This means that the pursuit of social value cannot be used to discriminate between bidders or between bidders’ national location.

The commissioning and procuring body has to

- understand the potential social value that it can drive through its procurement
- decide what social value it wishes to seek or would wish bidders to offer in a specific procurement
- decide whether they will specify social impact targets or await to see what bidders propose
- how it will evaluate social impact in bids; its relative importance to price and other selection criteria; and how it will test a bidder’s ability to deliver what it may be promising
- how it will measure social impact and hold the provider to account
- how it will pay for social value and if this will be incorporated in a payment by results contractual arrangement
- build social impact into its legal documents

These processes should be fundamental to strategic commissioning.

It will be essential to engage a range of stakeholders in these processes.

Service users, voluntary and community organisations representing service users and communities, providers from all sectors, staff and other stakeholders have to have an opportunity to influence the commissioners and procurers. The latter have to understand what is possible, what could stretch the boundaries of impact and what the “trade-offs” could be between price, effectiveness and social impact, etc.

Providers will have to

- be clear about the social impact of their services
- understand how they might extend the social impact of their operations
- be able to articulate to commissioners and procurers how they can add social impact – they may have to explain how they can do this
- talk to commissioners and procurers to influence their pre-procurement decisions – see above
- be clear about how they will address social impact in their bids

- be confident that they understand and check that they are right to be confident in understanding the public client's social impact goals
- have their own preferred means of measuring social impact but realise that they may have to be prepared to apply the public sector client's measurement system
- embed the measuring of impact into their organisations at all levels from the board to front line staff and volunteers
- avoid missing the key requirements in the invitation to tender because they are placing too much emphasis on social impact; and if they are a social sector provider not make the false assumption that they will be perceived as adding social value simply because of their legal structure!

Providers will need to consider their social impact in terms of social rate of return on investment when they are considering taking a loan through a social investment arrangement to enable them to manage cash-flow in a payment by result contract and/or to invest in assets or systems. Some social investors are willing to accept a lower rate of financial return on their investment where there is a measurable social return as well. Such a social return has to be identifiable and do the actions that create it; and it has to be measurable. Therefore, whilst not directly part of the Act these are related matters. The reality is that providers especially those in the social sector will increasingly have to be aware of their social impact/return be ready to measure this, and to be transparent about their performance.

Commentary

As Chris White MP's Public Services (Social Value) Bill is enacted it is important that its ethos and ambition is embraced across the public sector by commissioners, procurement executives, senior managers and political leaders. It is equally important that the business and social sector providers also embrace it. And, of course, staff delivering public services in all sectors.

The Bill is not as strong as it was originally drafted but never-the-less it sets a new tone and hopefully culture for public procurement. Social outcomes, benefits and dis-benefits should always be critical to procurement decisions as much as price and direct service quality – though they should never be an excuse for a failure to secure value for money.

It is going to be very important that throughout a procurement process the public sector client is clear about the social goals that it expects to see and how it will measure these. There is a risk that this element of the process will be either so bureaucratically complicated that it deters innovation and some potential suppliers from bidding or that it is simply paid "lip service" to.

There is a serious risk of the latter – "lip-service" at a time of severe financial pressures and public service cuts. This has to be resisted and providers have a role to play in this resistance.

There must be dialogue between the sectors to ensure that the right balance is struck and that practical affordable arrangements are used. There has to be some consistency in how social impact is measured and users and communities must be key contributors to this measurement and the design of systems.

Public sector commissioners, senior executives and political leaders should apply the same criteria for setting social impact targets and accountability for these to all providers irrespective of their sector. The ethos and aims of the Act have to be applied to all public services irrespective of who delivers them – business, social, community or public sector. This must not be regarded as only having application when services are contracted especially if such an approach is based on the premise that the public sector always adds social value. However, the Act does not require social impact to be taken into account when services are delivered “in house”.

At a time of concern about ethics and standards in the business sector in particular, here is also an opportunity to ensure that social impact considerations include employment practices, governance standards and the ethics of providers.

Where services are purchased through individual direct payments, co-payment and self-funding arrangements the social impact considerations may be less than when services are collectively procured by the public sector. Providers and others have an opportunity to address this possibility through active campaigns similar to those that promote “Fair Trade” goods

Through his imaginative Act Chris White has offered the public sector a powerful tool for driving change and making hard but necessary decisions. It offers a real opportunity for social sector providers to demonstrate what many of them have always believed in terms of their wider social contribution.

The Act has also placed public services well beyond the narrower confines of consumer services.

It does not though add any extra money into the procurement purse.

Nor does it improve the quality of public sector procurement but it has the potential to lead to a cultural shift in public service commissioning, procurement and delivery.

Indeed it is vital that the legacy of the Act is such a cultural change rather than a new set of processes!