



hct group

HCT Group policy paper

the Social Value Act six steps to fulfilment



executive summary

It has been four years since The Public Services (Social Value) Act 2012 (SVA) was introduced and the number of commissioners who are actively procuring social value is not at the level it should be. We believe that there is not enough weight placed behind the enforcement and policing of the Act and have looked a series of changes that could address these issues.

- We recommend that the language in the Act is changed, so that it requires commissioners to procure social value, rather than leaving a level of ambiguity.
- In a world where only 24% of local authorities have published their social value policy, obliging commissioners to publish a policy document will encourage slow adopters to implement.
- We also wish to ensure that companies are 'delivering on the deliverables'. Requiring commissioners to ask about previous social value activities would safeguard that outcomes are delivered. There is a good example from tax compliance - 'Measures to Promote Tax Compliance' was a government policy note that did just that, using evidence of past action to encourage further action on the ground

increased participation

The current regulations state that only public service contracts above the OJEU threshold have to adhere to the Act. However, this means that many smaller organisations, charities and social enterprises are missing out on the potential benefits of social value in the procurement process. This can be addressed by the threshold being removed or at least lowered, to increase their participation.

prescriptive tendencies in implementation

We are now seeing that, in certain cases, the implementation of the Act is becoming more bureaucratic, with an emerging focus on inputs and outputs. This is a backward step and limits innovation, one of the great assets of a social enterprise. When commissioning for social value, commissioners should focus on outcomes instead – this is not only good practice in procurement but also encourages innovative ideas.

levels of proportionality

We recognise that looking to change the language of the SVA, or lowering the financial threshold can create challenges for commissioners. However, taking regard to the principle of proportionality (from procurement law) in commissioning allows the process to become much

easier and fairer for all commissioners. Increased training and guidance for commissioners would ensure that the principle of proportionality is correctly applied to social value.

Amending the Green Book

At this time, the Government's Green Book for making business cases only has five dimensions, none of which is social value. Changing this model to a 'Six Case Model', including social value, would be a powerful driver for change, creating a real emphasis on the issue.

introduction

The Social Value Act 2012 came into force on 31 January 2013 and encouraged commissioners to consider social, environmental and economic factors in addition to cost when procuring public services. The Act has endeavoured to bring the issue of social value to the forefront of the procurement process, highlighting the difference between the value of a contract and the contract price.

At HCT Group, we believe the Act has been a positive first step, changing the nature of some dialogues between commissioners and suppliers and encouraging a focus on maximum value in public spending. However, the opportunities provided by the Act for voluntary organisations, charities and social enterprises remain mostly unrealised – even as many of these organisations satisfy the criteria for social value as it tends to be at the heart of what they do.

The purpose of this report is to introduce areas where the Act and its implementation can be improved upon, suggesting methods by which that might happen:

- How can we avoid creating prescriptive, bureaucratic processes that treat social value as consisting of inputs and outputs?
 - We will look at the procurement principle of proportionality and how we can use this to ensure the process is both fair and sensible.
 - How can we look to place more emphasis upon social values in all business cases?
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- There is a perceived lack of policing and enforcement, how can we give the SVA more 'teeth'?
 - Many VCSE organisations are missing out on the benefits of the SVA as they compete on smaller valued contracts. We will look to lower the financial threshold to allow participation of these organisations.

six steps to fulfilment

language used in the act

There is a commonly held view amongst social enterprises that the Social Value Act does not have enough 'teeth', giving insufficient weight its own enforcement.

The current language and wording of the Act calls for all public sector commissioning 'to have regard to economic, social and environmental well-being', yet without making it an essential requirement. Unfortunately, this language and wording renders implementation of the Act entirely optional in practical terms.

We believe that the language of the Act should be more direct so it reads, 'public authorities must have regard to...' as this would remove the optional nature of the Act.

policing and enforcement of the Act

Enforcing implementation: The Act was introduced over 4 years ago, yet application is still limited. This is demonstrated by only 24% of local authorities having published their social value policy or similar document¹. We propose that commissioners should be required to publish their policy statement or a similar document. This will encourage the initial implementation of social value in the procurement process by those slow to adopt. To maintain momentum, we believe that commissioners should publish a yearly report detailing any social value activities

from the previous year, demonstrating the actions taken. Moreover, as the Act has recently expanded to include utilities based contracts, implementing these two concrete steps will prevent similar delays in the implementation of the SVA for those contracts.

Enforcing the outcomes: As we speak, only a few percentage points of most tender applications are given to social value, where it is present at all (at least in the direct experience of HCT Group competing for transport contracts). This leads to many companies placing too little regard to implementing their social value proposals once the contract has been won. As a result, commissioners are not seeing the benefits of the social value that they have bought with their procurement.

We believe that forcing companies to 'deliver on the deliverables' or risk running into issues with future tender applications will start to address the issue. This begins with ensuring that contracts, once awarded, are delivering on all aspects of the contract, including social value.

We believe that organisations should have to declare previous social value activities during the procurement process. This will allow commissioners to establish which organisations actually deliver on their social value promises and which merely pay lip service. An example of where Government has used evidence of prior compliance to enforce a policy

¹ *Procuring for Good 2016*, Social Enterprise UK

can be found in the 'Measure to Promote Tax Compliance'² – a government policy note which outlined tax compliance measures on central government contracts. A similar government policy note outlining the expectation of commissioners would be a first step to ensure compliance³.

increasing participation

Lowering the financial threshold: The Act was originally introduced with an aim of levelling the playing field for VCSE organisations, enabling them to compete with larger companies for public sector contracts. However, the current threshold of £173,934 for local authority contracts and £113,057 for central government contracts⁴ is too high, restricting countless organisations. Various social enterprises or smaller organisations do not operate on a scale where they are in a position to compete for contracts of such value. Lowering or completely removing the threshold would look to bring smaller organisations into consideration, many of which incorporate social value into what they do.

prescriptive implementation

Over-prescription of social value: We have started to see that the implementation of social value by some commissioners has become a bureaucratic exercise. Overly prescriptive definitions of what a commissioner will or

will not count as social value are starting to limit the innovation of social enterprises. The process is favouring larger companies who have the resources to complete longer applications. Increased training and guidance from government demonstrating techniques to procure social value without limiting innovation would help to remove the bureaucratic element from the process.

Avoiding a system of inputs and outputs: Overly prescriptive and bureaucratic tender processes often focus on commissioning social value as a series of inputs and outputs. It is well understood that when commissioners over-specify contracts and look for specific inputs for a desired output, the process limits innovation and becomes inefficient⁵. We are seeing an emerging trend where the procurement of social value is falling into the same, over-prescriptive trap. We propose that commissioning for social value reflects the recognised good practice of commissioning for outcomes. This approach would look to encourage innovation within the process.

² *Procurement Policy Note 03/14: Promoting Tax Compliance 2014*, Cabinet Office

³ Care would have to be taken as not all commissioners have procured Social Value before, therefore there will be instances where some companies have no previous experience

⁴ *'Social Value Act will apply only above certain contract value thresholds'* 2012, Griggs, I

⁵ *Innovation in Transport Procurement, 2009*, Villeneuve-Smith.F

levels of proportionality

We have recommended that the SVA be changed in a number of ways. The changing of the language, lowering the financial threshold and publishing policies all represent a challenge and a change to current ways of working.

We believe that the changes we recommend can be introduced successfully if the principle of proportionality – one of the guiding principles of procurement law – is applied. This principle encourages commissioners to design processes that are appropriate to the scale of the contract being tendered.

However a commissioner chooses to run their procurement: qualification requirements, time limits for responses, the extent of the process – even the extent of the social value – these need to be necessary and appropriate. It can act as a guide to making overly procedure-driven approaches more rational.

In the context of social value, this means seeking social value at a level commensurate with the scale of the contract, alongside systems to evaluate and measure that are also scale appropriate. Applying this principle can protect against making including, measuring and accounting for social value too burdensome.

Crucially, proportionality can also help to make procurement fairer, by reducing needless complexity – enabling smaller

VCSEs to compete on a more level playing field.

As a result, we believe that more training and guidance from government to commissioners is needed to support them to apply this most underused of procurement principles.

amending the green book

From five to six: The Green Book is guidance for central government produced by the Treasury on how publicly funded bodies should prepare and analyse proposed policies, programmes and projects to obtain the best public value and manage risks.

The Green Book applies a 'Five Case Model', making reference to the strategic, economic, commercial, financial and management cases for taking a particular action and is a framework for thinking in terms of how best business cases can be delivered⁶.

There is one obvious element missing: the social value case.

We believe that changing the Green Book methodology from a 'Five Case Model' to a 'Six Case Model' that includes the social value case would send a powerful signal to decision-makers that this aspect of their strategy was indeed important.

⁶ *Green Book Supplementary Guidance on Delivering Public Value from Spending Proposals*

recommendations

In this report we have analysed the Social Value Act and the effect that it is currently having on organisations and commissioners. Policing and enforcement, increased participation, prescriptive tendencies and levels of proportionality are the key areas in which we feel the Act can be improved upon. To develop the SVA further, we have six key recommendations:

- 1. Changing the language in the Act** from 'to have regard to social, economic and environmental well-being', to 'must have regard to...', would give the Act more 'teeth', compelling commissioners to take action.
- 2. Lowering the financial threshold** would allow many smaller VCSE companies to compete for contracts in a way that recognised their high levels of added value.
- 3. Making it essential for commissioners to publish their social value policy and a yearly summary.** This will encourage commissioners to implement social value initially. Further, the annual report will demonstrate to other companies the benefits from social value as well as improving accountability.
- 4. Ensuring that commissioners have to make reference to the previous social value activities of their supply chains so that organisations 'deliver on the deliverables.'** A government policy note, outlining this would help ensure compliance.
- 5. An increased level of training and guidance** for commissioners that will demonstrate the wider benefits that are available from social value and how to achieve those impacts in their commissioning. This will allow commissioners to develop tender processes that are not prescriptive and will allow innovation to progress.
- 6. The Sixth Case:** Changing the Green Book from a 'Five Case' model for government business cases to a 'Six Case' model which includes the missing case – social value.

About HCT Group

HCT Group is a social enterprise in the transport industry, safely providing over 23 million passenger trips on our buses every year. We deliver a range of transport services – from London red buses to social services transport, from school transport to whole bus networks, from community transport to education and training. We reinvest the profits from our commercial work into further transport services or projects in the communities we serve.

www.hctgroup.org

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