

Restoring public values: the role of public procurement.

Policy provocation



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1. Introduction

*"[W]ithout quite realising it, without ever deciding to do so, we drifted from having a market economy to being a market society."*¹

Michael Sandel

In the light of the Covid-19 crisis, and the oncoming economic stimulus, it is vital that every single pound of public money is used wisely and well. It must flow through our economy to maximise social value in the form of opportunities for local enterprises, the creation and maintaining of jobs, and the advancing of zero carbon objectives.

Underpinning this imperative is the need to restore public values.

Distinct from personal or commercial values, public values should represent the common good, democracy, public interest and social cohesion. However, over the last four decades, public values have been eroded. Some of our public services have been outsourced to the private sector, which has – at the extreme – resulted in the commercialisation of public service.

Furthermore, private sector management techniques have intruded perilously into much of the UK public sector, especially in England, and the adoption of New Public Management (NPM) has seen cost efficiency emerge as the fundamental basis for value. The solution to all manner of social, economic and environmental challenges is too often reduced to a decision on price. Citizens are now viewed less as people with indubitable rights to public goods but more as consumers of expensive services procured on their behalf.

This focus on cost as the touchstone of public value has been exacerbated by the last decade of austerity. Not only has the retreat of the state fuelled inequality and poverty² – with public sector spending, as a proportion of GDP, falling 6% since 2010³ – it has also led to a race to the bottom.⁴ In this, the quest to deliver services as cheaply as possible has resulted in a reliance on the third sector, who are now expected to plug the gaps that were once filled by the state.

Now, though, as the Covid-19 public health, economic and social crises continues to unfold, the consequences of a state that has become too lean and too mean is being played out in horrifying real-time. New policies to protect businesses and workers, though welcome, are struggling to play catch-up with years of neglect.

¹ M Sandel (2012). *What Money Can't Buy: the moral limits of markets*. London: Penguin.

² P Alston (2018). Statement on Visit to the United Kingdom. United Nations Special Rapporteur on extreme poverty and human rights. [Read](#).

³ Trading Economics (2020). United Kingdom Public Sector Total Spending to GDP. [Read](#).

⁴ L Brittain (2019). *Austerity Kills, the breakdown of substance misuse services and the race to the bottom*. The Campaign. [Read](#).

Moving forward, we must seek to equip the local and national state with an inbuilt resilience and adequate contingency to tackle the other crises it has for so long ignored: poverty, social care, housing and – most significantly of all – the climate emergency. Fundamental to this aim is a consideration as to how the spending of public money can be harnessed to maximise its social value and deliver greater social, economic and environmental justice.

As this provocation will argue, this requires a renewed intent from politicians and public servants to address how social, economic and environmental benefits can be maximised from the beginning of any commissioning process. It also requires new legislation to introduce social licensing. This would mandate the delivery of social value in relation to the supply of goods and services to the public sector.

In lieu of social licensing legislation, we need a recalibration of current procurement practice. In particular, we must harness the new procurement powers, introduced in response to Covid-19,⁵ as well as existing tools such as pre-qualification criteria, to address wider societal benefits.

⁵ GOV.UK (2020). Procurement Policy Notes. [Read](#).

2. The problem

It is well understood that, through the commissioning and procurement activity of public sector organisations, there is the opportunity to impact upon economic, social, and environmental priorities.

In the process this generates what is commonly referred to as social value, for example:

- promoting skills and employment, good terms and conditions and developing opportunities for all within the community.
- supporting the development of responsible local businesses.
- creating healthier, safer and more resilient communities, building stronger and deeper relationships with the voluntary, community and social enterprise (VCSE) sector, whilst continuing to engage and empower citizens.
- protecting and improving the environment, ensuring that the places where people live and work are cleaner and greener.⁶

Whether it's commissioning a new homecare service or procuring printer cartridges, a consideration as to how these kinds of priorities can be maximised should form a part of the process.

Nevertheless, the opportunity to deliver social value is fettered by a number of problems. Four decades of outsourcing, commercialisation and, more recently, unprecedented austerity, have eroded the public sector's ability to generate social value. Below we describe the impact of this loss on the public services landscape.

Extraction of wealth

In their often-unquestioning belief in the ability of outsourcing to drive efficiency, successive UK governments have pursued a model of privatisation. The results of this approach have seen public funding channelled to public limited companies (plcs), driven by shareholder return, while too often wages have stagnated, terms and conditions have been eroded and taxpayers have been left to pick up the bill

⁶ Whilst there is an opportunity to deliver social value across a range of public sector functions, social value has a particular association with public expenditure. In other words, whilst heavily associated with commissioning and procurement, generating social value extends beyond these functions. Other functions such as employment, financial power and the use of land, property and assets are tools that anchor institutions can use to maximise social value and address social, economic and environmental justice. A discussion of these tools is, however, beyond the remit of this current publication. For further discussion, see, for example: CLES (2019). Community Wealth Building 2019: theory, practice and next steps. [Read](#).

when companies collapse. The market for some public services has become dominated by a small number of large firms, who attempt to deliver high returns for investors by driving down overheads. Some of these firms use complex corporate structures registered in multiple tax jurisdictions, including tax havens, to maximise these returns further.⁷ This means that wealth generated from public service contracts can flow out of local communities into an opaque system, which impedes the government's ability to track flows of money and therefore to tax it.⁸

Commercialisation

The spending of public money can be too often understood first and foremost as a commercial market transaction with civil servants and local government officers duty bound to ensure the much prized "value for money". In this scenario, everything is, or has to be, valued, appreciated and judged according to its "market value".

As a result of the increased market focus of public sector organisations, NPM defines the context that people think and act within,⁹ undermining the delivery of genuine social value.¹⁰ Commissioning (a term more properly used to describe the processes of assessing needs and designing ways to meet them) is too often reduced to a competitive tendering activity, framed by a rigid set of costed outputs and complex contract conditions.

Crucially, however, much of what is important about social value pertains to what the NPM approach fails to capture – namely anything that cannot be quantified as a financial figure or within a quantitative frame. Indeed, a significant aspect of social value pertains to the wider qualitative non-financial impact certain activities make to people's lives. For example: regaining control over your physical or mental health and volunteering in your local community all have a uniquely qualitative dimension that cannot be captured in pounds and pence.

Undermining of democracy

The marketisation of public services has weakened the democratic accountability between citizens and public service providers. For example, the combined opaque nature of some outsourcing arrangements (such as PFI schemes) and the largely impenetrable corporate structures of many large outsourcing companies creates a lack of transparency, making it extremely difficult to scrutinise the terms of contracts and the flows of money involved.¹¹

In short then, we've part lost our way. The imperative to maximise the positive impact of our public expenditure has been severely compromised. So much so that new Covid-19 procurement powers,¹² which could be harnessed for more positive

⁷ S Smith (2020). Termite Capitalism: how private equity is undermining the economy. [Read](#).

⁸ R Murphy (2015). Unite investigates: Tax Avoiders buying up the NHS And how TTIP could 'lock in' tax avoidance. [Taxresearch.org](#). [Read](#).

⁹ M Alvesson and H Willmott (1992). Critical Theory and Management Studies: An Introduction, in M Alvesson and H Willmott (eds). Critical Management Studies. Sage publications.

¹⁰ T Diefenbach (2009). New public management in public sector organizations: the dark sides of managerialistic enlightenment. *Public administration*, 87(4). [Read](#).

¹¹ S Smith (2020). Termite Capitalism: how private equity is undermining the economy. [Read](#).

¹² GOV.UK (2020). Procurement Policy Notes. [Read](#).

societal impacts, have instead seen central government turn to the large corporate outsourcers.¹³

In recent years, there has been some attempt to redress the balance here – we’ve seen the passage of Public Services (Social Value) Act 2012,¹⁴ as well as calls for the VCSE sector to be much more heavily involved in the delivery of services.¹⁵ However, as we now explain, whilst the former has been insufficiently powered to steer us back on course, the latter – whilst outwardly seen as a positive – can hinder social value rather than creating it.

The failure of the Social Value Act

The Social Value Act has served to soften some of the sharpest edges of the erosion of public values described above. Indeed, it has been enthusiastically taken up by some organisations seeking to leverage real social, economic and environmental benefit for local people.¹⁶ Whilst it has many merits, it lacks teeth and there is a lack of consistency, with large variations in how social value is perceived and used in practice.

This is attributable to the fact that the Act does not require social value to be enforced as part of commissioning and procurement exercises, it merely requires it to be considered. As a result, and particularly in light of the context described above, considerations of social value are diminished or, in some cases, ignored completely.

In this context, suppliers have learned how to ‘play the game’, presenting a good impression and, ultimately, how to manipulate the system.¹⁷ In some cases, this has resulted in larger providers deploying dedicated bid-writing staff to deliberately over-promise the amount of social value they will deliver in order to gain an advantage in the tendering process.¹⁸

Furthermore, this temptation to over promise is compounded by the fact that monitoring the delivery of social value is hampered by a lack of process and capacity on the part of public bodies. Even in local authorities, where social value practice is most advanced, post-award contract management is insufficiently developed and would require substantial investment to enable effective monitoring to take place.¹⁹ Local authorities, increasingly, do not have the resources to do spot checks on their suppliers. In practice, this has led to suppliers

¹³ J Garside and R Neate (2020). UK government 'using pandemic to transfer NHS duties to private sector'. The Guardian. [Read](#).

¹⁴ GOV.UK (2012). Public Services (Social Value) Act 2012. [Read](#).

¹⁵ See for example: A Lent and J Studdert (2019). The community paradigm: why public services need radical change and how it can be achieved. New Local Government Network. [Read](#); and, the Centre for Social Justice (2019). Community capital: how purposeful participation empowers humans to flourish. [Read](#).

¹⁶ CLES (2017). The Power of Procurement II. [Read](#).

¹⁷ R Butterfield, C Edwards and J Woodall (2005). The new public management and managerial roles: The case of the police sergeant. *British Journal of Management*, 16(4). [Read](#).

¹⁸ D Harrison and P Edwards (2018). Making Procurement Work for All: Procurement practices as a route to fulfilling work in North East England. Carnegie Trust. [Read](#).

¹⁹ Ibid.

becoming “clued up” about the lack of accountability, and, to the perception that there is no need to fulfil social value promises because nobody polices them.²⁰

In addition, the opportunity to think about social value in more substantive terms is often missed here. It has, for some, become a mere tick-box exercise: simply a process you apply when you go out to tender. However, the spending of public money on public services must require more.

Commissioners and local policy makers should be considering upfront how our public services can maximise social value and deliver greater social, economic and environmental justice. They should be thinking about social value way before a commissioning process goes out to tender. As we outline in more detail below, this requires a consideration of social value at the point at which services are being designed and should address whether the service, or elements thereof, should even be outsourced.

The community power paradox

In addition to the Social Value Act, as a solution to the conjoined issues of less public money and growing social need, there has been a resurgence of ideas lately that are reminiscent of David Cameron’s “Big Society”.²¹ Touted as the “final stage in the evolution of public services”, the claim is that the state and the market are both discredited and are unable to tackle injustices and stem rising public service demand. As such, it is proposed that communities are best placed to take control when it comes to local public services, leading to the emergence of a new “community paradigm”.²² With a particular emphasis on prevention, the belief is that this will stem the tide of demand, before service needs become acute.

Yet, the paradox here is that this approach hinders social value rather than creating it. Whilst building stronger and deeper relationships with the VCSE sector is part of what it means to generate social value, there is little benefit in devolving the remnants of a broken social safety net and crippled local public services to communities who are often themselves time and resource poor.²³ This will only serve to weaken public services, not strengthen them. Consider the response from a Clinical Lead for Addictions within the Leeds and York Partnership NHS Foundation Trust, which has seen increased outsourcing to the VCSE sector in the 2010-2020 austerity period.

“What we are left with is an under-resourced, overworked third sector and a service that cannot respond as effectively to the complex needs of its patients. Though organisations

²⁰ Ibid.

²¹ GOV.UK (2010). Big Society Speech: Transcript of a speech by the Prime Minister on the Big Society, 19 July 2010. [Read](#).

²² See for example: A Lent and J Studdert (2019). The community paradigm: why public services need radical change and how it can be achieved. New Local Government Network. [Read](#); and, the Centre for Social Justice (2019). Community capital: how purposeful participation empowers humans to flourish. [Read](#).

²³ CLES (2020). An economy for all: the role of community power. [Read](#).

across the country do tireless work, they are not adequately trained or supported to treat the increasingly complex population.”²⁴

By operating within the austerity-framed ideas of public service reform, this is not the pathway towards true system change and wider public value. A better future for our public services does not ignore the wider political economy, it seeks to fundamentally change it by confronting the systemic causes of social pain such as austerity, weakened economies and economic insecurity. In relation to homelessness, for example, some system change focus is on direct help on the streets, such as increasing the supply of homeless shelters. It is much rarer, however, to see considerations given to local employment, the Real Living Wage, failing regional and local economies, or a failing housing market. Arguably the latter are the much more important upstream factors in reducing demand and are thus vital to affect positive systemic change.

²⁴ L Brittain (2019). Austerity Kills, the breakdown of substance misuse services and the race to the bottom. The Campaign. [Read](#).

3. What needs to be done

Maximising the impact of public sector expenditure is fettered by the problems outlined above. The Social Value Act has been weak in driving the application of social value and an over reliance on the VCSE sector is not an effective way of delivering social value.

In broad terms, we need to reverse the many years of chronic underfunding of public services with a fundamental understanding that public values are unique and essential and need to be funded generously.²⁵ More specifically though, we need a more enlightened approach to commissioning and procurement – an approach that considers social value right up front and is more bullish about what should be delivered in house and where it is appropriate to go out to the market.

Where there is a need to go out to the market, we then need tougher legislation to mandate the delivery of social value as part of public sector contracts. In lieu of this being introduced, we need a recalibration of current practice that takes advantage of both pre-qualification criteria in competitive tendering, as well as recent changes to procurement law in light of Covid-19. We outline these measures in more detail below.

A more enlightened approach to commissioning and procurement

Social value upfront

As we noted above, there is a tendency for social value to be reduced to a tick-box exercise – something that is narrowly applied to the tendering process. In this, the opportunity to preconfigure social value is missed. The question of how social, economic and environmental benefits could be maximised should therefore be addressed from the beginning of any commissioning process.

The state or the market?

Considering social value upfront should, by its nature, provoke questions around whether a service should even be outsourced or whether it might best be delivered inhouse. CLES believes that we should be building a resurgence of a public service movement based on new forms of democratic and citizen involvement. Commissioners should therefore seek to selectively involve organisations and individuals who, whilst not directly part of local government, are equally passionate about public values and offer some positive contribution to the delivery of public services – the use of co-operatives or community interest companies within social care for example.²⁶

²⁵ CLES (2020). We need a generous state forever. [Read](#).

²⁶ S Bedford and J Phagoora (2020). Community micro-enterprise as a driver of local economic development in social care. [Read](#). New Economics Foundation.

However, in light of the horrific scenes in care homes precipitated by Covid-19, now is the time to draw a line. We should no longer allow large providers to extract profit from our struggling front line public services, putting shareholders ahead of the needs of services users and the people who work tirelessly to care for them. As such, frontline services should be run by:

- the state; or in conjunction with
- non-extractive private sector organisations – e.g. co-operatives, community businesses and social enterprises.

Nevertheless, and the moral argument notwithstanding, outsourcing has been with us since the introduction of compulsory competitive tendering in the early 1980s. We therefore recognise that the current system cannot be changed overnight. There are now significant funding restrictions and capacity issues that frustrate the ambition outlined above (especially in England). However, when the need for a new service (or element thereof) emerges, or when existing service contracts come up for renewal, removing extractive providers from public sector supply chains should be what the public sector everywhere is working towards.

New legislation

In light of the above, the need to go out to the market to purchase core front line services should be more limited. However, in addition to front line services, the public sector spends billions every year on everything from goods such as stationary and medicine, through to the construction of schools and roads and the delivery of back-office functions such as information technology and human resources.²⁷ Therefore, where there is a genuine need to go out to the marketplace, we need effective legislation to guarantee the delivery of social value.

Social licensing

The introduction of mandatory social licensing would mean that providers can only enter particular markets if they have changed their business practices and guaranteed the provision of social benefits to communities and stakeholders. Social licensing would change the rules governing social value, giving companies or sectors the right to trade in public sector markets whilst placing them under reciprocal obligations to offer social returns, such as being a living wage employer that offers decent progression and training routes for its staff, for example.

Given that we ought to be minimising the extraction of wealth in relation to public expenditure, a special tier of license should be provided to organisations that are generative as opposed to extractive – organisations with plural forms of ownership such as co-operatives, social enterprises and community businesses. These ownership models enable public spending to be retained within the local economy as opposed to being extracted out as profit. Where feasible, legislation should

²⁷ Local government is also frequently involved in other kinds of partnerships – joint ventures with the private sector, such as the development of land for housing, for example. These partnerships should be subject to social licensing arrangements, whereby partners are under obligation to offer social returns.

enable organisations with this special tier of license to be given priority in procurement exercises.

In addition, rather than vesting the responsibility with local public bodies to police the application of social value, social licensing should be monitored centrally by dedicated social value auditors. However, the social licensing criteria itself should be flexible enough to allow local authorities to set their own requirements, responding to local circumstance and need. Were this legislation to be progressed, it is vital that the power to develop, shape, and implement these licences be devolved to local areas.

Through these activities, the introduction of social licensing in UK public service delivery would be a far more effective way to re-embed social value in the procurement of goods and services. The choice facing potential suppliers would be clear: to supply goods and services with social value at their core – or to simply not have access to these markets.

A recalibration of current practice – what the public sector can do right now

Implement pre-qualification criteria

Where there is a need to purchase goods and a case to go out to the market to procure a service, public sector bodies can currently take some action to restrict who has access to tendering exercises. In lieu of a social license to operate, prequalification can be used to this end. Whilst there is limited scope under existing frameworks to explicitly *exclude* certain suppliers, normal procurement criteria can be utilised to set out discretionary exclusion grounds and/or get a broader understanding of the suitability of potential suppliers. A good example of this kind of work is the adoption by a number of councils of Unite’s Construction Charter into their procurement procedures.²⁸ This charter lays out 11 requirements for both contractors and their supply chains, such as developing and implementing skills and training opportunities, mandating direct employment of workers and ensuring access to trade union representation.

Using new procurement powers

Since the onset of Covid-19, the government has issued a series of procurement notices,²⁹ which allow contracting authorities – including local authorities, NHS bodies and the wider public sector – to take extraordinary measures, allowing them to continue paying invoices, even when firms are no longer doing contracted work. These measures have already been extended until October 2020. In practice then, the changes could be used to secure wider benefits from public expenditure activity, ensuring the survival of key suppliers through expedited payment.

²⁸ See for example Salford City Council’s adoption of the Unite Construction Charter. [Read](#).

²⁹ GOV.UK (2020). Procurement Policy Notes. [Read](#).



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