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Reappraising the UK Social Value Legislation

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This article appraises the scope and legal obligations of the UK Public Services (Social Value) Act 2012. The law, by imposing on public authorities an obligation to consider wider social, economic and environmental benefits before they enter into major public service contracts, in principle improves service outcomes for communities, and it also facilitates better access for third sector organisations to public contracting opportunities. But evidence of the legislation's impact has been mixed. It is, at this stage, promising in its ambition but with little prescriptive legal force in practice. The article suggests that community and third sector organisations should promote an experimentalist governance framework that imposes non-legal accountability on commissioning authorities for social value, by linking them into an iterative peer-review process.

Introduction

The government has put in place legislation - the UK Public Service (Social Value) Act 2012 - that encourages UK public authorities to seek wider social, environmental and economic benefits, as opposed to purely commercial value for money, when they contract out key public services in their communities. The primary objective of these legislative changes is to improve commissioning and service outcomes for communities and their citizens, by reforming procurement processes. But, according to Chris White MP whose private member's bill formed the basis of the legislation, they are also specifically intended to 'make it easier for local charities, voluntary organisations and social enterprises to help deliver our public services' (White, 2011). Unsurprisingly, they have been broadly welcomed by third sector organisations across the UK, from small social enterprises to large national, or international, charities, for whom delivering public contracts is a significant income stream. Many of these organisations would argue that the delivery of "social value", such as the involvement of disadvantaged social groups and community integration, is what this sector is particularly good at. The turn to social value, it could be expected, would therefore strengthen the third sector's role in public service contracting, at a time when public spending cuts generally placed greater financial pressure on the sector.

Yet while many would agree that the legislation has, meanwhile, had some positive impact on commissioning, and that it has improved things in ways that benefit both public service users and (some) third sector providers, others acknowledge that this law could go further. Despite a clear commitment to promote social value widely in principle, it falls short of imposing prescriptive social value obligations in practice, relying instead on light-touch drafting (authorities are merely exposed to a legal duty 'to consider' seeking social value) and including a number of provisions that restrict the scope of the legislation, which are discussed below. A recent government-commissioned review of the legislation (Cabinet Office, 2015) made these tensions between principle and practice apparent in its discussion of two questions: namely, whether the legal obligations should be strengthened to impose greater accountability for social value on contracting authorities (a 'deepening' of the legislation); and, secondly, whether the legislation's material scope should be extended to cover a broader range of contracts to include not only services but also public works and supply contracts, and potentially others too (a 'broadening' of the law). In conclusion, the review advised against both these changes although its reasoning is, as the following discussion argues, not consistently clear.

This article initially outlines evidence of the social value legislation's impact thus far, including the question whether it has improved the access of third sector organisations to procurement opportunities. It offers conclusions that are tentatively positive although the recent review underlines that some of the evidence is more mixed. The following discussion then evaluates the tense political compromises reflected in the legislation. Those defending the legislation in its current form

acknowledge the practical advantages of a light-touch regime that leaves commissioners room for flexible and responsive decision-making on social value, in the face of administrative uncertainty over complex financial and political choices in widely diverse individual circumstances. In doing so, it encourages them to gradually generate good institutional practice, where they integrate social value more firmly into their policies and strategies, but without overly curtailing their individual discretion. Critics, on the other hand, emphasise the benefits of formal accountability for social value that more comprehensive legislative prescription and robust legal enforcement would provide. Both perspectives have their merits in terms of how they might pursue efficiency and different forms of accountability. What should not happen, however, is for administrative flexibility and its practical advantages to be used politically as a convenient reason, if not excuse, to water down legal obligations whilst paying lip-service to the principled commitments made in the legislation, without a fully-substantiated analysis of all the options. The article consults the legislative history of the social value legislation to illustrate how this political dynamic might have affected the character of the legislation.

The article concludes that as a result of these ambiguities and tensions, all those who would benefit from fairer and better commissioning for social value, including communities and third sector organisations, should be astute when they position themselves in the political discussion over this legislation and its future. Some organisations already highlight the potential advantages of further legal reform to strengthen the Act, recognising that even if the initial review of the law rejected further change, future reforms are not impossible as more evidence around the legislation comes to light over the years (Social Enterprise UK, 2013). However, others must, at the same time, call on commissioners to exercise their administrative flexibility, which the law does currently offer them, in a proactive and spirited way so as to progress and widen the impact of social value in practice within the current framework. Tools beyond central policy initiatives (such as the government's training programmes) are necessary to ensure that dissemination of good practice amongst commissioners is encouraged further, which might lead to a wider take up of the law even if it is not mandated in the legislation itself. The article suggests a structured governance framework linking commissioners and procurement teams, government and community representatives in an iterative cycle of accountability and peer-review. The framework would discipline commissioners and procurement teams enough to motivate them to develop more comprehensive strategies and policies on social value and to fill out the gaps left in the current legislation, but without imposing the rigidity of 'top-down' legal accountability. Often dubbed 'directly-deliberative' or 'experimentalist' governance, iterative governance frameworks have developed widely in the EU and globally to address a broad variety of regulatory concerns. Drawing on some of the existing literature on experimentalist governance, the article briefly outlines the key features that an iterative governance framework for social value commissioning and procurement would include.

[A social value revolution?](#)

The effect of the UK Public Services (Social Value) Act 2012 on public service commissioning and procurement has been described as a quiet revolution (Kippins, 2013; Monks, 2014). Since January 2013, the Act requires public authorities, including local and central government as well as NHS commissioning bodies and housing associations, to consider the 'economic, social and environmental well-being of the relevant area' before they procure major public service contracts (see s. 1(3) Public Services (Social Value) Act 2012). The legislation does not impose an obligation to act upon these considerations, but by directing them to reflect on the wider benefit or "social value" of services tendered, it indirectly encourages an approach to commissioning and procurement that goes beyond commercial value and individual service outputs. Instead it nudges them towards focusing on service *outcomes*: contracting authorities first identify the wider changes they want to see happening in their communities over an extended period of time; and then develop a path, through their service commissioning and procurement strategies, to see those changes happen (Blume and Randle, 2013; New Economics Foundation, 2014). The social value approach also encourages authorities to place

greater emphasis on the value of service *processes*, where the benefits of how an activity is delivered and who is involved in its delivery, are taken into account alongside the value of what is actually being delivered (the service output). These benefits may be very tangible, such as creating local jobs or training opportunities for disadvantaged social groups, or reducing the carbon footprint of the local economy. Others are softer and less immediately measurable, for example the social benefit of generating greater community cohesion and engagement, local accountability and potentially safer communities that a particular service might bring when delivered by local organisations that actively involve local residents (London Borough of Croydon, 2013).

It takes little imagination to see why the third sector, including voluntary or community organisations and social enterprises (VCSE), welcomed the enactment of the social value legislation to advance its competitive position in accessing public service contracts given a climate of great financial pressure. Commissioning that centres on economic value, often focused on price or cost and immediate (measurable) output, tends to advantage established commercial competitors that can draw on their specialised tendering expertise and capacity, if necessary offering contracting authorities significant commercial incentives by providing reduced rate services that focus on short term savings (Joy and Hedley, 2012). A shift towards social value and longer term economic, social and environmental outcomes on the other hand, offers the third sector the opportunity to sell itself on what some argue it is best at, namely the provision of services that are sensitive to changing social and societal concerns, whether present or affecting the future, and not dominated by the motive to return a quick profit for shareholders and investors. The sector often has, as one source puts it, ‘elements of a social value hard-wired into [it]’ (London Borough of Croydon, 2013, p. 5). But it is important to note that while procurement for social value might indirectly bring significant advantages for the third sector, the primary aim of the legislation is broader, namely to encourage authorities to engage with a variety of providers to improve commissioning outcomes for service users and their communities.

The social value review

The first government-commissioned review of the social value legislation, two years after the law’s enactment, offers a cautiously optimistic assessment of the Act’s impact (Cabinet Office, 2015). Wider-reaching case study research appears to support these findings. At the extreme end, in some councils the social value agenda has unleashed a transition towards more fundamental system changes, away from individual service-focused commissioning departments and towards cross-service and cooperative commissioning, delivery and support (Blume and Randle, 2013). There is also growing evidence of experimentation and innovation through *co-production* models, where services are co-designed by local people, councillors, businesses and officers on an ongoing basis. Residents and service users are, as far as possible, involved not only in determining what are desirable outcomes (‘what we value’) but also in co-producing the delivery of both outputs and outcomes (Parrado et al., 2013; Fotaki, 2015; Boyle and Harris, 2009). These initiatives align with the Act’s objectives, and many of them make explicit reference to the legislative framework.

The social value review also concludes that the Act has improved the third sector’s access to service commissioning, though it concedes its analysis works from a small sample only (Cabinet Office, 2015, pp. 9-10 and 17). Further emerging evidence includes success stories where individual third sector institutions, and some bidding consortia, have grown their presence in the commissioning cycles of their localities, while general support, especially for social enterprises, appears to be growing (Social Enterprise UK, 2013; NCVO, 2014). Meanwhile, though, it is clear from both the review and other emerging research (Social Enterprise UK, 2013 and 2015) that the social value legislation has proven anything but a panacea for third sector organisations, or indeed for smaller businesses with an interest in providing local public services. The review’s report (Cabinet Office, 2015) identifies a number of practical barriers that have so far dampened the Act’s positive impact on commissioning in a way that would benefit VCSE. It concludes that while many authorities are aware of the legislation and open to considering social value, far fewer have put in place strategies or policies to follow through on these

considerations or have firmly embedded social value into their commissioning cycles and the structure of their organisation. According to the report, there is a particular risk that lack of understanding and inconsistent practice amongst commissioning teams as to how to apply the Act, will eventually lead to further bureaucracy and a lack of uniformity that is especially unhelpful to the third sector and smaller organisations generally. The report also picks up on the challenge of designing effective, consistent and commensurate methods of measuring social value, an issue that VCSE organisations have paid close attention to for years (Davies and Schon, 2013).

Awareness and interest in social value appear to be growing at either end of the provider scale, both amongst VSCE and big businesses (Cabinet Office, 2015, p. 10). The latter, too, are attracted by the idea of selling themselves as social value providers, and the review, for example, describes as an 'exciting opportunity' the fact that a number of large commercial public contractors have begun to develop social value strategies for their businesses because to ignore the pressure to do so would be 'commercially destructive' (Cabinet Office, 2015, p. 18). By depicting this as the direction in which big business is moving, the review implies that more and more corporate bidders will in the future come to use their business expertise (and considerable resources) to structure and price bids in ways that satisfy the expectation that they will provide at least some aspects of social value. Once again, it falls upon contracting authorities to respond sensitively within the parameters of the legislation to these issues, to ensure social value is deployed in a manner that is both balanced and fair to all provider organisations and, above all, that it serves citizens and their communities well.

It means making sure that social value is understood and measured in ways that account for a wide range of community benefits, including local decision-making and accountability to citizens, rather than on a tokenistic basis, for example, on the number of apprenticeships delivered or local businesses supported in the process of delivering a public contract. Important as these issues are, they do not exhaust the potential of the social value approach, as the co-production model outlined above demonstrates. Neither, arguably, will these criteria alone help the third sector gain more public contracts, unless authorities are prepared to do far more than adjusting procurement criteria or commissioning priorities. Growing research suggests that to overcome wider structural barriers, authorities often also have to address bureaucratic habits, some of which may be culturally embedded, to open up public contracting to smaller and social providers (Locality, 2014; NCVO, 2013; Joy and Hedley, 2012; Social Enterprise UK and Locality, 2013). This can range from changing attitudes towards risk (with an impact on things like capital requirements and financial guarantees in procurement criteria) to rethinking contracting structure and contract sizes. It might also include the elimination of bureaucratic silos (division between individual service teams or between the procurement and commissioning arm of the authority) and fine-tuning of contract management to verify that social value is actually being delivered. It is, on the other hand, important for commissioners to be aware of the risk (and sometimes the reality) of oligopolies being created amongst third sector organisations, where dominant large charities might play an important role (Backus and Clifford, 2013); and to avoid turning the Act into a means simply for keeping the third sector strong in difficult times, rather than engaging with all providers in ways that maximise the positive outcomes for vulnerable communities.

The scope of these structural challenges calls for a robust legal framework to ensure effective accountability and genuine transparency for public decision-making on matters that affect social value in general, and the third sector's position in particular. On the other hand, imposing overly prescriptive legislative solutions that heavily curtail the administrative discretion of contracting authorities may end up being counter-productive. It may, for example, lead some of them to incorporate social value as (merely) a bureaucratic exercise into their existing practices and habits rather than generate a genuine strategic change, with the result that they might fail to select the organisations best placed to provide wider social, economic and environmental value to communities, contrary to the Act's primary objective.

Between principle and pragmatism

This tension – between the benefits of robust law on the one hand, and the advantages of administrative flexibility on the other – runs through the current legislation, resulting in some uneasy compromises which affect especially those provisions that define the legal obligations under the Act, and its material limits. So far, the legislation applies only to public service contracts (but not works or supply contracts) above the EU procurement thresholds, and it currently imposes on authorities no more than a procedural requirement at the pre-procurement stage to think about the wider social, economic and environmental impact of what they might contract for. Given the Act's permissive formulation – they may, but are not obliged, to follow through on that thinking - it is sufficient for them, mostly, to document their internal decision making process or provide evidence that they have spoken to representatives of the community before taking decisions on these issues (Cabinet Office, 2015, p. 13).

Many would argue that this position presents, in principle, a sensible and pragmatic starting point for constructive law- and policy-making. By placing certain limitations on the Act, the government has in effect been piloting the law in the area of service contracts, and has kept legal obligations light-touch in order to see if commissioners and procurement teams would find these obligations useful and would voluntarily extend them or do the same for other types public contracts. In doing so it recognises the importance of leaving contracting authorities enough room for flexible and responsive decision-making in the face of administrative uncertainty over complex financial and political choices, in widely diverse individual circumstances. The social value review, similarly, builds on this approach. Amongst other things, the review addressed whether it would be sensible to extend the Act to cover a greater range of contracts, including those for works and supply but also others, for example on planning issues or asset disposals, or even contracts below EU thresholds. It further considered whether obligations under the Act might be extended, in two ways: first, by imposing a duty on commissioners not just to consider but, more firmly, to 'account for' or 'implement' social value; and secondly, by requiring them to consider (or, if extended, account for) social value, not only prior to the formal tender procedure (pre-procurement) but at all stages of the commissioning and procurement process. This would mean including social value in all tender documentation. However, in conclusion the review found that any extension at this stage would not be advisable (bar a limited suggestion to adjust applicable thresholds so as to avoid an unintentional further limitation of the Act as a consequence of the 2014 revision of the EU procurement thresholds). It concludes that to make the Act more mandatory at this stage, either by strengthening or extending its obligations, would undermine its non-prescriptive nature and its potential as a driver of innovation. It takes the view, broadly speaking, that where authorities include social value out of a bureaucratic (legal) duty rather than genuine enthusiasm, they are more likely to do so formulaically and without clear intent, leaving the whole process adrift; a lacklustre tick box exercise (that, as discussed above, would largely benefit commercial providers). Moreover, these additional bureaucratic hurdles would, according to the report, 'eventually operate against smaller organisations with less capacity to absorb burdensome procurement processes' (Cabinet Office, 2015, p. 15).

Critics, on the other hand, point to growing evidence that suggests a stronger law would lead to better accountability and would advance more sustainable procurement for wider social value. Major studies commissioned by the VCSE sector come to the view that it would widely improve commissioning practices, were the Act to be strengthened and public bodies obliged to account for how social value is generated in commissioning and procurement (as opposed to simply showing that they thought about social value at the outset) (Social Enterprise UK, 2012 and 2013; Macfarlane *et al.*, 2014, p. 19; NCVO, 2014). Accessible, non-bureaucratic procurement is a key concern especially for smaller bidders, and certainly for many VCSE, but these studies contradict the argument that stronger social value obligations would, as a matter of course, risk undermining these interests. They highlight instead that stronger legal accountability for social value introduces greater transparency. It encourages the collection of accurate data to justify decision making, at a time when the absence of data, in particular

the lack of reliable and comprehensive statistics on spend and support directed at VCSE, has been identified as one of the existing weak points across many public authorities (Elkins, 2012; Bhati and Heywood, 2013; Freeguard and Makgill, 2014; Joy and Hedley, 2014). Poor bureaucratic tendering practices that scupper the third sector's chances of accessing contracts are, some organisations argue, currently the result of a lack of genuine accountability under the existing regime (NCVO, 2013). Emerging evidence further contradicts the suggestion that social value renders commissioning or procurement more cumbersome *per se*. It shows instead that the approach encourages change and innovation, but once the transition to social value is in place, commissioning processes are more effective at solving social problems and issues that society values (Blume and Randle, 2013). Research has begun to document and model these effects and to generate conceptual and practical frameworks that can help authorities in the transition process (New Economics Foundation, 2014), but it is not evident whether the review takes account of the wider evidence, nor the emerging research. The review instead suggests that any additional bureaucracy in the fields of goods or works would be a hindrance especially to smaller organisations, when in fact many local providers and VCSE are often most appreciative of the opportunity to demonstrate their ability to offer social value in the delivery of goods, whether as prime or sub-contractors. According to one opposition MP, 'the evidence that we have drawn out is that spending money locally provides seven times the impact of spending it in other areas, so the purchase of goods by public authorities can have a tremendous effect on the local supply chain and local economies. Why is the Minister deliberately removing an opportunity to enhance local economies through purchasing goods?' (House of Commons, 2011a).

The legislative parliamentary debate on the Public Services (Social Enterprise and Social Value) Bill during 2011 contains a number of further sharp exchanges around these issues. Several critical MPs pointed out that to limit social value obligations to the pre-procurement stage, as was suggested by government, would be manifestly inconsistent: it would mean that authorities are required to consider social value at the initial stages of the procurement, but then free as they progress through the tender procedure. However, these concerns notwithstanding, the relevant government minister would not be pressed for an answer. The closest he came to an explanation was in stating that the pre-procurement stage offered, in the government's view, 'most scope for taking account of [social, environmental and economic value]', which of course fails to explain why this might be so; why it should be a reason for not also encouraging it at the procurement stage; and to what extent the resulting inconsistency undermines the effectiveness of the legislation (House of Commons, 2011a). The resulting inconsistency sits uneasily with the policy direction of the new EU procurement framework, which encourages contracting authorities to take account of social and environmental criteria at any point in their procurement, subject to the principles set out in the EU directives and in general EU law; in particular, the principles of equal treatment, transparency and proportionality (Arrowsmith and Kunzlik, 2009; Sjøfjell and Wiesbrock, 2015). From the third sector's perspective, it certainly leaves a risk that even if commissioners might show themselves enthusiastic in developing social value and engaging with VCSE at the pre-procurement stage, the same enthusiasm would not translate into tender documentation when procurement teams, some of them especially nervous of working within the parameters of the new EU legislation, might think it necessary – or in fact convenient - to reduce social value criteria (Davies and Schon, 2013; Macfarlane *et al.*, 2014, p. 19). This omission is particularly unfortunate in light of existing evidence which suggests that the procurement stage still constitutes a key barrier to access public contracting opportunities for the third sector and especially smaller providers (NCVO, 2013; Social Enterprise UK and Locality, 2013; Social Enterprise UK, 2015).

Opposing MPs were similarly perplexed by the proposed inconsistency of limiting the law to service contracts only. One parliamentarian for example found it hard to see 'why it is reasonable to encourage commissioners to think about social value in the context of services but is unreasonable to ask the very same commissioners – as it is usually, although not always, the same commissioners – to think about social value when awarding contracts for work or, crucially, for goods' (House of

Commons, 2011b). Largely ignoring the logic of these concerns, the government minister insisted on a limitation to services, broadly on the basis that the Act would thereby focus on the types of contracts that could make most difference to local communities, and where wider value was therefore 'likely to be most relevant'. He added, however, that 'it is not the Government's intention to suggest that there would not be benefits in considering wider value in other forms of contract, but we do not believe that they warrant legislation at this time' (House of Commons, 2011a). The government did not put forward any research at the time to support its position, namely that commissioning was not yet ready in practice for legislation of a wider scope, which then led to the largely arbitrary distinction between services and other types of contracts in the legislation. Yet the recent review continued to treat this point in much the same manner: the review findings include only scarce references to concrete evidence and instead tend to resort to general observations, such as the risk of over-bureaucratising procurement and an understanding of the Act as at an 'early stage of development' (Cabinet Office, 2015, p. 15); but without explaining the practical impact of these factors in greater detail.

In sum, the government, and by extension the review, present a legitimate concern to stimulate administrative innovation and experimentation (and avert over-bureaucratisation) by keeping the legal regime light-touch. Others however take the view that the law should be both widened and strengthened, to impose more robust legal accountability and transparency, and to preserve consistency. In principle, each of these positions has its plausibility in terms of how it might pursue efficiency and different forms of accountability, and the resulting legal text constitutes a political compromise. However, the government and the review have questions to answer as to why they have failed to make a more thoroughly substantiated case to justify why it would be ill-advised to strengthen the legislation further at this stage. Critics legitimately point out the paucity of logic in their reasoning, and the sparing references to research evidence to substantiate the benefits of a light-touch legal regime. The government presents its position as a careful and pragmatic approach towards law-making, but it should not be a guise for political ambivalence and a policy agenda that lacks transparency. What should not happen is for the argument in favour of discretion (namely, that light-touch obligations stimulate administrative innovation) to be used as a convenient reason, even excuse, to water down legal obligations whilst paying lip-service to the principled commitments made in the legislation, without a fully-substantiated analysis of all the options.

Experimentalist governance

Acknowledging that the legislation is, at this stage, promising in its ambition but with relatively little prescriptive 'bite', how should community and third sector organisations, who would like to see more widespread commissioning for social value, position themselves in the political discussion over the future of this legislation? Some organisations, like Social Enterprise UK, continue to lobby for further legal reform to strengthen the Act, recognising that although the initial review of the law rejected further change, future reforms are not impossible as more evidence around the legislation comes to light over the years (Social Enterprise UK, 2013). However, it is equally important to encourage the practical application of social value beyond the Act in its current form. It is important to actively develop a more comprehensive governance framework for social value commissioning that imposes on contracting authorities more robust additional, non-legal forms of accountability. The social value review only skims the surface of what an effective governance framework might look like, implying that more research and policy work will be required for its development. The review's report includes a number of policy recommendations to improve the uptake of social value and the effectiveness of the legislation, but it addresses virtually all of them directly to Cabinet Office: including proposals to oversee training programmes or the development of guidance and best practice to raise awareness of the Act and to overcome barriers for smaller providers, or the design of a social value measurement framework. The Office's responses, while broadly positive and attentive (Cabinet Office, 2016), only partially draw on the problem-solving capacity of the primary actors (commissioners, procurement professionals, providers and service-users) as a tool for effective learning and accountability,

concentrating instead mostly on central policy dissemination tools in the form of guidance papers and more training facilities.

These measures are useful in their own right, but especially so if they were complemented by a wider governance framework that links commissioners, government and stakeholders themselves into a iterative cycle to set social value goals, and to subject existing practice to peer-review against these goals. Often dubbed ‘directly-deliberative’ or ‘experimentalist’ governance, iterative governance frameworks have developed widely in the EU and globally to address a broad variety of regulatory concerns in settings where growing uncertainty and complexity, and a continuing need for political autonomy, renders hierarchical forms of governance and traditional law-making less suited as a means for intervention and decision-making (Sabel and Zeitlin, 2010; De Búrca, 2010; De Búrca et al., 2014). Sabel and Zeitlin for example describe their understanding of experimentalist governance as ‘multi-level architecture’ linking four elements in a recursive cycle. First, broad framework goals are set, usually by a combination of ‘central’ and ‘local’ unities, in consultation with a wider group of relevant stakeholders. Secondly, the local units are afforded broad discretion to pursue these goals in their own way. But in response they must, thirdly, report regularly on their performance and participate in peer review where results are compared with those of other, similar, local units. Finally, the goals and decision-making procedures themselves are periodically reviewed and if necessary revised by, as Sabel and Zeitlin put it, ‘a widening circle of actors in response to the problems and possibilities revealed by the review process’. And eventually, the cycle repeats (Sabel and Zeitlin, 2012, p. 170 – 171).

Following Sabel and Zeitlin’s framework, an experimentalist governance model for social value commissioning would thus, broadly speaking, involve four iterative stages. The first stage identifies a set of central actors whose task it is to set broad social value goals, including representatives of central government but also (crucially) commissioners and procurement officers at both central and local levels including those within the NHS. Goals are set inclusively, i.e. in consultation with representatives of provider groups and service users. They leave broad discretion to commissioners and procurement teams to apply these framework goals in practice (the second stage of the cycle). For instance, a social value goal may be defined to improve the control that local service users have over delivery of a service outputs and outcomes. But, leaving commissioners free as to the individual means they wish to deploy, it may translate into a multitude of different measures in practice: survey consultations, or the employment of third sector providers or service mutuals, but also stricter contractual accountability clauses and so on. In return for flexibility, commissioning authorities would be required to participate in regular peer review exercises, involving other authorities in equivalent positions and subject to the same framework goals, to account for the effectiveness of their activities in a peer-to-peer setting (the third stage of the cycle). Appraisals in these settings do not yield hard obligations or sanctions but rather a softer form of peer pressure and disciplining, leading to the gradual establishment (‘bottom up’) of best practice. The rationale is, on the one hand, for these processes to render contracting authorities’ individual policies more effective over time without adding formal bureaucracy that may be disproportionate and counter-productive. On the other hand, they are intended to encourage inclusive decision making, involving as many relevant actors as possible and crucially, including also a role for service recipients and public contractors (or potential contractors). This in turn also applies to the fourth and final stage of the cycle, where the forum of central actors meets periodically with representatives of both providers and service users, to discuss whether the recursive process itself, and the framework goals in particular, are still appropriate to help address social value in light of evolving circumstances, or whether they need some adjusting.

Setting up such an experimentalist governance framework for social value commissioning and procurement generates some difficult questions, in terms of both its effectiveness, inclusiveness and practicability, that no doubt would need to be further explored and evaluated. Some commentators for example have been notably less optimistic than Sabel and Zeitlin about the ability of experimental governance frameworks to generate inclusive policy results or more open and accountable decision-making (Scheurman, 2004; Dawson, 2015). But, given the Act’s current limitations, it would seem

that experimentalist governance offers a promising conceptual basis for future research and debate to develop non-legal forms of accountability, transparency and more effective implementation of social value obligations.

Conclusion

The compromises that run through the Public Services (Social Value) Act 2012, affecting both its legal enforceability and its material scope, highlight that this law is not intended to regulate the issue of social value in procurement exhaustively. Instead it constitutes an anchor point, containing a set of broad objectives and light-touch obligations as a basis for further initiatives to encourage authorities to change their procurement and commissioning practices. The Act is drafted in a way that tacitly acknowledges how important flexibility and responsive decision-making are in the face of administrative uncertainty over complex financial and political choices in widely diverse individual circumstances. However, to what extent political ambivalence may have been a driver behind the light-touch drafting too, remains a moot question. The government's (and the review's) failure to engage fact-based arguments more thoroughly to justify the Act's permissive character, certainly leaves a question mark over the future development of this legislation. In an attempt to formulate a response to these uncertainties, this article argues that third sector organisations, and others wishing to progress the social value agenda more widely, should be open-minded in how they position themselves in this debate. By all means, some of them will want to continue lobbying for further legal reform as evidence of the practice under the Act emerges. However, others should meanwhile focus on actively promoting structured non-legal forms of accountability for social value, including an experimentalist governance framework that links commissioners, government and stakeholders into an iterative cycle to set social value goals and to subject existing practice to peer-review against these goals.

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