BRIDGING THE DIVIDE

Social entrepreneurs and commissioners on public sector contracting

Anna Davies & Rachel Schon / November 2013

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Related work

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INTRODUCTION AND CONTEXT

In the last decade, successive UK governments have pursued an agenda of opening up public services to alternative providers from the private and third sectors, with the stated aim of diversifying provision in order to promote competition, efficiency and innovation. The current coalition government has made a particular commitment to "support the creation and expansion of mutuals, co-operatives, charities and social enterprises and enable these groups to have much greater involvement in the running of public services".[i] With an annual spend of £230 billion, public sector procurement has the potential to create significant business and growth opportunities for social enterprises.[ii] There is a huge diversity of products and services that social enterprises may be able to supply to the public sector; in recent years there have been particular opportunities in the areas of health, social care and youth provision. And social enterprises can be sources of creative and innovative approaches to service provision.[iii] But how easy is it for social enterprises to actually bid for and win public sector contracts? If social enterprises are locked out of procurement processes this can close off one potential path to innovative services. This case study examines some of the barriers social enterprises face in contracting with the public sector.

The field of social enterprise and its relation to public services is highly contested. Some have questioned whether increasing provision of services by social enterprises amounts to a redistribution of risk towards third sector providers. Others have suggested that the apparent rapid increase in social enterprises in the UK is to a large extent due to a politically driven shifting of the definitions used.[iv] There is also significant debate about the role of the state and the potential impact of privatisation. These questions are not ones we can take up within the scope of this case study. However, it is important to acknowledge at the outset that the discussion of social enterprises and public sector contracts does not take place in a politically neutral context.

What do we mean by 'social enterprises'?

Definitions of social enterprise vary greatly and the term 'social enterprise' has been used to signify a wide range of organisations. As a report from the Social Enterprise Coalition (SEC) and the Economic and Social Research Council (ESRC) puts it, "The umbrella term 'social enterprise' includes a range of organisational types that vary in their activities, size, legal structure, geographic scope, funding, motivations, degree of profit orientation, relationship with communities, ownership and culture." For the purpose of this study we use the broad definition offered by the UK Department of Trade and Industry in 2002 which suggests three defining characteristics:[v]

- Generating income through trading in the marketplace (therefore distinct from traditional grant funded charities)
- Primarily social objectives
- Surpluses are principally reinvested in the organisation to meet its social objectives

The organisations that we spoke to for this research identified with the label and discourse of social enterprise to a greater or lesser extent, but they all met these three criteria.

In order to shed light on the specific nature of the challenges which social enterprises face in contracting with the public sector, we conducted interviews with 18 individuals, drawn from social enterprises, commissioning bodies and social enterprise support organisations. In the next section (part one) we set out some of the common themes related to these challenges. In part two we then explore some of the responses that are being made to these challenges.

Case study methodology

To provide input to this study we identified individuals in three categories: intermediaries and social enterprise sector experts, commissioners and social enterprises. To ensure candid disclosure related to sensitive issues or specific contracts, we have anonymised respondents from social enterprises and commissioning bodies.

Our 18 interviewees were as follows:

Social enterprise sector experts

- Helen Ryman, Local Partnership Development Manager, UnLtd
- Gemma Rocyn Jones, Young Foundation, Ventures Team
- Eleanor Cappell, Young Foundation in Residence, Young Foundation
- Margaret Ogebule, Young Foundation in Residence, Young Foundation
- Richard Kennedy, Young Foundation, Ventures Team
- John Loder, Young Foundation
- Nancy Towers, Programmes Officer, Social Enterprise UK
- Martyn Oliver, Chief Executive, 3SC

(We also consulted David Hunter from Bates Wells Braithwaite LLP to give a perspective on some of the legal aspects related to this issue.)

Social enterprises

- SE A, a youth work organisation based in the West Midlands
- SE B, an organisation placing young people into apprenticeships with small and medium employers operating in both Scotland and England.
- SE C, a Community Interest Company providing a combination of consultancy and activities around dementia, operating across England
- SE D, an organisation providing furniture for social housing that works with unemployed people operating throughout the UK
- SE E, a youth work organisation based in South West England
- SE F, a large social enterprise delivering leisure centre services operating in the south east.

Commissioners/ purchasers of social enterprise services

- C1, Chief Executive of one of the new Commissioning Support Units set up to support Clinical Commissioning Groups in the NHS
- C2, a head of inclusion services for a large housing association based in the West Midlands
- C3, a former commissioner for public health in the West Midlands
- C4, A current commissioner for a city Council in the south east

We are grateful to all our interviewees for their valuable input to this case study.

PART ONE: UNPACKING THE CHALLENGE

Based on our desk research and interviews, we have identified four distinct challenges that face social enterprises when they are looking to contract with the public sector.

Knowing Me, Knowing You

It was striking how many of our interviewees commented on the difficulty of knowing what commissioning opportunities are available, and how to structure bids so that they match what procurement and commissioning officers are seeking. Helen Ryman, from UnLtd, pointed out that the first challenge a social enterprise faces when attempting to break into the public sector is answering the simple question, "who do I speak to?" SE C stated that in their experience it was "a research job just working out who you need to speak with." Margaret Ogebule, Young Foundation in Residence at Metropolitan Housing Association, commented that "there's a lack of networks – social enterprises don't know where to look for these contracts." She noted that with jargon rife in the public sector, it can be a very tough world to navigate where unless you have "someone on the inside who can explain to you how the system works or who to speak to, you are very much on the outside." C3, a former commissioner for public health in the West Midlands agreed that "networks are really important – social enterprises need to get out there and meet people. They also need to understand how [commissioning bodies] work, and what they want." However, C1 head of one of the new Commissioning Support Units for the NHS commented that although commissioners do tend to release high level strategic plans it is still "quite difficult to find information about specifics about what they are planning to do."

This lack of knowledge of what commissioners are looking for can translate into social enterprises preparing bids that are poorly targeted and therefore have little chance of being successful. Eleanor Cappell, Young Foundation in Residence at NHS Arden Clinical Commissioning Group, commented that when pitching to commissioners, "many social enterprises focus too much on the problem, and not enough on the solution they are proposing. They [have a tendency to] talk in general terms about benefits, rather than putting it in specific terms that meet the objectives of commissioners". Martyn Oliver of 3SC agreed that making a clear bid is key: "if people can articulate a solution they've developed, so they [the commissioner] can see the solution that they are buying, that's a winning bid."

Just as social enterprises may feel that they lack understanding of the processes by which the public sector operates, similarly there is a perception that public sector commissioners are relatively ignorant of the world of social enterprises or what they might have to offer. Nancy Towers from Social Enterprise UK pointed to a "lack of understanding on both sides". She said she was "continually surprised at the lack of knowledge from the commissioning side about what is going on in their local area, what services there are etc". She also noted that in the context of NHS commissioning, GPs are very new to this role and so are likely to "just go for the safest option or what they consider to be the safest option, not a social enterprise as they don't understand what a social enterprise is."[vi] John Loder of The Young Foundation also noted that currently "the public sector often does not have great knowledge or awareness of the capabilities of organisations outside of itself". SE C noted that "there is much greater understanding of larger, more established third sector organisations, whereas there is still a lot of misunderstanding about what social enterprise is." Of course, established third sector organisations selling services to the public sector would fit our definition of social enterprises, so the concern here seems to be about how easy it is for smaller and newer organisations to be recognised and gain contracts.

Some of our interviewees also spoke about certain assumptions that might be made about social enterprises by public sector officials, for example that they are less business-minded. C3, a former commissioner for public health perceived that social enterprises "think enthusiasm itself will generate business, but it won't…To realise their vision they've got to put their business hat on". Similarly C4, a city council commissioner stressed that "having values that are laudable isn't enough – they have to be able to demonstrate that they can deliver services as well". There also seemed to be some concerns around perceptions of quality and professionalism with commissioner C2 questioning whether social enterprises have "the right expertise, or is it just a right on, nice bunch of people, who all wish us well". Furthermore, Helen Ryman of UnLtd noted that when dealing with social enterprises, "sometimes there's wariness around risk, and scale."

Demonstrating Impact

Assuming that social enterprises are able to find out about contracts which are available to them, and that they understand what it is that commissioners are looking for when seeking to award those contracts, there is a further problem in demonstrating the value of their work. SE B described this as the challenge of "being able to put on paper what you do and do it justice". SE F commented that "the sector is terrible at writing down what it does". Several interviewees from social enterprises felt that impact measurement was intrinsically difficult, particularly if their work was preventative in nature ("you only know what the impact is if you take the service away", SE E). In many cases results can only be seen over the long term and so therefore it is "very difficult to measure that in a monthly or annual contract and say what has been produced" (SE E).

Richard Kennedy of the Young Foundation argued that being able to capture social value offers competitive advantage to social enterprises: "the better the sector gets at measuring that social value, the better they'll be at differentiating themselves". However, several interviewees noted that small social enterprises principally focused on delivery find it difficult to prioritise investing in measurement. Eleanor Cappell highlighted that "the reason [social entrepreneurs] get out of bed in the morning is to help the local community, but they struggle to recognise the importance of capturing that data". Similarly Gemma Rocyn Jones suggested that many social enterprises "have got to get past the mind-set of 'my focus is on the young people, I'm not going to spend time putting things on paper". Eleanor also noted that in her experience social enterprises could be somewhat naïve in expecting commissioners to visit their work in situ and meet their beneficiaries when in reality "that's a very time intensive approach and also not very systematic".

Even where social enterprises are convinced of the value of measuring their impact, they may not have the resources to invest in this. Developing and tracking robust impact measurement can be time consuming and expensive. SE B highlighted that "even spending £2-3,000 is a big deal for a small social enterprise" and SE A noted that "there's a cost element to this that sometimes isn't in the contract or we don't have the reserves for it".

There are also issues related to how well various measures of impact are understood by commissioners. Helen Ryman noted that:

"The issue is understanding what good looks like. Appraisers do have these skills when looking at outputs – to see that it stacks up and looks reasonable. We need a similar kind of knowledge when thinking about social value."

SE D agreed that lack of understanding was problematic, explaining: "we can produce all these effective evaluations or forecasts of value – impact reports, local multipliers, but until people understand them… [the impact] will be quite limited."

Mismatched Priorities

Another common theme that emerged was the mismatch between the priorities of social enterprise and the public sector. The context of austerity and budget cuts in the UK presents particular challenges and may make it difficult for commissioners to prioritise the long term social value that social enterprises seek to generate. Commissioner C4 noted that "there's a real preoccupation around driving down costs at the moment, because demand is rising, especially for elder care and finances are diminishing." SE B felt that: "they are incentivised to procure the best price, and social enterprises might not be able to offer that". In the experience of SE C, there's currently "a race to the bottom in terms of price". SE D, an organisation providing furniture for social housing that works with unemployed people, noted that while commissioners can "accept [ideas of social value] and think they're great, if they are still incentivised on what is the cheapest option, how will the situation ever change?" Richard Kennedy also noted that the drive for efficiency can result in a preference for bigger contracts with single providers, which are harder for social enterprises to win as they are typically much smaller organisations.

Others questioned whether local authorities are in a position to think about long term benefits:

"If I say – I can save the local authority £500,000 over a youngster's lifetime through them not being a NEET now, they're thinking, so what? I've got a budget and I need someone to come and get the job done. There's a disconnect between the organisations and the people reading the tenders." (SE B)

Clearly the timeframes that are used to assess value for money are particularly important. Richard Kennedy explained that "social enterprises put a higher priority on social impact and social outcome than private sector companies. I do think that as a result it could be argued that they are less efficient in delivering the contracted outcome, but more efficient in delivering long term sustainable change and social impact". Similarly, SE F thought it was important to question: "are they commissioning for overall value, or just costs?" Martyn Oliver from 3SC also identified a mismatch in focus. In his view, social enterprises face difficulties in securing contracts because "they're a customer focussed sector fighting against a procurement focussed and policy focussed contracting authority."

Some of our interviewees suggested that the mismatch in what social enterprises focus on and what the public sector wants is more fundamental. For example, John Loder of the Young Foundation argues that it is often "those things that the public sector doesn't think are important that have attracted people into the social sector." If social enterprises are motivated to fill gaps in provision that have traditionally not been met by the public sector, then we should not always assume that there will be close alignment between what social enterprises aim at and what the public sector is looking to deliver.

Is EU Procurement Law a Barrier?

EU Procurement law aims to ensure that contracts are tendered in line with key principles of non-discrimination, equal treatment and transparency. All contracts over a certain threshold must be advertised in the EU's Official Journal and be open to bids from suppliers all over the European Union.

David Hunter from Bates Wells Braithwaite LLP noted that there can be tensions between the principles of open competition and the desire to favour smaller or more local suppliers. Although many services such as healthcare, education and cultural services are not intended to be caught by the full regulations, in practice procurement officers may find it simpler to use the same process for all their procurements. This can make unnecessary demands on bidders for such contracts, which can create a barrier for social enterprises. There is a new EU procurement directive which is part of the Commission's Social Business Initiative and which professes to introduce new regulations to assist small businesses and social enterprises to compete for public sector contracts. The UK government has indicated it will pass this into national law sooner rather than later, which means some time in 2014 at the earliest. As ever, how the legislation is interpreted and implemented will be critical in determining whether the original intent behind the directive is achieved and social enterprises do find it easier to win business from public authorities.

Furthermore, commissioner C4 told us that "the difficulty with the Social Value Act is that it's in the context of EU procurement law – it's inhibiting in terms of what you can and can't do". That said, rather than using the EU regulations as an excuse to do nothing, more enterprising public authorities can structure their procurement exercises in ways which, rather than (for example) requiring bidders to pay the London living wage and running the risk of a legal challenge, make clear that they will look favourably on bidders who voluntarily commit to this. In David Hunter's view, if a commissioner is clear about what they want to achieve and determined to do it, it is possible to find a way through the EU regulations. More often, in practice, they seem a convenient (if not always accurate) excuse for inaction.

Lack of Capacity and Ability to Absorb Risk

A key issue we returned to many times in our interviews was the capacity social enterprises have to both respond to and deliver public sector contracts. Data from this year's State of Social Enterprise survey demonstrates that working with the public sector can be particularly difficult for small social enterprises. The largest social enterprises, those with turnovers of over £1 million, are nearly four times as likely (39%) as the smallest social enterprises, with turnovers of less than £10,000 (11%), to cite the public sector as their main source of income. This was supported by our interviews. SE F, the largest social enterprise we spoke to commented: "there are a lot of barriers in procurement, not particularly for social enterprises, but more about how local authorities procure, which favours bigger organisations. We're a bigger organisation, so we are less concerned about that."

For smaller, newer social enterprises, there are often challenges related to being able to respond to tenders. SE B explained that "the diligence in [tenders] is fairly heavy, and often we don't have the capacity sitting around". C2 commented that it is very hard for social enterprises when they are competing against large private sector organisations that "have teams of experts waiting to write the next bid, day in, day out". This lack of experience and expertise can mean that "the quality of their submission is just woeful" (C3). Nancy Towers noted that even the large social enterprises "still have issues competing with the corporate, shareholder profit companies. It's not quite a level playing field".

Second, responding to a tender may require documentation and policies that small social enterprises do not always have to hand. SE C recalls how commissioners "want to see all sorts of documentation that we don't always have in place." Similarly, SE A has found that public sector commissioners often "want further policies you'll need to source and sign off from your board – it can be on a tight timeframe and you still need to be going out and doing delivery." However, as public health commissioner C3 makes clear, getting evidence of relevant policies and risk assurance is essential: "you need assurances that these people have various governance structures in place and that they will be spending public money well. You can't as a commissioner just say 'I know you're good, we'll get you up to speed'". Being able to give evidence of a solid financial record can also be difficult for new social enterprises. SE B explained that due to the nature of being a social enterprise, "you can be on the breadline a lot of the time", and this can be a disadvantage when you show your financials to commissioners – "you may not look as sound as you actually are".

However, the biggest issue is around the ability to take on risk that is required by public sector contracts. Contracts for the public sector are increasingly structured on a Payment by Results (PBR) basis. As Gemma Rocyn Jones explains this presents a major risk for social enterprises since "the Local Authority will only pay for success – if it goes wrong they pay nothing". Our interviewee from a large housing association C2 also noted that where social enterprises are sub-contractors to a large PBR contract they can also miss out: "prime contractors…are the ones with the lawyers – they'll argue over every penny. If you aren't great at monitoring your outcomes, or evidencing that still, you will lose cash as a result, on a PBR contract". Even if there are not disputes about whether results have been achieved, payment in arrears can create cashflow issues for social enterprises, which as Richard Kennedy highlighted, often have little working capital to underwrite the delivery of services. As SE A noted, "when it's payment in arrears, that is hard to manage. It is also difficult if payments are not made on the days you expect – it can be difficult to then pay staff."

Another form of risk is related to regulations that protect public sector workers when new organisations take on contracts. SE E, a youth work organisation operating in the South West told us that they had been forced to withdraw a recent bid for work because "there were major issues around the way that risk was managed, particularly around TUPE and redundancies."[vii] They took legal advice and employed specialist HR consultants who suggested that the costs of making necessary redundancies to take the contract forward could potentially be a very large proportion of the overall value of the contract. Based on this advice, SE E had to put a series of caveats in their bid in order to avoid "exposing ourselves to a risk that would have bankrupted us". The council was not willing to engage in a conversation about how the risk could be shared and they judged that the caveats in SE E's bid meant it was non compliant and could not be considered. C2 from a large housing association described complications around TUPE can be particularly difficult for a small social enterprise to take on board: "it's all right for me, I've got a team of in-house lawyers. Those issues are minefields for organisations to get involved with".

Several of our interviewees argued that a lack of capacity to absorb risk required by public sector contracts could lead to a Catch 22 situation whereby "if you haven't got a contract, you can't get a contract." (SE E). SE E felt that in some fields of work there may be only one major contract to be had, and so there is a sense that "if you've got the contract you'll be at that scale, if you haven't you won't be…Once you've got a contract you can bid for the next Local Authority contract; if you haven't you can't." SE B concurred, describing how they felt that "for younger organisations without the track record…I can't imagine trying to win a tender." SE A also agreed that "what contracts you've had in the past will determine what contracts they're willing to give you again."

The challenges we have identified are highly complex and many relate to some of the fundamental difficulties faced by actors working within the fields of social enterprise and the public sector. They are therefore not easily 'solvable'. It is also important to be realistic about the scale of the problem here. It is not as if all activities of the public sector will be appropriate to be delivered by social enterprises. And for many social enterprises their core income will come from other sources (for example, trading with the public).[viii]

However, in the course of our desk research and interviews we came across a number of factors that can go some way to addressing the challenges that we uncovered when social enterprises want to contract with the public sector. We have organised these into four categories:

1. Bridging the Gap: Intermediaries who can broker relationships between commissioners and social enterprises
2. Demonstrating Impact: Developing ways for social enterprises to evidence their impact
3. Valuing the social: The Social Value Act as one way to prioritise what social enterprises can offer amidst competing priorities
4. Working together: Social enterprises collaborating and working as consortia in order to address problems of resourcing and scale

We describe each of these below.

PART TWO: ADDRESSING THE CHALLENGE

Bridging the Gap

Given that our research was so unequivocal in finding that both commissioners and social enterprises lack knowledge about each other, it is not surprising that a variety of initiatives have arisen which attempt to bridge this gap and hence support social enterprises in winning public sector contracts. In 2009, The Young Foundation collaborated with NHS Birmingham East and North to host the UK's first 'Social Entrepreneur in Residence'. This programme involves placing someone within organisations which are doing commissioning in order to act as a link or go-between between them and the wider community and social sector, and is now known as 'Young Foundation in Residence'. Similarly, in 2012 Social Enterprise UK launched a 'Health Commissioning Improvement Programme', which aimed to connect the newly formed Clinical Commissioning Groups and Health & Wellbeing Boards with local voluntary, community and social enterprise organisations.

Such programmes have been very effective in helping commissioners to understand the opportunities that are available through contracting with social enterprises to deliver services. Margaret Ogebule, Young Foundation In Residence at Metropolitan Housing Association, explained that prior to her appointment the housing association had had "hardly any" experience in commissioning social enterprises. Following her appointment, they were able to gain a much greater understanding of the barriers that had been standing in the way of social enterprises seeking to bid for contracts. Metropolitan created a new tender process specifically for social enterprises, including a much shorter form which excluded irrelevant questions aimed at private companies. They also changed their processes so that contracts under £2000 did not mandate the 3-5 quotes deemed necessary for larger ones. In addition, the Housing Association began to introduce smaller ventures to their insurance company in order to help them with managing risk.

SE A, a youth work organisation, commented on the usefulness of the Young foundation in residence programme, saying "it reduced the risk factor for the Primary Care Trust. They had someone providing line management and feeding them information. There are a lot of community groups out there – commissioners don't have time to visit them all. Having an organisation like The Young Foundation that can do the sifting and sorting is a good way forward." Margaret Ogebule agreed, saying "heads of procurement don't have time to meet 50 or 60 organisations, but we provide a filtering role."

Eleanor Cappell, Young Foundation in Residence at NHS Arden Clinical Commissioning Group, highlighted the importance of a senior champion in the host organisation for the success of the programme. She said "these people are essential to give the programme authority and strategic buy in and to demonstrate commitment to the programme – this can really open doors." She also commented on how crucial it is that the post be physically based at the offices of the organisation in question. Margaret Ogebule echoed this point, saying "being based in their offices makes it easy to have conversations with people next to you... If I wasn't based in their office, I wouldn't have that information at my fingertips."

However, it is important to recognise that such solutions are extremely resource-intensive. John Loder cautioned that although the programme could create great results it was unlikely to represent "a scale solution" due to the large amount of money and effort required from third party organisations. Nancy Towers from Social Enterprise UK acknowledged that the 'Health Commissioning Improvement Programme' is "definitely time-consuming, from all parties' perspective" but in her opinion it was "worth that investment for the long term".

There are also a number of other on-going initiatives to support more open discussion between commissioners and social enterprises. SE E told us about a day workshop that was recently run to bring together commissioners from the local city council with voluntary and community sector organisations in the area to discuss some of the key challenges in working together. Helen Ryman of UnLtd also highlighted the value of 'meet the buyer' events that provide an opportunity for interaction between commissioners and social enterprises.

C1, chief executive at a Commissioning Support Unit expressed a hope that we are moving towards a climate whereby commissioners will be "providing better, easily accessible information about what they are doing", largely through the use of digital technology. The UK Government is also attempting to encourage increased transparency within procurement processes, and is consulting on measures that would see all new contract opportunities and contract awards advertised online, while mandating the public sector to report on its spend with SMEs and centrally negotiated deals.[ix]

Demonstrating Impact

In order for social entrepreneurs to demonstrate the value of their services, they need to find a way to measure complex and seemingly intangible outcomes, as well as detailing the outputs that are expected by commissioners. Eleanor Cappell emphasised that it is not enough for organisations to 'go through the motions' of measuring their impact. She considers that social enterprises "need someone to live and breathe capturing the impact of [the] work – someone who has the skills and is going to really lead on this."

Some of our interviewees were finding ways of measuring their impact effectively. For example, SE B had recently purchased a psychometric tool to enable them to track beneficiaries' levels of confidence and changed attitudes to employment before, immediately after and then six months following their participation. Having such robust measures of impact has been helpful to SE B in securing public sector contracts. Interviewees also talked about additional benefits to investing in measurement, beyond its role in winning contracts. SE B described how motivating it was for staff to be able to capture the benefits of their work. And SE D commented that measurement in their experience enabled them to "learn and serve beneficiaries better".

Another of our interviewees had made use of Social Return on Investment (SROI), a 'social accounting' tool that allows for social and environmental outcomes to be monetised in a standardized fashion. A City council contracting with SE D has given them feedback that the strength of the information they could provide to demonstrate their impact was particularly influential in winning a recent contract.

However, our interviewees were also highly alert to some of the limitations and risks associated with specific impact measurement tools. SE B felt that there is an issue around credibility specifically for SROI, commenting that "some of the social return on investment reports that you see… don't look like they're worth the paper they're written on". Richard

Kennedy, the chair of the SROI Network, noted that "generally accepted social accounting principles and systems are still in the early stages of development, making consistency across organisations, sectors and geographies a challenge". One specific issue is how well different measures of SROI can meaningfully be used to compare organisations. A recent report from the Third Sector Research Council cautioned that "the SROI ratio is specific for each organisation and hence does not lend itself to cross-organisational comparison."[x] This suggests that SROI might not be an appropriate tool for commissioners to compare different social enterprises, although where used consistently, it can give an indication of the ways in which any one given organisation might have improved over time.

Valuing the Social

As we outlined in part one, it can be difficult for commissioners to prioritise the social value social enterprises may deliver, particularly when there are strong incentives to focus on obtaining the cheapest price. One potential response to this issue is The Public Services (Social Value) Act 2012, which has been in force since 31 January 2013. The wording of the Act states that the procuring authority must consider:

(a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
(b) how, in conducting the process of procurement, it might act with a view to securing that improvement.[xi]

In this way the Act represents an attempt to embed the explicit consideration of social value into the procurement process. Helen Ryman notes that the Act "sets an important marker in the sand" and Richard Kennedy argues that "it's changing the conversation, if not the dynamics just yet". However, it was striking that awareness amongst our interviewees (both commissioners and social enterprises) was rather low. This perhaps reflects the fact that individuals working in both the social enterprise and public sectors have little time to engage with the current policy agenda. SE C observed that "engaging with things like the Social Value Act… requires an investment of time which people don't have when you're immersed in delivery and trying to win more business".

Another common response was that the Act as it stands "lacks teeth" since it only mandates 'consideration' of social value, which is rather vague in terms of what it entails. As SE D comments, "people can say: 'I took it into consideration, and decided to ignore it!'" SE E also speaks for many when he comments "the big issue I have is that no-one has defined what social value is." Richard Kennedy cautions that "there's a risk that private sector companies find a form of words that satisfies the social value act to say 'we're doing it', but actually it is a meaningless paragraph."

Clearly, it is rather early days to assess the full impact of the Act. SE A felt that "it really depends on how commissioners use it and how seriously they take it – we need information on how it's actually being used." Nancy Towers comments: "the act itself is quite general, and people want to know how to do it, and what can be achieved through it". At Social Enterprise UK, she is involved in a programme which works with commissioners to help them in implementing the Social Value Act. While she acknowledges that the boards who have volunteered to participate "form a self-selecting group", she is nevertheless encouraged that commissioners she has spoken to show "a keen-ness to get going, and a real sense of what the Act can and will help them achieve". The plan is to share the learnings from the programme, including case studies, as soon as possible. She comments that once there are some “solid examples” it “will be much easier for those not so forward thinking to get on board with it”.

One thing that might be influential in giving the Act more teeth is the potential for a legal challenge to create greater clarity around the act and its implementation. David Hunter from Bates Wells Braithwaite cautions that any given social enterprise is unlikely to have the resources or the motivation to bring a challenge, as there is no guarantee that they will win the contract even should they win the case. However, various sector experts that we spoke to expressed an expectation that a group of enterprises might pool resources in order to fund a challenge, and said that they were keeping an eye out for a case which might provide an opportunity to test the law in this area. In Richard Kennedy’s view, “everyone in the sector would contribute to a fighting fund to pay for advice to see a strong case through to court”. David Hunter draws an analogy with the Equalities Act, which public authorities paid little attention to until a legal challenge was successfully brought, then proceeded to fall over themselves to demonstrate compliance. It will be interesting to see if a similar trajectory is repeated with the Social Value Act.

There have also been some central government policy initiatives to support commissioners to think broadly about social value rather than only in relation to their own specific area. For example, the Social Outcomes Fund is a £20m fund managed by the Cabinet Office which provides a ‘top up’ to outcomes-based commissions such as Payment by Results where the issues are complex, affect multiple parts of the public sector and may therefore be difficult for any one commissioner to focus on. However, it is interesting that this was not an initiative mentioned by any of our interviewees.

The Role of the Commissioner

In part two we have focused on some of the initiatives and activities that we think can make a difference to the ability of social enterprises to deliver public sector contracts. However, a theme that also emerged consistently from our interviews was the importance of strong relationships with supportive commissioners.

Several of the organisations we spoke to felt that having links with understanding and knowledgeable commissioners made all the difference when it came to obtaining and delivering contracts. SE C commented that, "it takes a lot of courage for people doing commissioning to embrace social enterprise; they prefer to go with something more familiar where they understand the model better." He spoke about a particular commissioner he had worked with who had been "willing to bring about the change she wants to see and find ways to get beyond all the internal processes." SE A also described how he was able to manage a problem with payments due to his excellent relationship with a particular commissioner, who was in effect able to alter the way things were done so that the payment schedule was not an inconvenience. For this reason, SE A felt that success "depends on the individual commissioner, their understanding of social enterprise and their willingness to do things in a different manner". SE F commented that from their perspective, commissioning relationships are all about "willing partners, because if the people procuring don't care, then do you really want to work with them anyway? If you get a local authority that just wants everything as cheap as possible, and would rather not be doing it in the first place, then it's not going to work in the long run."

Although the personal characteristics and commitment of the commissioners seems to be most important here there are some moves to try to provide support and training to up-skill these individuals. The Cabinet Office is currently piloting a 'Commissioning Academy' open to all public sector commissioning organisations including central government departments, local authorities, health bodies and justice organisations. The stated aim is to create "capable, confident and courageous" commissioners and social value is one of the topics explored.

Working Together

As we have explored, many social enterprises face barriers related to finding capacity to write winning bids, meeting the various financial and governance requirements stipulated within tenders and shouldering financial risk. The UK government is currently consulting on policy changes that might improve the situation for small and medium sized enterprises, including eliminating the use of Pre-Qualification Questionnaires for low value contracts and ensuring contractors pay their suppliers on time.[xii]

While these reforms are welcome, our research suggested another way forward relates to finding ways for social enterprises to combat the challenges of limited size and capacity by working together more closely. Sometimes this involves creating greater visibility for social enterprise services by marketing themselves via a common portal or website. For example, Think Venue is a consortia of third sector organisations in the West Midlands who have come together to promote their services and products. Helen Ryman noted that Birmingham

City Council had advised its employees to use this site as a first point of call when organising events.

Increasingly, individual social enterprises are joining forces in order to be able to more successfully bid for contracts, forming small ‘clusters’. However, the majority of clusters do not establish themselves until a specific opportunity presents itself, e.g. the call for tender, which means that in many cases the process of forming a group and establishing compatibility has to be accelerated to fit in with limited timescales. Some of our other interviewees also flagged up problems working in consortia. SE E had found the council they worked with were not experienced dealing with consortia:

“they were very unclear in what they meant by consortium – do you mean a lead with sub-contractors, do you expect us to form a special purpose company in order to tender for this; and about pre qualification, does each member pre-qualify separately?...Either the council didn’t know the answer or we had two different answers coming from two different people”.

Some commissioners, however, are enthusiastic about the prospect of social enterprises working in consortia to deliver services and are even working to help facilitate this. Devon County Council, for example, has formed a local Social Enterprise Group with representatives from the council and social enterprises to explore possibilities in this area.[xiii]

Other social enterprises attempt to gain access to public sector contracts by sub-contracting from larger private sector companies or ‘primes’. Richard Kennedy spoke about how this had happened in the context of the Work Programme, cautioning that in various cases the large businesses competing for the bid had named social enterprises on the tender and then not followed through in giving them the promised work. This had in many cases created significant cash-flow problems for the social enterprises concerned and is clearly not a solution to managing the burden of risk that comes from taking on public sector contracts.

Another more promising development is the emergence of umbrella organisations such as the Third Sector Consortium (3SC), itself a social enterprise which was established in 2009. Since then 3SC has worked with over 200 organisations and delivered over £63 million worth of contracts. Martyn Oliver Chief, Executive of 3SC, explains that “the idea of 3SC was to provide that portal, not just for the sector, but also for clients, either government departments, local authorities or indeed the primes, who win most of this marketplace.” 3SC manages the procurement process from beginning to end, including “searching out opportunities where we feel the sector can deliver”. They also manage the contracts, enabling third sector partners to focus on delivery.

Martyn Oliver explains that it is far easier for social enterprises to engage with 3SC than it would be for them to engage with the contracting authority itself, as “the bid process we put our partners through is far lighter touch”. He comments that “we probably ‘gut feel’ it more than most organisations do, but I don’t want us to become one of those organisations where somebody is there with a checklist that is another barrier to getting involved.” In addition, 3SC take a more flexible approach when looking at the financial viability of an organisation: “if an organisation is making quite a big loss…then a big commercial prime might not like the look of that, their due diligence formula will rule them out, on that basis. We say, if we overlay this opportunity onto the financial accounts that we are looking at, then giving them a contract will make them more financially viable than not.” In his view, 3SC have been able to use their size and influence to get more involved in how services are delivered: “we try to operate at the design stage for some of this stuff… that automatically leads to a better situation for our members and our supply chain”.

Oliver acknowledges however that 3SC is still not able to operate at the level of some of the largest prime contractors. He accepts that there is an inherent limit to the scale at which it could operate: "I don't think we'll ever be able to do it for thousands and thousands of organisations. It's going to require more than one 3SC to do that". He also cautions that there needs to be "real thinking within the social enterprise community about how they might address some of these barriers themselves."

CONCLUSION

Our research for this case study uncovered a number of key barriers to social enterprise growth through contracting with the public sector. We also have identified strategies for overcoming these, including:

- Intermediaries who can broker relationships between commissioners and social enterprises
- Developing ways for social enterprises to evidence their impact
- The Social Value Act as one way to prioritise what social enterprises can offer amidst competing priorities
- Social enterprises collaborating and working as consortia in order to address problems of resourcing and scale

Although this is an area with considerable central government attention and various policy responses, it was interesting how few of our interviewees were aware of these, or chose to mention them. Clearly there is still a significant shift required in culture and practice in both the social enterprise and public sectors before a larger role for social enterprises in public sector provision can be realised.

ENDNOTES

i Cabinet Office, *The Coalition: Our Programme for Government*, HM Government, 2010 quoted in Cabinet Office: *Modernising Commissioning: Increasing the role of charities, social enterprises, mutual and cooperatives in public service delivery, 2010.*

ii HM Government Consultation Document, *Making public sector procurement more accessible to SMEs*, 2013

iii Levels of innovation within sector enterprises are difficult to track but there is some data supporting the idea that they are more innovative than other forms. For example, recent data from Social Enterprise UK's 2013 survey found that 56% of social enterprises developed a new product or service in the last 12 months compared with 43% of SMEs. This data is taken from: Social Enterprise UK, The People's Business, State of Social Enterprise Survey 2013, Frank Villeneve-Smith and Charlotte Chung.

iv See S Teasdale, F Lyon and R Baldock, 'Playing the numbers game; A methodological critique of the social enterprise growth myth', *Journal of Social Enterprise*, vol 4:2, 2013

v The wording of the DTI definition is as follows: "A social enterprise is a business with primarily social objectives, whose surpluses are principally reinvested for that purpose in the business or in the community rather than being driven by the need to maximise profit for shareholders and owners". Taken from *Social Enterprise: A Strategy for Success,* Department of Trade and Industry, 2002.

vi GP led Clinical Commissioning Groups were introduced in April 2013.

vii TUPE is an acronym for the Transfer of Undertakings (Protection of Employment) Regulations. The purpose of TUPE is to protect employees if the business in which they are employed changes hands. Its effect is to move employees and any liabilities associated with them from the old employer to the new employer by operation of law.

viii The State of Social Enterprise Survey 2013 found that the most common source of income for social enterprises is trade with the general public. Taken from: Social Enterprise UK, *The People's Business: State of Social Enterprise Survey 2013*, Frank Villeneve-Smith and Charlotte Chung.

ix HM Government Consultation Document: *Making public sector procurement more accessible to SMEs*, 2013

x Third Sector Research Centre, Working Paper 49: *The Ambitions and Challenges of SROI*, Malin Arvidson, Fergus Lyon, Stephen McKay, Domenico Moro, December 2010

xi Public Services (Social Value) Act 2012, Chapter 3

xii HM Government Consultation Document: *Making public sector procurement more accessible to SMEs*, 2013

xiii Devon Social Enterprise Group: Terms of Reference, retrieved 13 December 2013, <http://www.devon.gov.uk/devon_social_enterprise_group.pdf>