

CHALLENGES TO EMBEDDING SOCIAL VALUE ACT 2012 IN THE STRATEGIC AND OPERATIONAL PROCESSES OF PUBLIC SECTOR CONSTRUCTION PROJECTS

Niraj Thurairajah¹, Joan Muchena² and Hong Xiao³

¹ *Department of Architecture and Built Environment, Northumbria University, Newcastle Upon Tyne, NE1 8ST, UK*

^{2&3} *School of Engineering and the Built Environment, Birmingham City University, Millennium Point, Birmingham, West Midlands B4 7XG, UK*

This research focuses on the Public Services (Social Value) Act 2012, which came into force in January of 2013. The Act appears to challenge the traditional perception of value and proposes to one that encompasses social, environmental and economic benefits to the communities these businesses operate. The Act has received some criticisms for being a soft touch as it essentially asks commissioners to ‘consider’ embedding the Act when making their procurement decisions and this flexibility has been attributed to the lack of its uptake by some Local Authorities. However anecdotal evidence suggests that some of these issues are stemming from strategic and operational processes with regards to how it is implemented in everyday practices. Therefore, this research seeks to investigate how the Social Value Act (2012) has been embedded into the strategic, operational and technical aspects of public sector construction projects. An explanatory case study approach, consisting of three case studies, specifically focusing on the Act’s applicability within a construction context, was used in this research. Facts and perceptions were collected from Local Authority policy documents and from senior managers representing four Local Authorities. Furthermore, a contractor’s perspective was also obtained from a specialist Social Value delivery consultant associated with one of the selected Local Authorities. Findings show that Local Authorities at the heart of this Act have welcomed the way in which it is not prescriptive. The flexibility of the Act was perceived to be an incentive and allows them to use the Act not just for procurement but other Local Authority functions. However, the Act is still surrounded by confusion with regard to specifications on delivery and this could be attributed to the lack of clarity on measuring Social Value outcomes.

Keywords: Social Value Act, public services, policy, local authorities, procurement

INTRODUCTION

The construction industry has been renowned for its inefficiencies, most notably for its procurement practices whereby most clients were intent on over-emphasising the acceptance of the lowest bid, effectively leading to key project delivery problems. There was and still is a call for the shift away from such practices as championed by Egan (1998) and to focus on best value. The Public Services (Social Value) Act 2012 appears to underpin this shift (Allen and Allen, 2015), thus challenging the traditional perception of value. It could be reasoned that the overarching validation for

¹ niraj.thurairajah@northumbria.ac.uk

introducing the Social Value Act (SVA) was to change the commissioning practices adopted by Local Authorities (LAs) and not only ensuring that the 'lowest cost' practices are abolished, but also ensuring social, economic and environmental value is delivered to the community at large via this Social Value (SV) policy.

As claimed by Social Value Hub (2019), the SVA has been adopted by Third Sector Organisations and some LAs. This endorsement of the SVA is based on the potential positive outcomes it is anticipated to bring about. However, Boeger (2017) called for a review into the Act indicating lack of awareness issues associated with the Act and its non-prescriptive nature. It could be said, however, the apparent issues with the SVA for those LAs that have adopted it could possibly be stemming from a strategic or operational viewpoint with regards to how it is implemented in their everyday practices. The murkiness surrounding the Social Value (SV) philosophy can be due to the lack of its clear definition. While there have been attempts at defining the meaning of Social Value, it is probably applied or interpreted differently depending on the vantage point of the applier, be it end-user, contractor or commissioner. This ambiguity has left it open to various applications, reinforcing the problems apparent with its understanding, uptake, and operation. To ensure the SVA is truly achieving what it is intended to, there is a need for strategic planning, mobilising the strategy through intensive stakeholder engagement activities and finally operationalising the strategy on the ground, ensuring successful delivery. A 'deepening' of this policy might thus create greater accountability on commissioning and contracting authorities to proactively adopt it. These issues highlighted will, therefore, be investigated to attempt to unravel the principles versus practice and the overall perception of the SVA today.

LITERATURE REVIEW

The Public Services (Social Value) Act 2012 was introduced in the UK which defines Social Value as a concept that seeks to maximise the additional economic, social and environmental benefits to citizens and the community at large through how public goods and services are procured (HM Government, 2012). However, Social Value is an ambiguous term and is often interchanged with other related terms such as 'social benefit', 'community benefit', 'social impact', 'social output', 'social outcomes' and the broader concept of Corporate Social Responsibility (Raiden *et al.*, 2019). Although the SVA has since been embedded in the procurement of the majority of UK's public organisations, its purported benefits have been contested for various reasons.

In construction, the procurement approach traditionally emphasises on the lowest price to ensure the best deal for the clients. This practice effectively forces the contractors to lower their bid price but leads to many delivery problems such as over budget, delay and poor quality as contractors will attempt to maximise their own profits through cost-cutting and claims (Holt *et al.*, 1995). Even though this price-based selection method can facilitate the creation of an objective criterion (Lo and Yan, 2009), Ruparthna and Hewage (2015) argue that such practice gives rise to adversarial and trust-lacking relationships which are detrimental to a project. Both Latham (1994) and Egan (1998) condemned this 'lowest price wins' philosophy. It also exacerbates the fragmentation in the construction. It has been agreed that the procurement in construction has not realised its full potential and there is a need for its continuous evolution (Oyogoke *et al.*, 2009).

Clients have been known to choose procurement methods that have worked in the past (Miller *et al.*, 2009), possibly due to the risk-averse nature in the construction industry. Trust-based relationships have a major influence on procurement decisions (Rees *et al.*, 2012) because trust is a key requirement within the supply chain relations which can enhance the partnerships and effectively yield better results (Jelodar *et al.*, 2016). Clients are therefore more inclined to engage with long-established suppliers. But in practice, partnerships tend to work more effectively when they are underpinned by voluntary trust-based relationships rather than those imposed by mandate or by competitive arrangements that undermine trust (Rees *et al.*, 2012). This poses a challenge on the Social Value Act (SVA) as it is trying to achieve a new way of working that will no longer be based on long-standing relationships and trust but on the wider benefits for society.

The SVA stipulates that commissioners undertake SV assessments during the pre-procurement stages to ensure the greatest positive outcomes. It calls for a transition in procurement practice from the 'lowest price' or 'trust-based relationships' to a new way of procuring hence the neologism 'social value procurement'. It is different from the traditional procurement practices in that it seeks to leverage extra social profits whilst creating 'social value' in the respective communities (Loosemore, 2016). However, this SV assessment is only conducted at the pre-procurement phase by involving prospective suppliers completing a set of pre-qualifying questions to demonstrate how they can deliver a specified element of SV prescribed by clients. Therefore, clients are still in control of their PQQ's and can still manipulate these to work in favour of their preferred suppliers. Furthermore, Hampton (1994) argues that the pre-qualification process is biased against the minorities within the supply chain who are mainly SMEs lacking in financial resources. This casts a doubt whether the pre-qualification process is socially sustainable as it appears to somewhat work against exactly what the SVA is trying to achieve.

Although SVP aims to move from the traditional focus on the short-term cost savings, reduced rates and instantly measurable outcomes presented by established suppliers to the long-term and wider outcomes, there are obvious barriers including the lack of clarity when it comes to measuring and assessing SV, limited experience on the public sector's procurement departments and limited organisational capacity (Barraket and Weissman, 2009). Newman and Burkett (2012) argue that the positive SV outcomes tend to be long-term and they are only achievable if the strategic benefits are felt from inception level through to implementation. Consequently, SVA requires that procurers identify the key aspects of delivering long term social, economic and environmental value to the community at large. The identification process is prescribed to be through stakeholder engagement to establish what the community needs from the project (HM Government, 2012), so the stakeholders can define and identify their local priorities of the communities. But in practice, the decision on a construction project is seldom influenced by the end users' needs or preferences. This is because the community in a construction project is predominately perceived as a liability as opposed to being an asset with regards to project delivery (Close and Loosemore, 2014). Reinforcing this school of thought is the claim that at the project level, the hype associated with these social initiatives is not seen through the operational stages (Boeger, 2017).

While significant progress has been made in the environmental aspect of construction projects, social issues are normally relegated to a distant third priority, a long way behind economic and then environmental objectives (Loosemore, 2016). This

philosophy is underpinned by the format and structure of the PAS91 (BSI, 2013), the standard Pre-Qualification Questionnaire (PQQ) adopted by most LAs as part of a contract tender submission to be fulfilled by the prospective contractors. While Supplier Identity, Financial Information, Business and Professional Standing, Health and Safety Policy and Capability are the mandatory 'Core' questions, the rest of the questions wherein SV is optionally asked are termed as 'Other' questions, effectively, additional SV requirements are notably inserted as addendums within the PQQ. This clearly shows the social aspects in construction contracts are mostly perceived to be peripheral in comparison to the other tender requirements.

Most contractors are in business for a profit which is derived from their primary construction project objectives. With the SVA, they are required to fulfil certain extra obligations as a basis of securing a contract. This means the LAs are looking to obtain value but at the expense of the contractor and its supply chains who have to deliver these secondary obligations whilst also delivering over and above their hard deliverables, the primary contract to build. The construction market is extremely competitive which in turn leads to small profit margins. This raises the question if this practice can be sustainable and allow respective organisations to thrive. With regards to the operational process for delivering SV in construction projects, it appears that it is not clear who is responsible, how and by whom that delivery is managed, within what time frames and what benchmarks to explicitly determine the delivery of SV for a construction project. This raises the questions of whether the SVA is merely being added on as an afterthought or it is fully entrenched in the whole procurement process within public sector projects.

In order for the policymakers and public organisations justify their spending decisions and funders seek transparency on how to direct their money for the most effective projects, SV outcomes have to be measured. But this can be problematic due to the lack of a single authoritative definition of SV (Wood and Leighton, 2010), as a result, some non-financial SV outcomes such as wellbeing, environment and social capital are difficult to quantify and therefore have been seen as 'soft outcomes' (Dewson *et al.*, 2000). Although some measurement tools such as Cost-Benefit Analysis, Key Social and Cooperative Performance Indicators and Social Return on Investment (SROI) have been attempted for measuring SV outcomes, there is no one standardised single method. While it is important that LAs can have the flexibility to develop their own SV measurement tools to fit their specific needs, too many methods can also unintentionally create confusion and inconsistency with understanding what and how to measure and restrict LAs from being benchmarked against any other organisations. Operationally, quantifying SV is an arduous task, often requiring creating a new role and intensive staff training. This inevitably results in LAs opting for SV activities that have easy metrics for success (Wood and Leighton, 2010). If the measurement activities are time-consuming and costly, then this whole activity outwardly takes away the rationale behind the whole process, seeking value.

METHODOLOGY

Case study approach was used to collect data for this study. Keeping LAs as the unit of analysis, this research focuses on finding out how the SVA has been embedded into public sector construction projects. Four LAs were selected based on accessibility, size and social value provision. However, due to page limitation, three case studies and their findings are shared in this paper. Semi-structured interviews and LA policy documents were used to capture data from each LA. At least two individuals from

each LA were interviewed to understand LAs’ attempt to provide SV. Interviews were conducted with those in managerial levels within their respective organisations. The rationale for specifying the sample type was that they are predominantly hands-on and key players within the implementation of the SVA frameworks by which their respective procurement policies are based on. These participants are also greatly involved in setting out and driving the operational requirements as dictated by the SVA to the corresponding contractors. It was reasoned to be also beneficial to capture the contractor’s perspectives on the Act, and an interview was secured from a specialist contractor’s consultant who specialises in the operational aspects of the SVA and has historically worked with LA1. The Table 1 provides a summary of presented data for this study.

Table 1: Case study data

| Case Study | Interviewees | Document reviews |
|------------|---|--|
| LA1 | 1. Procurement framework manager | 1. Procurement policy |
| | 2. Strategic category manager for construction | 2. National procurement concordat for SMEs |
| | 3. Category manager for health and social care | 3. Benchmarks for infrastructure social value |
| | 4. Contractor specialist consultant on Social Value | 4. Tailor-made employment and skills strategy |
| LA2 | 1. Procurement manager | 1. Social Value policy |
| | 2. Social Impact manager | 2. Social Value charter |
| LA3 | 1. Procurement manager | 1. Social Value statement |
| | 2. Procurement controller | 2. UK sustainable development framework indicators |

Organisational Context on SV Related Activities

Case Study 1- Local Authority 1 (LA1):

LA 1 is based in the West Midlands and one of the most affluent areas outside London, serving a population of just over 200,000 with a higher nominal Gross Value Added (GVA) per capita and most residents having a larger disposable income than the UK average. LA1’s approach to procurement is underpinned by a Procurement Policy which is implemented alongside a National Procurement Concordat for SME’s. LA1’s strategy to entrench their Sustainable procurement policy is via a Client-Based Approach, which emphasises the development and implementation of Employment and Skills Strategy in construction projects. The project budget will set the project specific requirements in terms of what is expected of the contractor to fulfil, the philosophy is that as these employer-led benchmarks for employment, skills and apprenticeship delivery are weighted against procurement lot sizes of £1 million going up thus making them accessible to the SMEs in the way of promoting local supply chains. Thus, the prospective suppliers are supported by this information to enable them to deliver the SV outcomes as per contractual requirements. In driving this approach, they have formulated an Employment and Skills Strategy, which is a tailor-made strategy supporting contractors in delivering the best value in ‘price and non-price’ aspects of the tender.

Case Study 2- Local Authority 2 (LA2):

The LA2 business charter for social responsibility sets out key principles in a bid to boost the local economy through maximising its SV. This is facilitated by the LA2’s £1 Billion purchasing power through making this money work to improve the citizens of this authority. This means is any commissioning and contracting decisions will incorporate the principles set out in the charter to ensure the creation of employment

opportunities, supporting local supply chains and fair wages for contractors' employees that are associated with the policy. LA2 has a SV policy (from 2016), in which it illustrates concisely their expectations from signatories of this charter. Current and future suppliers were therefore urged to accredit themselves to the charter, which will, in turn, commit the supplier to deliver the principles by fully adopting the Charter into both existing contracts through addendums and future contracts. In order to bid for new work, the supplier must, therefore, provide a Charter registration number, if this is not available, they should comply with an action plan that ensures that registration will be complete within a clear time frame. LA2's SV Policy reiterates the Government's definition of SV showing no attempt in interpreting the SVA for LA2 works.

Case Study 3- Local Authority 3 (LA3):

LA 4 is a Metropolitan Borough Council located in the West Midlands, the Black Country area with a population of just over 300 000 across 24 wards. Upon attempting to collect SV related documents available on their website, it became apparent that they do not highlight the SVA in any of its publications plus its procurement related data is limited. What they do have is a slightly simplistic 'myth buster' which states their ideals when it comes to assessing 'best value' when awarding contracts. Their stance is not only to consider economic factors but also social and environmental factors. Similar to LA1, tenders are also scored against a set of criteria and weighted accordingly by the tender panel 'the organisation with the highest score wins the business'.

FINDINGS AND DISCUSSION

Embedding Policy

HACT (2015) emphasises the need for Public Sector commissioners to be clear in what it is they want to achieve particularly in the pre-procurement stages to embed SV policies into their strategic objective. Interviewee 1 from LA1 emphasised a similar approach stating, 'it's about getting the commissioners to instil this into the stakeholder's minds much earlier on into the process so they start thinking of how they can deliver SV'. However, the analysis shows that LAs appeared to rely heavily on charters, SV Action Plans or Sustainability frameworks for this purpose. For example, LA2 has mandated that all parties privy to a contract for works must be signatories of its SV Charter. Interviewee 2 from LA2 stated that 'SV requirements on their tenders is weighted at a minimum of 10%; however, for construction projects, this may be higher particularly around jobs and skills'. On further probing, the respondent stated that weighting was anything between 10-45% for construction projects. On the other hand, LA3 has been using Sustainability Impact Assessment Tool, which is an outcome driven framework, utilised to assess the Borough's needs in terms of priority to drive SV. Interviewee 1 from LA3 mentioned '...council makes use of Sustainability Impact Assessment tool to make decisions based on guidance in the UK SD Framework indicator'. However, these frameworks have been interpreted differently by individuals from LAs especially when relayed to the contractors. Mainly, LAs have struggled to clearly articulate and incorporate the policy into their core procurement strategies. This fuzziness or lack of clarity could be owed to the lack of a clear understanding and or definition of the term SV for each respective LA.

Furthermore, the implementation process appeared to be overlooked by LAs; all LAs confirmed that it is left up to the contractors' project manager to ensure that delivery

is as planned. This differs from HM Government's (2012, p.27) proposal for the parties "...to work together to work out how service delivery can be enhanced in collaboration with each other as well as service users and other stakeholders...". The main reason for the lack of client involvement was echoed by most respondents to be the lack of resources. At present, most LAs need to consider ensuring the resources are available to conduct operational activity because as it stands only the larger LAs stated that they had specific Economic Development departments that oversee the delivery. Whilst this may be commendable, one respondent mentioned that these Economic Development departments are not well versed on the procurement process let alone the SVA to be able to efficiently manage the delivery process. Another common theme that was highlighted from this research was the involvement of elected Cabinet Members, who are highly active during delivery and monitor and try to ensure that purported SV has been created post completion. They are therefore ensuring that commissioners and contractors alike are delivering the purported SV as demonstrated by the strategy and contract award requirements. Whilst this is an admirable activity on the Councillors' side, it is worrying how the commissioning bodies do not chase up on a process that they would have instigated. This area of SV can be perceived to be an area where commissioning bodies can improve because it is unclear whether the SV is being delivered as per the specification of the client. On further probing Interviewee 2 from LA3, interviewee responded '... we really aren't involved if I'm honest, we sort of leave them to it and hope for the best'. Based on the findings it is fair to note that procurement contract is still being treated as an end of the SV delivery process as there are no logically set pathways or plans implemented by the LAs to monitor how the above targets are met and satisfied. Interviewee 1 from LA3 acknowledged 'nobody wants the responsibility of overseeing what happened post-procurement' and suggested to revisit a project 6 months later to complete a post-completion review.

Supply Chain Selection and SV Capabilities

Furthermore, it emerged that commissioners would ideally prefer to work with a contractor with whom they have long-established relationships. This notion is largely based on trust and reputation of that contractor and palpably does not consider their ineptness to deliver the SV. This fact supports Jelodar *et al.*, (2016) who purport that trust, therefore, enhances the partnerships and effectively yields better results. It can, therefore, be argued based on this notion that through previous experience, mitigating risk whilst attempting to maintain reputations, the clients will generally be more inclined to engage with long reputable contractors. This is supported by Rees *et al.*, (2012) who argued that in practice partnerships have tended to work more effectively when they are underpinned by voluntary trust-based relationships rather than those imposed by mandate or by competitive arrangements that undermine trust.

Most of the respondents echoed that the SVA has not directly influenced the way in which the bids have been coming in. This finding differs from Loosemore (2016) who states that the future of procurement will be led by contractors fulfilling the 'social credentials' demonstrated by the PQQ. Findings suggest that trust-based client-contractor relationships outweigh their social credentials; this is because clients consider underlying requirements such as H&S, insurance and competency before any SV requirements. Respondents pointed out that even if a contractor fails to achieve the promised SV as per contract, they are not to be oversighted in the next procurement cycle for that reason as this is against EU Procurement law. It shows that clients will still envisage working with the contractor who has failed to satisfy 'social

credentials'. The common consensus with the interviewees across the LAs was the fact that the SV policy was still new, and most contractors were not familiar with the concept. On this note contracts are still awarded regardless of this lack of awareness and the Public Sector argues that they will 'support' contractors to ensure that they achieve this value. On analysing the interviews, it became apparent that clients are willing to 'work with' contractors that they know will deliver primary project objectives in ensuring they can furthermore satisfy the SV requirements. What this could mean is that the SMEs that have not yet set their own reputations in the market will still find it a challenge by having to compete against the mainstream contractors who are to receive additional support to ensure they deliver. This argument poses a challenge on the SVA and what it is trying to achieve as a new way of working that will no longer be based on industry norms but on the wider benefits for society. Having failed to do so makes this a weak policy that is being overshadowed by existing practices and has thus not achieved or made a significant impact on procurement practices.

Non-Prescriptiveness Nature of the Act

Low uptake of the SVA with only 25% of the LAs embedding SV aspects in their procurement strategies (Burke and King, 2015) have been owed to the lack of prescriptiveness in the Act. Boeger (2017) proposes the SVA to be more prescriptive and set down as legislation. In contrast, the findings show that most of the respondents welcomed the 'flexibility' within the act. The main rationale was that it gave them 'give' on how to implement the policy and tailor it to suit their strategies. In contrast, the LA1 contractor indicated that LAs can impose some form of penalty on contractors that do not consider or attempt to implement SV as required when submitting their tenders. However, this idea was not supported by LAs. Once again, the main reason for this associated with the existing relationships between the clients and contractors that are predominantly based on trust. This reasoning leads back to the notion on trust-based relationships over any form of mandate. On the other hand, most LAs pointed out that lack of uptake was predominantly due to 'lack of resources' as well as the size of the LA in question, with the small LAs having even tighter constraints on resources and were therefore not as keen on embedding the Act yet. This is unfortunate because smaller LAs are more engaged with their local communities which are tight-knit and delivering SV would have been an easier and most rewarding task.

Stakeholder Engagement and Measurement Tools

The SV Procurement Note (2012) and the HACT (2015) Social Value Toolkit place emphasis on the importance of Public Sector clients in engaging with the communities as they shape their SV strategy through those they serve. Findings show that the decisions are mostly up to the project commissioner and communities are consulted as opposed to shaping the SV outcomes. Most of the stakeholder engagement activities were carried out between the client and suppliers which is likely another result of the way in which the Policy is not prescriptive and somewhat allows the authorities to translate stakeholder activities in the best way they see fit. On the other hand, Barraket and Weismann (2009) highlight that this vagueness in the concept creates challenges in ensuring SV is defined and delivered. The findings show that most LAs measuring SV provision by utilising tools such as 'lessons learnt' or cross-checking with their KPI score sheets. Whilst this might provide some sort of picture it still does not quantify the outcomes. Dewson *et al.*, (2000) suggest putting a monetary value on

social aspects is complex as these are subjective outcomes and therefore immeasurable.

CONCLUSIONS

The findings of this study show the importance of socio-economic impacts triggered by the industry. As Myers (2013) points out, economic growth signals higher societal needs such as essential infrastructure and housing needs. Through recognising the domino effect in societal needs initiated by the industry, it is only reasonable for the construction sector to be at the forefront of fulfilling SV to the respective societies. This could potentially improve the image of the industry. However, the issue of embedding SV is more to do with ensuring that there is a mutual understanding across the supply chain, and all stakeholders are working towards the same measurable outcomes, via agreed methods and monitored mutually.

This research shows how some LAs have become innovative in obtaining societal value and have used procurement and planning processes to ensure SV provision. This flexibility is also supported by the Act's lack of prescriptiveness and non-legislative application, meaning the LAs could potentially do more with the Act with no overarching restrictions. However, measuring SV still remains an issue for LAs. Furthermore, due to the lack of resources LAs have partnered with voluntary third sector organisations to manage the SV delivery process. SV Procurement Note highlights the necessity for LAs to work in partnership with contractors to manage delivery. Perhaps the fact that it does not stipulate 'direct partnership' allows the under-resourced departments to facilitate sub-partnerships now between the contractor and voluntary sector organisations. With no penalties implementing the policy appears to be the 'right' thing to do. When not subscribed, it has a negative knock-on effect from the client to the contractor and then to the community that will eventually miss out on obtaining value. However, findings from this study show that the 'soft' touch in which the Act is set out is advantageous as it allows most authorities to utilise its flexibility to benefit other local priorities and maximise the potential of the Act.

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