



True Value

TOWARDS ETHICAL PUBLIC SERVICE COMMISSIONING

By Collin McLinden

About Localis

Who we are

We are a leading, independent think tank that was established in 2001. Our work promotes neo-localist ideas through research, events and commentary, covering a range of local and national domestic policy issues.

Neo-localism

Our research and policy programme is guided by the concept of neo-localism. Neo-localism is about giving places and people more control over the effects of globalisation. It is positive about promoting economic prosperity, but also enhancing other aspects of people's lives such as family and culture. It is not anti-globalisation, but wants to bend the mainstream of social and economic policy so that place is put at the centre of political thinking.

In particular our work is focused on four areas:


- **Decentralising political economy.** Developing and differentiating regional economies and an accompanying devolution of democratic leadership.
- **Empowering local leadership.** Elevating the role and responsibilities of local leaders in shaping and directing their place.
- **Extending local civil capacity.** The mission of the strategic authority as a convener of civil society; from private to charity sector, household to community.
- **Reforming public services.** Ideas to help save the public services and institutions upon which many in society depend.

What we do

We publish research throughout the year, from extensive reports to shorter pamphlets, on a diverse range of policy areas. We run a broad events programme, including roundtable discussions, panel events and an extensive party conference programme. We also run a membership network of local authorities and corporate fellows.

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Callin McLinden

Advisory panel

This research project was supported by an advisory panel, whose members are listed below. Advisory panel members provided one-on-one advice and/or attended an editorial roundtable. It must be understood that they may not necessarily agree with every analysis and recommendation made in the report.

- Jane Bristow, Crown Representative, Cabinet Office
- Peter Campbell, Director of Corporate Affairs, Business Services Association
- Claire Dove, VCSE Crown Representative, Cabinet Office
- Sean Hanson, Chief Executive, Local Partnerships
- Tina Holland, Programme Manager – Procurement, Local Government Association
- Alan Long, Executive Director, Mears Group
- Catherine Manning, Operations Director, Social Value UK
- Jeffrey Matsu, Chief Economist, CIPFA
- Joshua Pritchard, Senior Policy Adviser – Public Sector Markets, Confederation of British Industry
- Martin Samuels, Strategic Director – Social Care & Education, Leicester City Council
- David Shields, Chief Executive Officer, Value Match
- Chris White, Visiting Professor – Industrial Policy, Loughborough University

Foreword

Localis's previous investigation into social value, "Brighten All Corners – maximising social value in place", was published in April 2020 at a time of great uncertainty, when the very survival of the prime minister was in doubt. However, over the course of that spring and summer, its optimistic message of taking practical action at local level to ensure communities received the kind of benefits they wanted to see and experience from public money spent in their name, caught on and resonated. Certainly, we made the industry and policy think tank circuit, now of course on Zoom, repeatedly making the moral case for the public pound to not just go further, or to where it is most needed, but also to where it might create the greatest value.

This is value creation in the sense of establishing something that wasn't there before. Something that is of genuine good, of practical use and of benefit – whether financial profit or some other specific measurable impact.

In an earlier report looking at this issue, "Ethical Commercialism" from 2018, Localis posited the virtues of establishing trust and strong relationships as the necessary elixir for turning the poison of suspicion into the medicine of mutual benefit. In our defence of the principle of a mixed market in public services, we argued good relationships between the public sector and private corporations require hard work, patience and communication as well as trust.

In her book, 'Reimagining Capitalism: how business can save the world', renowned Harvard economist Rebecca Henderson, writes: "Free market capitalism is one of humanity's greatest inventions and the greatest source of prosperity the world has ever seen. At the same time, its single-minded pursuit of profit has led to rampant inequality and the looming threat of climate catastrophe – and now threatens to destroy the society on which it depends."

In tackling 'wicked' social problems and climate change we can have full and functioning trust and still end up way off course. There is an element that has to supersede even trust when steering a true course, which is intentionality. And this relates to the economics of purpose which Henderson has helped to elucidate. Or as stated by Larry Fink, CEO of Black Rock, the largest asset company in the world in 2018: "To prosper over time, every company must not just deliver financial purpose, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers and the communities in which they operate.'

And with economics of purpose must come providers of purpose. Suppliers

contracting with the public sector for the sake of delivering public services and then creating the maximum public value.

In the UK government context, total government expenditure is slightly north of £1 trillion and total spend on goods and services across all public sector verticals will be above £300bn. It should be noted that among developed countries we are middling when it comes to the proportion of such public spend. Next year we will be and should be celebrating 10 years of the Social Value Act – which served to broaden the criteria for procurement and the awarding of contracts to one that incorporated the economic, environmental and social wellbeing of a relevant area.

At the time of writing, we are awaiting legislation to reform how our public sector goes about buying goods and services, shifting to a more flexible and principled procurement process and system. A system that supports speedier payment and the right to investigate the payment performance of suppliers and a new approach to transparency in respect of processes, performance and results.

A procurement system in which public sector buyers do not have to pick the lowest price bid when procuring and should take a broader view of value for money that incorporates social value.

A certain former Number 10 strategy director has observed, procurement, commercial and logistics issues, are much more important and strategic than trade deals and 'Global Britain'. Procurement has been very much a criminally-neglected art, whose skills and potential impact are more vital now than ever post-Brexit.

The extent to which better public service commissioning can be harnessed to attain a marked increase in public efficiency and social benefit won't attract the hullabaloo raised around other domestic policy issues. But in shaping and improving the daily life of ordinary people everywhere, it's every bit as important as issues which attract louder concern. If not more so.

Local government has a pretty big dog in this fight. Some £180.6bn was spent with third parties in the last three years and £63bn alone was spent on third parties in 2019-2020. The trick for the next decade will be to boost the value of the local pound in delivering for people and places – whether better local wages or enhanced skills acquisition for the age of net zero. That is, to maximise public and social value from a common lever that – despite all else going on – can be controlled and whose exercise improves through adaptation.

We don't know what 'best' or even 'good' will look like in ethical public service commissioning. So in this report we have sought, through open dialogue and free

exchange conducted via webinars and interviews with experts and practitioners, to get an educated understanding of the direction of where true value lies through the prism of:

- transparency and openness;
- ethos and values
- and finally local economic benefit – or levelling up as we'd best have it.

Among the questions we wanted answers to, were:

- what evidence is there that the 'good guys win' and that ethical suppliers provide both higher quality public services that in turn deliver sustainable local outcomes?
- how aligned are providers of commissioned services to public service values? And if so can we measure any tangible gains in things like performance, or unseen virtues such, as more local pride and reputational gain from a shared ethos?
- at the level of 'levelling up' our places, how possible is it for an open markets approach to sustain local economies, as well as drive up skills levels and supply chains, boosting local jobs and businesses?

I hope that our efforts here will stimulate further debate and furnish understanding for a valid model of ethical public service commissioning, one that will deliver true value for people and places everywhere.

Jonathan Werran, chief executive, Localis

Executive summary

Public procurement and outsourcing have great potential when managed well with socially conscious processes and procedures. Unfortunately, for decades, UK governments have been unable to tap systematically into this potential and have engaged in outsourcing rather haphazardly. This has amounted to a rocky and piecemeal development of public procurement. Proposed reforms and the current government's broader levelling up agenda represent an exciting opportunity to get to grips with and enable the immense potential of public procurement and deliver for neighbourhoods and communities.

The changing procurement landscape

For decades, UK public procurement was governed further by EU rules and legislation, and as such had to work within its framework. Rules laid out in EU directives dictated how and where contracts could be advertised, how suppliers were assessed, grounds for the awarding of contracts, and the approved punishment for when a rule was broken. Most significantly though, the Public Contracts Regulations 2015 required that contracts be awarded to the lowest bidder across the EU and thus left domestic contracting authorities unable to be more strategic with their contract-awarding process.

Amidst this context, the strategic purview of procurement has, for the most part, been limited – as many see it as merely a back-office processing function. Symptoms of this widespread perception are frustrating: a lack of investment in development, digital systems, skills, training, and people have compounded public procurement issues. Under the weight of austerity and EU competition law, the tendering process has inclined to default to a matter of what is most cost-effective and economically advantageous, without thought to wider social and economic impact.

The UK is now a part of the WTO's GPA – a simpler, less prescriptive plurilateral agreement on procurement. Freedom from EU directives and the single market could go one of two ways for the future of UK public procurement. On the one hand, a status quo has developed around these conditions and is predicated on access to EU tenders. Unless some sort of compensative or familiarisation process accompanies upcoming reforms, contracting authorities risk falling significantly short. On the other hand, it is a pivot point and represents a critical opportunity to reform UK public procurement to be more strategic, to leave more room for innovation, and deliver better services for communities.

From back office function to strategic tool – changing views of procurement

In recent years, views of public procurement have begun to shift towards an understanding of its power to achieve long-term strategic goals, particularly at the local level. Procurement does not just sit in isolation, it can be a tool at the disposal of a contracting authority, used towards the delivery of strategic priorities and public value. Better understanding of this notion is developing, and some local authorities have begun to demonstrate exciting best practice in this regard. There has been an increase in strategic partnership working that moves towards longer-term, advisory relationships between stakeholders and suppliers, as opposed to transactional, 'one-off' arrangements. Commissioners are no longer the only people in the room when thinking about procurement – collaborative and co-designed long-term procurement strategies are being produced at the local level. This change in approach is an exciting prospect for public procurement and its ability to deliver for modern requirements post-Brexit. This 'turn' in procurement was encapsulated in a 2020 Cabinet Office Green Paper titled 'Transforming public procurement'.

Procurement reform

The Green Paper outlines a more flexible and principled procurement process and system, now that the UK is outside the EU's legislative framework. The Green Paper also comes with a distinct message to all contracting authorities that they do not have to select the lowest price bid when procuring, instead insisting that authorities should take a broader view of value for money that incorporates 'social value'. This is presented as a means of encouraging public procurement; contract terms, strategies, ways of working, delivery plans, and evaluation processes to become built around a broader interpretation of 'value' and the purpose of achieving social value objectives.

Taking advantage of no longer having to adhere to EU procurement directives, and, as alluded to by the reforms, the government is also looking inward towards a more domestic and socially-conscious procurement policy. The Green Paper places particular emphasis on SME and VCSE suppliers, although the reality of the situation is much more complex than typical binary perceptions of 'small' and 'large' business suggest. Larger suppliers could be perceived as monolithic or homogenous but may in fact have multiple different geographic bases in the country where they act as key local anchor institutions. Nevertheless, the point is to have all local procurement stakeholders collaborating and complementing each other to work towards a more mutually beneficial procurement system that is ethical and transparent – legislatively opening up the opportunity for more organisations to become more involved in public procurement is a positive step from government to this end.

Risks have been identified with the proposed changes of the Green Paper. There is the unavoidable unfamiliarity of new processes to buyers and suppliers, and relevant familiarisation costs. There are also concerns that the increased flexibility of the proposed reforms may result in greater divergence across buyers, limiting the potential for standardised, outcomes-based approaches, and increasing the overall time and cost of procurements due to unfamiliarity with complex procedures and increased potential for poor practice. Increased legal challenges will be inevitable as the new flexible procedure is tested. There is therefore a risk that the principles of the government's 'new procurement' are established through court decisions and precedent – which themselves are subject to specific circumstance and context.

For local government, there have been several key concerns with the proposed reforms – including a lack of local nuance, resourcing, and the risk of losing step on social value progress in the context of recovery, clean growth, and levelling up. Furthermore, there is little attention paid to how local authorities, as democratically elected self-governing bodies, engage with procurement to meet community needs – the legislation instead uses the oversimplified term 'contracting authorities' to describe all public buyers irrespective of democratic status. Local authorities are unique public organisations, and for them the reforms will require some tailoring as well as a far more certain financial outlook than has been provided for local government in recent years.

Value and the case for social procurement

The reorientation of procurement from a contract-by-contract consideration centred on value for money to a strategic function has antecedents in the turn to social value of the 2010s. The consideration of social value, as well as economic value, in procurement was introduced by the Social Value Act almost a decade ago. The act enshrined into law the duty of paying regard to social value when making procurement decisions. Since then, the incorporation of a social value element into the assessment of contracts has become a universally recognised consideration, particularly in the recent context of a national need for economic recovery.

In 2020, the UK Government published its own social value model. The model, written in the context of COVID-19 recovery, puts forward eight thematic policy outcomes. These outcomes are as follows;

- helping local communities to manage and recover from the impact of COVID-19;
- creating new businesses, new jobs, and new skills;
- increasing supply chain resilience and capacity;

- effective stewardship of the environment;
- reducing the disability employment gap;
- tackling workforce inequality;
- improving health and wellbeing; and,
- improving community integration.

This new model centres the outcomes-focused approach to social value – the determination of social impact. The government’s model also aligns with the general thrust of the procurement green paper in seeing procurement and social value as pathways to achieve key policy goals like recovering from the economic impacts of the COVID-19 pandemic and tackling workforce inequality. This is in line with the growing trend in local government to use procurement in a muscular manner to achieve positive impacts in the lives of residents.

In the years since the passage and implementation of the Social Value Act, the principle of social value as a consideration within procurement, and the recognition of procurement officers as crucial to the process of realising social value, has become embedded across local government. This may not amount to a unified, sector-wide approach to evaluating social value, but nevertheless represents a step in this direction. This change has been mirrored in the private sector, with Corporate Social Responsibility an increasingly important concept throughout the 2010s. Alongside this, 'BCORP' status has become sought-after by many firms as a way of demonstrating their commitment to sustainability goals in equal measure to the more traditional focus on turnover and profit. This shift represents a broadening of the concept of 'value' – beyond strictly value-for-money calculations, and towards a wider consideration of impact and returns from commercial activity.

Social value has spread across departments, organisations, and sectors – significantly breaking down silos and encouraging collaborative working¹. Links between local authorities, small and larger suppliers, social enterprises, anchor institutions, and community groups have formed for the purpose of social value delivery – and there are examples of the sector taking it upon themselves to build their own capacity in this regard. There is also now a wealth of shared good practice and frameworks to help social value development and familiarisation within organisations. The future of a values-led, 'social' procurement looks bright. However, the success of this model hinges on an authority’s ability to embed a refreshed public sector ethos and involve communities and other relevant

¹ Crossley (2021) – Collaboration is the key to social value

stakeholders early in a collaborative process of setting local social value priorities. These priorities must then go on to inform the desired outcomes of each contract – with contract management operating to deliver on this basis.

Towards a new ethical model

Ethical public procurement is fair, corruption-free purchasing that avoids conflicts of interests, ensures external transparency and, most importantly for public authorities, delivers conspicuous and inconspicuous benefits for communities on the ground. Sadly, public procurement has been plagued by several unethical and sometimes illegal practices over recent decades, tarnishing perceptions of the public sector ethos. Excessive secrecy, suspect procedures, and inappropriate working relationships are all red flags for practices such as bribery, coercion, extortion, favouritism, illegal sourcing, and a general traffic of influence – all of which contribute to public procurement losing sight of who's being served.

Public sector transparency is essential to raising and maintaining a higher ethical standard – those involved in procurement must know what is expected of them and be able to make decisions promptly and efficiently. It is not uncommon for suppliers to feel as though there is not enough consistency or transparency in how local authorities score and evaluate bids. This is justified given that local authorities do tend to change and switch their systems, and there are often inconsistencies in approach across and within localities. This has led to misleading tenders. An independent review of how local authorities approach scoring and evaluating bids will contribute greatly to achieving consistency and transparency across the sector and could reveal important practical lessons beyond this.

It is time to be bold and pursue a new model of 'social procurement' that is built around and further entrenches existing ethical principles, as well as incorporating new commitments – such as collaboration, social value, sustainability, probity, higher labour standards, and a prioritisation of prevention over penalisation – necessary for public procurement to serve society in the long term.

Procuring local

The strategic turn in procurement outlined in the green paper, bolstered by the lessons and experiences of ten years of the social value act, has great potential to deliver real impact at the local level. However, there are many considerations around the nuances of local government procurement which must be built into reforms if they are to be embedded across the whole public sector.

Local authorities currently find themselves weathering a perfect storm of real-term cuts, rises in demand for public services, and tremendous social care costs

that now threaten to reach catastrophic levels – amid fraught post-Brexit supply chains and the ongoing volatility and impacts of COVID-19 and its aftermath. Which means councils are operating under severe capacity constraints whilst simultaneously spending a great deal of money on procurement. This is not reflected in the money spent on organisational processes or training around procurement, which leads to the disjunct between leadership ambitions and procurement processes. A shift in mindset is beginning to develop, but this is not to be confused with an effective systemic transformation – which requires guidance, planning, and resources.

Widespread effective local procurement is limited by insufficient capacity, fraught reputation status, and a fundamental lack of commercial skills across the public sector. Procurement teams often have little involvement or oversight in key strategic decisions made by local authorities, despite being relied upon to manage and deliver on said priorities when the time comes. Whilst there is widespread understanding of the important role procurement plays in delivering value for money and efficiencies², there is a tendency for local procurement to prioritise procuring goods and services over procuring for specific issues of strategic importance to a local authority. This is then reflected in the capability of procurement teams in handling different types of contracts. And whilst there is an understanding that procurement is important in delivering value for money, it has been concluded that the sector has tended to fail in providing such value.

An increased awareness is developing around the need for a better understanding and management of supply chains, whether locally, regionally, or nationally, when exploring how local procurement spend can be leveraged to boost recovery and deliver benefits to localities and their communities. It is now crucial that discussions on the strategy and practice of procurement do not take place in isolation and that there is a more wholesale recognition that the strategic power of public procurement can only be facilitated by broadening the scope beyond the activity of procurement teams alone. This involves a greater understanding at all levels of local government of the importance of pre-procurement and contract management.

Pre-procurement

Engaging with the market early, strategising and structuring contract management, and embedding KPIs and the needs of communities throughout are all critical parts of the pre-procurement stage that must be handled with care and depth. As a pre-requisite to a more mindful and strategic use of public procurement, there are two key

2 House of Commons, Communities and Local Government Committee (2014) – Local government procurement: Sixth Report of Session 2013-14

areas a contracting authority ought to be mindful of: setting social value priorities and market consultation.

Setting social value priorities ought to be collaborative and strategically-minded – so that the themes, outcomes, and measures are distinctly local. Having these be co-designed and well-defined allows them to be deferred and referred back to at every stage of a contract to ensure value is being delivered according to the 'TOMs' laid out in pre-procurement. Communities should be the go-to for ascertaining the details of what social value priorities should consist of in this regard. If community and resident voices are not included from the beginning, then it sets up too much room for error in how a local authority and relevant stakeholders define value and subsequent success. A good balance between quantification and qualitative understanding is required. Data utilisation and key performance indicators (KPIs) are of course necessary to evaluate bids and outcomes of social value offers. However, in setting the parameters for action and evaluation pre-procurement, there must be a qualitative interpretation framed in local context.

If transparency is not implanted and well-understood in the pre-procurement phase, it becomes much more difficult for accountability and transparency mechanisms to be effective from then on. It is particularly important that councils are transparent in their application of social value and indeed all other weightings at all stages of the tender. Suppliers often find that the weighting applied to social value at the top-level of the tender is stripped away by the time procurement has moved onto the more detailed, lower-level calculations of a tender – effectively social value is removed from the final consideration and value for money once again trumps all.

Market consultation involves engaging with potential bidders as early as possible. This allows for a local authority's key messages to be conveyed and for emphasis to be placed on the importance of strategic goals and social value priorities, as well as the potential for unique social value offers from suppliers to be identified and considered. Contracting authorities can now choose to reserve procurements for either local SMEs, VCSEs or large firms with strong local links, thanks to recent reforms. Through pre-procurement market consultation, a platform can be set up for local stakeholders and relevant suppliers to engage with one another, knowledge gained from which can go on to develop the procurement approach from the contracting authority. Furthermore, those suppliers with commitments of a particularly high ethical standard – e.g. those with strong net-zero strategies in place, or pay a living wage organisation-wide – can be identified and brought into the fold of a network of relationships and ethical arrangements, that all work towards circular, sustainable local growth and prosperity.

Whilst social value is an exciting movement that is demonstrative of a growing will and desire to see procurement deliver better outcomes for communities, it should be noted that social value offerings and ethical procurement are not one and the same. A supplier may score well on social value by delivering on specific asks but at the same time behave unethically in their day-to-day practices. Ensuring an evaluation of supplier ethics is a key part of a local authority's pre-procurement process and will be key to securing the delivery of social value whilst encouraging more wholesale ethical practice.

Contract management

Transparent and accountable contract management is crucial for all involved to buy into a more ethical public procurement practice which maximises the potential to deliver local transformative change. Often what is deemed unethical public procurement is the result of poor contract management – where relationships and delivery are mismanaged, and the governance of contracts are far below standard. Contracts are often complex, resource intensive and long-lasting, involving multiple actors and stakeholders. Therefore, effective, and efficient contract management is critical to achieving ethical public procurement that delivers strategic goals and social value priorities. Local authorities should be aiming for their contract management to be recognised as essential to driving ongoing improvement and improved service outcomes – with well-developed policies, systems, procedures, and staff all working holistically to drive forward planning and cost control, whilst consistently delivering on strategic goals and social value priorities.

Barriers to good local procurement

Various assessments, evaluations, and policy reviews have highlighted constraints on the efficacy of local procurement. These include:

- **Communication throughout the procurement process from all parties.** Interaction, and therefore collaboration and the like, is often hampered by a lack of communication between a contracting authority, suppliers, and service users. Rising above this and developing open channels of communications between a local authority, suppliers, and service-users will develop a local procurement system that is more reliable and strategically minded.
- **Inconsistent application of policy.** There are often gaps and inconsistencies in how the public sector uses procurement rules, regulations, and policy – this can be off-putting to potential suppliers and ultimately hinder the potential for better outcomes being achieved locally and nationwide.

- **Limited knowledge-share.** Knowledge-share can be a powerful tool and is key to unlocking the potential of public procurement more wholesale across the sector. However, as the National Audit Office has stated previously, there is a way to go before enough networking and sharing of information is occurring for the public sector and local contracting authorities to be considered a more “intelligent client”.
- **Capacity and skills gaps.** Pressed for funding, local authorities tend to have trouble in an environment of purchasing services instead of funding them. A lack of contracting skills and too great a focus on reducing costs short-term are symptoms of this.
- **Poor data utilisation and market intelligence.** There is a fundamental lack of an extensive dataset, that is coherent and comparable, relevant to the national public procurement market, and often, local procurement markets too. Plugging these gaps and improving market intelligence where possible will be critical to the responsibilities of place leadership and enhancing local economic benefits garnered from public procurement.
- **Poor risk management and risk aversion.** The public sector has had a poor track record with risk management and, more acutely, risk aversion. Safe, tried, and tested procurement options are opted for and prioritised, with practitioners being rewarded for following rules stringently, whilst more innovative solutions, that may require more distinct risk management processes, tend to be avoided

Recovery and levelling up

The procurement reforms, along with the imperative of recovery after the pandemic and boosting local economies following Brexit, are considered part of the wider levelling up agenda to reduce regional inequality and produce more and better-distributed economic growth. Understanding how the procurement reforms can best be tailored to levelling up is crucial to achieving the maximum impact of public spending on the targets of the agenda.

Identifying the left behind and stimulating recovery

If levelling up is to be about uplifting the most ‘left-behind’ places, communities, and people up to a worthy standard of economic, social, and environmental wellbeing, then the upmost priority for localities must be to identify where a lack of life’s essentials is most prominently felt – particularly post-pandemic, where many have fallen further behind. Ensuring safe and just spaces for people to inhabit, ensuring progress means progress for *everyone*, and reconfiguring the local economy to be ‘circular’ by design are key success factors for central and local

government – particularly when spending public money.

Moving towards a local economy that uplifts those most left-behind, contracting authorities have and should aim to increase the level of retention generated by their procurement spend at the local level. Key to this is mapping a local authority's spend amongst suppliers – including the geography of spend, subsequent re-spend by suppliers, the ethos of suppliers regarding their contributions to 'social foundation', and gaps in spend by ward and type of industry. Of course, it is not possible and perhaps not desirable for a local authority's spend to stay entirely within its boundaries, this could potentially reduce dynamism and shut firms out of the market by creating a public contracting closed loop. Being able to differentiate, particularly when dealing with very large suppliers, between the differing potential impact of national companies on the local economy is therefore critical. To this end, there is great value in clearly communicating with major suppliers what the goals of a council's procurement strategy are and what targets for recovery and levelling up have been identified

However, within a tendering system that is open market and favours broadened competition, maintaining procurement spend spatially and reducing 'leakage' of money outside boundaries is no simple task. On the one hand, there are several complex dynamics that influence local procurement; geographical location, online purchasing, supplier sector, and the relative feasibility of re-investment. On the other, collecting, collating, and analysing the data required for such a mapping remains far too big of a task for any single local authority. Therefore collaboration, networked partnerships, and full utilisation of the critical mass available at the sub-regional, regional, and even national level is of upmost importance. Making good use of growth bodies such as LEPs and relevant industrial strategies will help here.

Boosting local economic benefits

Partnership working is crucial to effective public procurement, due to its potential for significant cost-savings, efficiencies, increased capacity, knowledge-sharing, and contributions to innovation, productivity, and a shared sense of working towards place prosperity. Working with local authorities is not, however, an easy task for any business. There are multiple barriers to accessing opportunities to bid for local contracts, both in terms of the time taken to prepare and submit a bid and the money spent on the resources used in the process. Excessive barriers and bureaucracy must therefore be reduced wherever possible, and at times calculated risks on new local suppliers may need to be taken, in pursuit of more strategic and locally beneficial procurement.

It is also important to engage with those large-scale, major suppliers which all local authorities work with to some degree or other as part of the process. These organisations can work with local authorities in the development of works programmes which encompass a plurality of priorities and interests, like bringing in local firms as partners or working with further education colleges in the area on skills provision in the medium and long term. Long-term partnerships with large organisations can therefore generate aggregated social value benefits through multiple multi-year contracts. As recovery develops and reveals itself, the importance of boosting local employment, retaining local economic benefits, and building stronger communities will be greater than ever. Using early market engagement to identify potential large-scale partner organisations and developing contracts which maximise local economic benefits can help build robust relationships to the aggregated benefit of local economies.

Proposed reforms and levelling up

The proposed reforms to public procurement show signs of a break from the status quo that the barriers to strategic procurement described in this report have developed under. Fleshing out social value expectations, allowing for the prioritisation of local economic impact when procuring, and a fundamental shift in tone away from simply economic assessments of value, are all very welcome in this regard. However, despite being freed of various EU directives, the lack of local nuance and information on how stated objectives can be achieved in practice still leaves the deck heavily stacked in favour of incumbent providers.

Beyond enabling action through legislation, central government must also adjust its approach to the capacity funding of local government, which must be adjusted in terms of both scale and timeframe if local procurement is to work towards the goal of levelling up. Resourcing aside, the lack of long-term certainty in finance is also an obstacle to the kind of cultural change required. The aim of using procurement to drive the levelling up agenda is about moving from a fragmented to an holistic approach, which will take time and planning, requiring certainty.

The challenge of a cultural shift in procurement must be met both in individual local authorities and across the network of local government, in a way that is guided by central government priorities and resources as part of the wider push to level up. Individual authorities must be able to determine what the role of procurement should be in their broader economic development strategy, in a way which aligns with the goals of the levelling up agenda. Alongside these individual efforts, councils must share best practice and experience, making use of the local government network embodied by institutions such as the LGA and CIPFA, so that organisations working with councils across the country can observe a consistency

in principles even if the approaches differ depending on locality. This cannot be an entirely optional endeavour if levelling up is to work across the country. Guidelines must be set by central government for both training and networking to ensure a minimum standard.

Recommendations

A local English charter for ethical procurement

A written procurement ethics policy is the key place to start for raising and maintaining a higher ethical standard – those involved in procurement must know what is expected of them and be able to make decisions promptly and efficiently. A clear and concise written policy, with general principles, specific rules, and adequate guidance on how they should be applied, would help with this. Below is a charter for councils to follow when drawing up procurement policies, and to guide relationships between local authorities and suppliers.

1. **Good Jobs**

- Suppliers should all pay the Living Wage, as determined regularly by the Living Wage Foundation.
- Councils should commit to a diverse workforce and expect the same of suppliers.
- In cases of large suppliers, workers should be represented on the board where possible.
- Career progression opportunities should be available to the employees of council suppliers.

2. **Transparency**

- Councils must take a proactive, not reactive, approach to transparency.
- Contract registers should be made publicly available in *the simplest form possible*, with dashboard overview of council spend and impact available to residents.
- Key performance indicators for public value should be agreed by the council.
- Weighting for social value in tendering should be applied equally and consistently throughout the process.

3. **Good business**

- At the front end of the contracting process, councils should engage and consult with the market to ensure opportunities are well communicated and tailored to local specifications.
- At the point of application, councils should ensure that the application and tendering process is as simple as possible and consistent across council contracts.
- At the back end of the contracting process, it is vital that councils commit to prompt and timely payment of suppliers, with suppliers carrying this commitment onto their own supply chain.
- Councils should sign up to the ISO 44001, which details requirements for the effective identification, development, and management of collaborative relationships within or between organisations

4. Understanding local impact

- When dealing with large suppliers, councils should understand the impact the supplier could have locally, on the labour market and in the community.
- Councils must seek to maximise the 'multiplier effect' of spreading SME spending across as many local firms as possible.

5. Carbon commitments

- Councils should ensure that all smaller suppliers, within reason, undertake carbon accounting and are aware of their carbon footprint.
- In the case of major suppliers, councils should wherever possible ensure that large suppliers are on a path to net-zero emissions before 2030.
- This information should be aggregated and made available so residents can be aware of the carbon impact of their council's procurement.

6. Good training

- Councils must be aware of and communicate to suppliers the desired outcomes of procurement policy on the local labour market, using a robust evidence base.
- Councils must act as a coordinator between suppliers and local educational institutions to ensure commitments around training and skills provision are upheld in the most constructive and effective way possible.

7. High standards

- Upon signing up to this charter, councils should, wherever possible, ensure that the standards of doing business with the council are passed down the supply chain of large suppliers.

Unlocking strategic procurement: central government procurement reforms

The Procurement Green Paper and subsequent policy notes provide the beginnings of a positive step-change in procurement across the public sector. Building on this reorientation of the discipline, the following recommendations for procurement reform are designed to unlock strategic procurement at the local level and promote levelling up through procurement across the public sector.

- **Long term, stable funding for local government to build strategic procurement capacity.** Local procurement can be used as a strategic instrument of levelling up, providing resources are provided to fund a long-term reorientation and widespread organisational change.
- **A move away from ring-fenced and competition-based funding.** The ability of the local government to use procurement towards strategic goals is greatly diminished when much of what they procure is paid for through ring-fenced, one-off capital injections, often at the back end of a costly competition process.
- **Training pathways and standards for procurement officers and senior councillors.** Changing the emphasis and principles of public procurement must be accompanied by appropriate training for procurement officers. The government should ensure that all council procurement teams are brought up to speed, using institutions like CIPFA or the LGA to provide training and set standards.
- **A regional competition policy to replace EU competition law.** With the UK no longer subject to EU competition law, there is an opportunity for central government to rework the rules for local procurement in line with the aims to be outlined in the Levelling Up White Paper.
- **A shift in the onus of local procurement officers from value-for-money to local impact.** An explicit and statutory duty should be placed upon local procurement departments to consider the local impacts – economic and social – of procurement first, and value-for-money second.

- **Clear and consistent metrics of local impact, aligned with the Levelling Up White Paper.** The Levelling Up White Paper should definitively state the criteria for measuring a place's success in levelling up. These should be aligned with guidelines for measuring impact in the procurement reforms.
- **A responsibility for central government departments to prove impact of their procurement spend in priority areas.** As major contracting authorities, central government departments should have to demonstrate how their spend has been targeted to help achieve levelling up goals as outlined in the White Paper.
- **An independent review of how local authorities approach scoring and evaluate bids.** This will contribute greatly to achieving consistency and transparency across the sector and could reveal important practical lessons.

CHAPTER ONE

The changing procurement landscape

Public procurement and outsourcing have great potential when managed well with socially conscious processes and procedures. Unfortunately, for decades, UK governments have been unable to tap systematically into this potential and have engaged in outsourcing rather haphazardly.

This has amounted to a rocky and piecemeal development of public procurement. Various agendas, directives, policies, and shifts in narrative have led to a lack of a common approach, which has caused the practice to become overly bureaucratic and opaque. Yet money spent through procurement has increased year on year – and with this growth in procurement spend, certain relevant problems have continued to grow and remained relatively unchecked.

Outsourcing and procurement can enable organisations to bring capital costs under control, increase service efficiency, and can also instigate an ‘economic surplus effect’ due to rates of production being typically higher than under public management³. Proposed reforms and the broader levelling up agenda represents an exciting opportunity to get to grips with and enable the immense potential of public procurement and deliver for neighbourhoods and communities.

3 Auriol & Picard (2009) – Government outsourcing: Public contracting with private monopoly

1.1 Public procurement as it stood

1980s ←

Introduction of compulsory competitive tendering.

Procurement of private contracts notably expanded.

Significant outsourcing of service delivery by government departments and local authorities.

2000s ←

PFI expanded by New Labour through various infrastructure projects and public-private partnership (PPP) schemes were introduced.

After the 2008 financial crash, the government adopted ten 'procurement for growth' principles geared towards analysing markets, taking account of supply chain opportunities, and the involvement of more SMEs.

2020s ←

The COVID-19 pandemic saw government outsourcing and procurement increase in response to the unique demands of the crisis. Central government has been particularly active and is often criticised.

Local authorities also used procurement to considerable effect – applying supplier relief to businesses, sourcing PPE, and providing support to those dealing with emerging issues.

However, the response to the pandemic through procurement highlighted the lack of effective coordination, strong accountability structures, and transparency that has resulted in a grave amount of wasted public money.

→ 1990s

Successive governments, both Conservative and Labour, introduced various legislation to encourage more public-private partnerships and the use of external suppliers in public services – to achieve cost-savings and improvements.

Most significant of this legislation was the private finance initiative (PFI) – whereby private entities design, develop, finance, and operate public projects.

→ 2010s

The Coalition government backed and promoted the development and implementation of EU procurement reforms on the basis that public procurement had become overly complex and was not providing value for money.

There were also several domestic reforms to public procurement. Most notably, the Social Value Act 2012 and the Small Business, Enterprise and Employment Act 2015 – the latter of which allowing the Cabinet Office the power to regulate the procurement activity of other public bodies.

Amidst Brexit, there was the 2018 collapse of Carillion – a stark reminder of the risks and weaknesses of the UK's growing over reliance on 'strategic providers' played out in real time.



Many of these key events have raised questions over the efficacy of central government supervision, protection of public services, the level of risk that should be involved in public procurement, and the overall ethos of the public sector when engaging with procurement. Although public procurement has increased and legislation has been tinkered with, data and transparency in terms of expenditure, contracting, performance, and impact has continued to be severely lacking. There have been no consistent metrics, and even basic information about tenders and spend is opaque to the public. This represents a significant missed opportunity with both central and local government missing out on the potential of public procurement and outsourcing to deliver strategic goals efficiently and effectively.

1.2 Brexit implications

For decades, UK public procurement was governed by EU rules and legislation, and as such had to work within its framework. This framework is designed to stop member states from favouring their own companies and ensure a 'level playing field' across the EU. On the one hand, this gave UK companies access to bidding rounds for lucrative European contracts. On the other, these rules have been seen as overly bureaucratic, controversial, and restrictive. The Treaty on the Functioning of the European Union (TFEU) applied to all public contracts and included principles of free movement, freedom of establishment, mutual recognition, non-discrimination, proportionality, the right to provide services, and transparency.

However, there were certain EU directives, codified through various UK legislation, that had more overbearing implications for public procurement. Rules laid out in these directives were instructive in how and where contracts could be advertised, how suppliers were assessed, grounds for awarding of contracts and the approved punishments for rule-breaking. Most significantly, the Public Contracts Regulations 2015 required that contracts be awarded to the lowest bidder across the EU and thus left domestic contracting authorities unable to be more strategic with their contract-awarding process.

Whilst procurement was not mentioned in the government's mandate for a future relationship with the EU, some changes were introduced by the EU Exit Regulations, preceding the eventual publication of the Green Paper. The main difference was that contracting authorities were required to publish notices on the new 'Find a Tender' service instead of the previous OJEU. The EU-UK Trade and Co-operation Agreement (TCA) saw both the EU and UK commit to increased access to each other's procurement markets with minor exceptions. Other commitments included ensuring procurement is conducted electronically where practical, ensuring that environmental, labour, and social aspects are considered, ensuring suppliers demonstrate prior experience, and ensuring that a domestic

review procedure is put in place to deal with disputes. However, these rules are only set to apply to public procurements that are *between* the UK and EU.

The UK is now a part of the WTO's GPA – a simpler, less prescriptive plurilateral agreement on procurement. This allows greater flexibility in how public bodies wish to procure as well as allowing UK suppliers access to global opportunities. This means that public procurement policy going forward must be compliant with the legal commitments of the GPA, as well as a set of other WTO directives, such as the GATT and GATS. Requirements to this end are less strict than previous EU directives but are nonetheless important to be aware of. Contracts are required to be advertised, observe minimum timescales, and follow award criteria and specification rules. Furthermore, not discriminating on a national basis is still a necessity, and there are consequences in place for breaching these rules. However, unlike previous EU directives, these rules only apply above GPA value thresholds rather than across the board. Furthermore, the GPA is dependent upon bilateral negotiations between parties, and parties are not required to commit to grant access to all trading partners – allowing much more scope for flexibility.

Freedom from EU directives and the single market could go in one of two directions for the future of UK public procurement. On the one hand, a status quo has developed around these conditions and is predicated on access to EU tenders. Unless some sort of compensative or familiarisation process accompanies upcoming reforms, contracting authorities risk falling significantly short. On the other hand, it is a pivot point and represents a critical opportunity to reform UK public procurement to be more strategic, leave more room for innovation, and deliver better services for communities.

1.3 From back-office function to strategic tool – changing views of procurement

Amidst this context, the strategic purview of procurement has, for the most part, been short – as many see it as merely a back-office processing function. Symptoms of this widespread perception are frustrating: a lack of investment in development, digital systems, skills, training, and people have compounded public procurement issues. Furthermore, our supply networks have become increasingly complex, volatile, and inter-connected whilst procurement capability and capacity within contracting authorities has continued to be outdated and in short supply. Under the weight of austerity and EU competition law, the tendering process has inclined to default to a matter of what is most cost-effective and economically advantageous.

However, views of public procurement have begun to shift towards an understanding of its power to achieve long-term strategic goals. A notable catalyst for this broader, more strategic view of procurement is the result of a

series of national procurement reviews and, more recently, new legislation. As early as 2001, an independent review of English local government procurement highlighted that the general approach missed strategic nuances, with a lack of involvement of procurement professionals in key council departments⁴. Recommendations suggested aligning procurement with best practice, building procurement capability and capacity, better risk management, and improving legislation to be more conducive to using procurement as a strategic tool.

Amidst further reviews, taskforces, and changes in government, there have been several attempts at reforming public procurement to tap into its strategic potential and better deliver for communities:

- **Public Services (Social Value) Act 2012:** First presented by Chris White MP before passing into law in 2012, the act broadened the criteria for procurement and the awarding of contracts to one that incorporated 'social value' – the economic, environmental, and social well-being of a relevant area.
- **European Commission Directives 2014:** In 2014, the European Commission encouraged contracting authorities to move away from price being the most important criterion, and instead use a 'best price-quality' ratio – incorporating environmental, qualitative, and social considerations into its measurement of value.
- **Small Business, Enterprise and Employment Act 2015:** The act had provisions concerning public procurement that sought to remove barriers for SMEs to win contracts and streamline procurement practices across contracting authorities.

Alongside positive legislative changes to this effect, leadership and members are increasingly seeing procurement as one part of a jigsaw, rather than the underappreciated, back-office function it is typically regarded as. Procurement does not just sit in isolation, it can be a tool at the disposal of a contracting authority to be leveraged towards the delivery of strategic priorities and public value. Better understanding of this notion is developing, and some authorities are showing exciting best practice in this regard. There has been an increase in strategic partnership working that moves towards longer-term, advisory relationships between stakeholders and suppliers, as opposed to transactional, 'one-off' arrangements.

4 DTLR (2001) – Delivering Better Services for Citizens: A review of local government procurement in England

Increasingly, authorities are producing long-term strategies, with procurement often featuring as a means through which to achieve such strategies. Public procurement is starting to be seen as a way to support communities, improve environments, and a key lever in achieving better services and stronger supply chains. Commissioners are no longer the only people in the room when thinking about procurement – collaborative and co-designed strategies show exciting prospects for public procurement delivering for modern requirements post-Brexit.

1.4 Procurement reform

1.4.1 Backgrounds & key points

Government has begun to put forward a more principled approach to public procurement, with key obligations around advertisement, transparency, procedures, and principles. On the 15th December 2020, the Cabinet Office published the 'Transforming public procurement' Green Paper, intended to outline a more flexible and principled procurement process and system, now that the UK is outside the EU's legislative framework.

Intended to combine and replace the current dynamic purchasing system (DPS) and qualification system (QS), the government has proposed legislating for a new commercial tool (DPS+) that can be used for all types of procurement – rather than just regularly used goods and services. This new tool will allow for suppliers to also engage in its new "...competitive, flexible procedure". Furthermore, the government wishes to reform court procedures relevant to procurement – to streamline processes, increase accessibility, and reduce the attractiveness of speculative claims. They are open for this to eventually lead to a tribunal system. This is part of a broader indication that the government is intending to crack down on late payments and legislate to give contracting authorities the right to investigate the payment performance of suppliers. Lastly in this regard, the Green Paper contains plans for contracting authorities to report centrally on procurement processes, performance, and results. This signals a new approach to transparency, ensuring that there is at least some context being provided for tenders as they occur.

The Green Paper also comes with a distinct message to all contracting authorities that they do not have to select the lowest price bid when procuring, instead insisting that authorities should take a broader view of value for money that incorporates 'social value'. This is presented as a means of encouraging public procurement; contract terms, strategies, ways of working, delivery plans, and evaluation processes, to become built around a broader interpretation of value and the purpose of achieving social value objectives.

Taking advantage of no longer having to adhere to EU procurement directives and as alluded to by the reforms, the government is also looking inward towards a more domestic and socially conscious procurement policy. That contracting authorities are no longer obliged to select the lowest bid and are now free to prioritise as they see fit is a key part of the Green Paper that represents a fundamental change in how public procurement ought to be leveraged, with the Green Paper placing particular emphasis on the use of SME suppliers.

SMEs and VCSEs can in places offer agility, creativity, speed, and local insight into the effective delivery of contracts that may otherwise go amiss. This is not to imply that SMEs are virtuous by default, or to say that larger organisations are not themselves embedded in the localities they work within – the reality of the situation is much more complex than typical binary perceptions of the two suggest. Larger suppliers could be perceived as monolithic or homogenous but may in fact have multiple different geographic bases in the country where they act as key local anchor institutions – where their insight and impact go far beyond just economic. These shifts in tone and substance from government are an exciting opportunity for anchor institutions and larger organisations to work in partnership with local authorities, SMEs, and the third sector to foster a more holistic public procurement system that speaks to local needs.

The point is to have all local procurement stakeholders collaborating and complementing each other to work towards a more mutually beneficial procurement system that is ethical and transparent – legislatively opening up the opportunity for more organisations to become more involved in public procurement is a positive step from government to this end.

1.4.2 Identified risks & local concerns

Risks have been identified with the proposed changes of the Green Paper. There is the unavoidable unfamiliarity of new processes to buyers and suppliers, and relevant familiarisation costs. Consequently, contracting authorities may avoid engaging in the new processes altogether, instead choosing to revert to traditional, more familiar ways of procuring. This is especially prudent given that defaulting back to a comfortable status quo *vis-à-vis* procurement will leave contracting authorities lost in a market no longer dictated by the same set of frameworks and rules.

The increased flexibility of the proposed reforms may also result in greater divergence across buyers, limiting the potential for standardised, outcomes-based approaches, and increasing the overall time and cost of procurements due to unfamiliarity with complex procedures and increased potential for poor practice.

Similarly, greater use of negotiations between buyers and suppliers throughout a procurement process, even after an initial tender has been agreed upon, could prolong timescales and dilute deliverables. Taken as is, the reforms leave greater scope for inconsistency across contracting authorities – and if there is no consistency in how buyers and suppliers are operating, the reforms risk falling flat or becoming counterproductive.

Increased legal challenges will be inevitable as the new, flexible procedure is tested. There is a risk that the principles of the government's reforms are established through court decisions and precedent – which themselves are subject to specific circumstance and context. Alongside plans to reform relevant court processes in and of themselves, this will be a long, jarring process that will lead to unnecessary interpretative difficulties in absence of detailed rules and regulations set out in legislation.

For local government, there have been several key concerns with the proposed reforms – including a lack of local nuance, resourcing, and the risk of losing step on social value progress in the context of recovery, clean growth, and levelling up. The Green Paper discusses several methods of building capacity and familiarisation with the new legislation without elaborating on how this would be put into practice across the public sector. The primary focus on changing legal processes, rather than how stated principles and objectives can be achieved in practice or any plan on how public procurement will be invested in by government, leaves the reforms like candy floss without a stick.

Furthermore, there is little attention paid to how local authorities, as democratically elected self-governing bodies, engage with procurement to meet community needs – the legislation instead uses the oversimplified term 'contracting authorities' to describe all public buyers irrespective of democratic status. There is also further concern that removing the 'Light Touch Regime' (LTR) by required central reporting of procurement will only serve to burden councils and their suppliers further. For smaller scale local authorities, this will mean costly investment in data capture software, as well as other resources necessary to meet new publication requirements and standards. Similarly, the reforms will also require a far more certain financial outlook than has been provided in recent years – meeting expectations of publishing planned commercial activity and procurements will be challenging on the current trend of year-by-year financial settlements that are often unhelpfully competitive.

Many in local government have rejected the idea of a 'procurement inspectorate'. If local authorities are to be respected as democratically elected bodies, they must be free to prioritise their own local needs, strategise, and deliver

accordingly without fear of intervention until necessary. Overall, the reforms lack a comprehensive framework for investment in public procurement, and the delivery of its intended outcomes. The government sets out a minimal framework for a transformation of public procurement but does not distinguish between the different ways this transformation could and should be carried out and under what mechanism in different types of public sector organisation.

1.4.3 Procurement policy notes

Prior to and since publication of the Green Paper, the government has elaborated its procurement agenda and bolstered the legislation further with a series of 'procurement policy notes' (PPNs). These have begun to fill some of the gaps left by the Green Paper in the procurement reform agenda and do provide some answers for parts of the public sector. Some of these PPNs are specifically relevant to COVID-19 and will therefore be outlined later by this report in due course. The following, however, are those that are intended to be more overarching. Currently, these PPNs are not legally binding, there is no reporting on compliance and no sanctions for non-compliance, so they ought to be seen as a set of potential levers for change for relevant contracting authorities, rather than an inevitability of procurement practice going forward. Therefore, understanding and utilising these PPNs will be critical in taking full advantage of procurement reforms to come.

1

First are the PPNs that are relevant to central or 'major' government contracts – these are helpful in ascertaining the precedent the government is looking to set and building on this as an indication for practice going forward.

- PPN 06/20 insists that the 'Social Value Model'⁵ is applied in all central government procurements (a minimum of 10 percent weighting) where relevant and proportionate to the subject matter of the contract.
- PPN 06/21 expects in-scope organisations to include a requirement for suppliers to provide a 'Carbon Reduction Plan' that affirms their commitment to net zero by 2050 when bidding for a major government contract. This PPN applies to all procurements with an expected value above £5m per annum
- Replacing PPN 07/20, PPN 08/21 is an update on how a supplier's approach to payment can and should be considered in

the procurement of major government contracts – providing selection guidance and thresholds in this regard. This PPN applies to all procurements with an expected value above £5m per annum.

2

Second are the PPNs that appear to have relevance to the procurement activity of all contracting authorities.

- **PPN 08/20** informs contracting authorities of ‘Find a Tender’, the UK’s new e-notification service replacing the previous OJEU/TED. All contracting authorities will be required to publish public procurement notices for new procurements taking place after the end of the Brexit transition period.
- **PPN 09/20** regards proper application of the ‘Construction Playbook’; a document that sets out 14 key policies for how contracting authorities should assess, procure, and deliver public works projects.
- **PPN 10/20** is a predominantly informational notice, informing contracting authorities on how public procurement regulations will be affected after the Brexit transition period. Key changes include severance from EU legislation, the introduction of a new ‘Statutory Instrument’⁶ by the Cabinet Office, and the requirement to publish new procurements via the UK’s new Find a Tender service.
- **PPN 11/20** lays out the reserving of below threshold contracts. Predicated by additional freedoms on contract spend with a value below applicable thresholds, reservations can now be made based on supplier location and/or how appropriate the procurement may be for relevant SMEs and VSCEs. When deciding which supplier receives a reserved procurement, central government is to consider value for money long-term, as opposed to typical short-term, ease of access-based decision-making.
- **PPN 01/21** serves as a reminder to all contracting authorities that there are procurement options available to them in an emergency in accordance with pre-existing Public Contracts Regulations⁷ legislation.
- **PPN 02/21** informs contracting authorities of upcoming and ongoing procurement requirements regarding the WTO Government Procurement Agreement, that UK must now comply with now that we have left the EU, as well as the new UK-EU Trade and Cooperation

6 UK Statutory Instruments (2020) – The Public Procurement (Amendment etc.) (EU Exit) Regulations

7 UK Statutory Instruments (2015) – The Public Contracts Regulations

Agreement. Information of such requirements are provided in detail by the notice⁸.

- **PPN 03/21** is informative on the third annual refresh of the Outsourcing Playbook. This time round, the Consultancy Playbook was published alongside the Sourcing Playbook⁹ (the most recent rebrand of the Outsourcing Playbook), and both provide key information on procuring consultancy services and beyond. Both contain principles, rules, and guidelines that this notice implores contracting authorities to act on.
- **PPN 04/21** is threefold. First, it serves to remind contracting authorities of procurement rules for the exclusion of suppliers that have previously committed serious offences as well as in other notable circumstances. Secondly, it replaces the guidance set out in PPN 01/19 to account for changes to exclusion provisions and relevant procurement regulations post-Brexit. Lastly, it provides guidance on how contracting authorities can develop and enhance local procurement strategies, systems, processes, and procedures to remedy conflicts of interest.

The National Procurement Policy Statement & PPN 05/21

PPN 05/21 lays out relevant guidance and information for contracting authorities on the National Procurement Policy Statement (NPPS) that requires public procurement to consider national strategic priorities. The NPPS contains a lot of important information on what these strategic priorities are, as well as how public procurement can be used strategically to support the delivery of national and local outcomes for the public good.

The strategic priorities laid out by the NPPS are to follow. Further detail is provided in the document and is worth further inspection to gain a sense of how the government envisions the role of public procurement going forward, as well as how the practice can be used more strategically to achieve key outcomes – whatever they may consist of.

- **Social value:** when undertaking public procurement, contracting authorities ought to have regard to how the tender will ‘create new businesses, new jobs and new skills’, ‘tackle climate change and reduce waste’, and ‘improve supplier diversity, innovation and resilience’.

⁸ Cabinet Office (2021) – Procurement Policy Note – Requirements for contracts covered by the WTO Government Procurement Agreement and the UK-EU Trade and Co-operation Agreement

⁹ Cabinet Office (2021) – The Sourcing Playbook

- **Commercial and procurement delivery:** contracting authorities should consider whether the right policies and processes are in place to best manage key stages of procurement delivery and make changes accordingly. Key policy and practice listed by the NPPS in this regard include the publication of pipelines, capability assessments, delivery model assessments, KPIs, risk allocation, pricing and payment mechanisms, and so on.
- **Skills and capability for procurement:** regarding the procurement skills and resources required to deliver a renewed sense of value for money, contracting authorities should take note of their own organisational capability and capacity, and act to make changes accordingly. Considerations outlined include whether commercial objectives are aligned, whether governance is integrated and proportionate, whether market conditions are understood properly, whether contract management capability is sufficient, and so on.

Despite this national statement, as such there is still no national strategy for public procurement that looks to optimise the entirety of public expenditure for the public good, supporting local communities, or net zero obligations. The national statement does outline some priorities – and this is welcome – but lacks a detailed plan for delivery, a problem compounded by the limited capability of the sector to support the delivery of those priorities which have been identified.

1.5 The impact of the pandemic

As an ongoing exceptional and urgent situation, COVID-19 has inevitably affected the nature and practice of public procurement over the past 2 years. Procurement needed to quickly react and respond to the emergency as it unfolded in complex and varying ways. The novelty, scale and unpredictability of COVID-19 meant that contracting authorities had no choice but to bypass PCR advertising and competitive tendering obligations and make full use of emergency procedures laid out in the Public Contracts Regulations 2015 when procuring necessary goods and services. Public procurement saw an increase in the number of extension and modification notices, as well as a greater number of ongoing procurements being placed on hold¹⁰. Other procurements, particularly those crucial to key services and infrastructure, continued at an accelerated pace. Over 8,600 COVID-related government contracts had been awarded by the 31st of July 2020 – with a total value of £18bn¹¹.

10 Bird & Bird (2021) – COVID-19 – impact on public procurement around the world

11 National Audit Office (2020) – Investigation into government procurement during the COVID-19 pandemic

Legislatively, the government issued several relevant PPNs of specific relevance to public procurement during the pandemic.

- **PPN 01/20** covered what emergency procedures were permissible under current public procurement regulations. It also explains that contracting authorities can enter contracts without publishing procurement notices, so long as they can demonstrate genuine reasons for 'extreme urgency', that the need for extreme urgency was unforeseeable, that it would be impossible to comply with usual PCR timescales, and that the situation was not attributable to the contracting authority.
- **PPN 02/20** provided recommendations and guidance on paying suppliers to ensure key services continue throughout the outbreak of COVID-19 and beyond. This included the immediate payment of invoices, identifying "at risk" businesses, and the continued payment to businesses even if contract delivery has been suspended.
- **PPN 03/20** sets out information and guidance to central public bodies on the use of 'procurement cards' – aimed to help accelerate payments to suppliers.
- **PPN 04/20** lays out guidance and information on the payment of suppliers to ensure services continue to run during COVID-19 and moving into recovery. It insists that contracting authorities review their contract portfolios, work in partnership with suppliers, develop transition plans, and continue to pay suppliers as promptly as possible.

Despite positive moves legislatively, the government's ad-hoc outsourcing of its pandemic response has become a serious point of contention and is widely criticised. £54.2bn of contracts in relation to the pandemic have been awarded by the government, with over £21.6bn of this going to 50 companies, and a further £8.8bn of this awarded to just 5 companies alone¹². In November 2020, the National Audit Office published their findings of an investigation into public procurement during COVID-19¹³. The report found that procurement documentation was widely inadequate and that there was a fundamental lack of transparency around key decisions made regarding COVID-19 related procurements. Information on why certain suppliers were chosen for tenders and how conflicts of interests were managed is either too difficult to ascertain or absent all together.

12 The BMJ (2020) – Covid-19: Government has spent billions of contracts with little transparency, watchdog says

13 National Audit Office (2020) – Investigation into government procurement during the COVID-19 pandemic

However, it has been observed that, for the most part, local authorities have shown great adaptability and resilience in their procurements during the pandemic. The sector also played a critical role in crisis mobilisation and it has been recommended that, if a future pandemic were to take hold, better utilisation of local authorities and community groups should be a key priority¹⁴. Local authority procurement teams have been crucial to the provision of PPE and ensuring supplier relief to local businesses during subsequent lockdowns, as well as dealing with a range of emerging issues and urgent needs.

PPN 02/20 confusion

During the pandemic, there was considerable confusion surrounding PPN 02/20 regarding the payment of suppliers to ensure key services can continue. The PPN provided recommendations and guidance to all contracting authorities to continue paying “at-risk” suppliers for the work and contract delivery they are unable to carry out during the pandemic. Whilst housing associations do procure services, particularly from contractors, and were therefore expected to be forthcoming, the Crown Commercial Service indicated that the PPN was merely guidance and that contracting authorities could opt out – due to there being nothing mandatory, and no sanctions for non-compliance. This led to confusion amongst some, ultimately resulting in key suppliers unable to secure crucially needed relief from housing association clients – mostly citing weakened income streams themselves.

What this demonstrated was the weakness of light-touch guidance played out in practice and how expectations of what the PPNs set out to achieve failed to materialise on the ground. This example of uncertainty also demonstrates the need for all upcoming procurement reforms to be accompanied with plain English guidance and further familiarisation processes.

The pandemic has generated important lessons on governance, sustainability, and the need for accountability and integrity, whilst demanding contracting authorities be more strategic with their procurements. The extent to which these lessons have been learned by contracting authorities and the general effects of the

pandemic on the public procurement system across England is yet to be officially evaluated. An upcoming project led by Dr Richard Simmons involving academics from Oxford, Northumbria and Cardiff seeks to provide this evaluation in depth, examining what worked well over the course of the pandemic, what didn't, why, and with what effects and implications¹⁵. Nonetheless, it has been observed that, for the most part, local authorities have shown great adaptability and resilience in their procurements during COVID-19.

15 Simmons (2021) – Procurement in the time of pandemic

CHAPTER TWO

The case for social procurement

The reorientation of procurement from a contract-by-contract consideration centred on value for money to a strategic function has antecedents in the turn to social value of the 2010s.

The consideration of social value, as well as economic value, in procurement was introduced by the Social Value Act almost a decade ago. Understanding how the act has worked in practice at the local level, where the strengths and weaknesses of the current system lie, is crucial in understanding how legislative reforms can best enable further strategic action at the local level.

2.1 Social value

2.1.1 History of the social value act

The Public Services (Social Value) Act 2012 enshrined into law the duty of paying regard to social value when making procurement decisions. Since then, the incorporation of a social value element into the assessment of contracts has become a universally recognised consideration, particularly in the recent context of a national need for economic recovery. There is no one universal approach to applying social value. What counts as being of social value in a public contract depends on multiple contextual factors; the type of service, where the service is being commissioned, the size of the contract to name a few.

Beyond this, the actual quantification of the social value element in a public contract can be worked out using a variety of models, the selection of which will depend upon how the contracting authority approaches social value. Social value is typically provided through either one or some combination of three approaches: social value as an additionality, 'embedded' social value and 'inherent' social value¹⁶. Approaching social value as an additionality produces contractual requirements for suppliers to provide an extra service or contribution beyond the scope of works. This could take the form of volunteering or charitable donations to help with a local community initiative. Embedded social value is an approach that aims to create value for the public through elements built into the contract itself – for example, apprenticeships or other training for residents provided over the course of carrying out a contracted service. Inherent social value is where the service contracted is itself a creator of social value – for example, local authorities commissioning services for public education.

The upshot of all these approaches is *social impact*¹⁷. This, in the context of local government commissioning, is the benefit achieved in the lives of residents through the council seeking social value in its procurement – be that higher qualification levels, better wages or a more pleasant public environment. Multiple methodologies are available for quantifying the social value aspect of a contract, and further for measuring the social impact of the procurement decision. While there are often calls for standardisation of methodologies to calculate social value, the real focus must always be on the delivery of tangible and demonstrable social impact. For the general public, the outcomes are of far greater relevance than the process.

¹⁶ Thomas (2019) – How do we know where the social value is in our activities?

¹⁷ Grieshaber (2020) – Cutting through the jargon: what's the difference between CSR, social impact, and social value?

Social impact asks businesses to consider the effect of their actions on social challenges as well as the nature of the change their actions could potentially cause. When considering such social challenges, these may differ from place to place – and a level of consensus should be sought out by a business undergoing such assessments. Regarding change, a business should seek to make this as positive and significant as appropriate – go the extra mile to ensure their actions and their outcomes are improving the wellbeing and material conditions of relevant stakeholders.

It is critical that social impact is tied to practical themes, outcomes, and measures – much like social value – so that the term does not become another vague concept that gets lost in the corporate lexicon. Furthermore, there should be an effort on both sides – both public and private – to ensure that social value and social impact are working symbiotically to deliver conspicuous and inconspicuous benefits to communities through procurement.

In 2020, the UK Government published its own social value model. The model, written in the context of COVID-19 recovery, puts forward eight thematic policy outcomes. These outcomes are as follows;

- helping local communities to manage and recover from the impact of COVID-19;
- creating new businesses, new jobs, and new skills;
- increasing supply chain resilience and capacity;
- effective stewardship of the environment;
- reducing the disability employment gap;
- tackling workforce inequality;
- improving health and wellbeing; and,
- improving community integration.

This new model centres on the outcomes-focused approach to social value – the determination of social impact. Furthermore, it puts forward a broad approach to social impact. In achieving the policy outcomes outlined, procurement officers might use multiple possible combinations of embedded, additional, and inherent social value. The government's model also aligns with the general thrust of the procurement green paper in seeing procurement and social value as pathways to achieve key policy goals like recovering from the economic impacts of the COVID-19 pandemic and tackling workforce inequality. This is in line with the growing trend in local government to use procurement in a muscular manner to achieve positive impacts in the lives of residents.

2.1.2 The impact of ten years of social value

In the years since the passage and implementation of the Social Value Act, the principle of social value as a consideration within procurement, and the recognition of procurement officers as crucial to the process of realising social value, has become embedded across local government. This may not amount to a unified, sector-wide approach to evaluating social value, but nevertheless represents a step in this direction. In the last couple of years, as addressing regional inequality and stimulating international competitiveness have become central to the British political discourse, the importance of value-add at the contracting stage has come to the fore.

Government has now set the minimum weighting for social value in the consideration of awarding contracts at ten percent, but after ten years of experience, many local authorities are now choosing to go above this threshold, sometimes taking the weight of social value up to 20 percent. The procurement reforms mooted in the green paper are indicative of an increasingly bold approach to what procurement can achieve through social value, into the medium and long term as well as in immediate benefits.

This change has been mirrored in the private sector, with Corporate Social Responsibility an increasingly important concept throughout the 2010s. Alongside this, 'B Corporation' (or BCORP) status has become sought-after by many firms as a way of demonstrating their commitment to sustainability goals in equal measure to the more traditional focus on turnover and profit. These changes in the private sector culture dovetail with the shifting approach in the public sector and represent a broadening of the concept of 'value' – beyond strictly value-for-money calculations, and towards a wider consideration of impact and returns from commercial activity.

With the new green paper, government has doubled down on the need to use procurement to boost public goods. A particularly timely change is the requirement for central government departments to consider the net zero carbon reduction plans of suppliers in the procurement of major contracts. As with the original considerations put forward in the Social Value Act, this has great potential to generate additional public value if applied well at the local level.

2.1.3 Brighten All Corners

Although the broad principles of the act have become embedded in the public sector and social value as a contractual requirement is now very much embedded in local government procurement culture, there remain problems with the concept as it is currently realised. Differences in approach from authority to

authority can be difficult for suppliers and limiting for the councils themselves, achieving organisation-wide consistency on social value procurement has proved challenging, as has accountability and avoiding vagueness in the identification of desired social impact.

In 2020, Localis published 'Brighten All Corners' – an in-depth examination of social value as it stood with recommendations for how improved use might play a more meaningful role in raising local prosperity. To avoid vagueness and deliver 'real' social value, there is a need for clarity, direction and understanding of local context by contracting authorities – facilitated by early engagement with communities and other relevant stakeholders. When defined social value priorities can 'bed-in' with existing procedures, delivery becomes easier and more effective for all – as the social element can be built into tenders from the start and evaluation is made against a codified vision.

Regarding the back end of the procurement process, our report identified a lack of follow-up on social value pledges as a major issue of accountability. We suggested that legal obligations and a social value break clause could augment 'blunter' forms of accountability such as satisfaction ratings, league tables, and other centralised reporting mechanisms as a means of delivering positive outcomes. This allows for a social value offer, powered by local priorities, to be very clear at the outset of a tender and remain secure throughout – rather than an afterthought. Regarding measuring the 'value' in social value, our report recognised that it makes sense that a wide span of measurements of social value have emerged.

Many still grapple with how to communicate social value requirements to the supply chain and some are not set up to deliver this capability alongside typical day-to-day responsibilities. To find a unity between the need for local context and consistency across the sector, we suggested that authorities ask of themselves:

- Have you defined the social value vision?
- Have you integrated the approach across the organisation?
- Is there early engagement and partnership working?
- Can the impact of the social value be measured?

Furthermore, we outlined a set of useful tools aimed towards aiding authorities in pursuing and measuring social value, such as the national Themes, Outcomes and Measures (TOMS) framework, social return on investment (SROI), the New Economic Foundation's 'Prove and Improve' toolkit, et cetera. Many more useful tools and training regimes have developed since and their insights, particularly in

the absence of a well-funded procurement capacity building programme sector-wide, are invaluable.

Danny Kruger MP's levelling up communities

In a set of proposals for a 'new social covenant' put forward by Danny Kruger MP for central government consideration, Kruger notes the significance and potential that leaving the EU has for UK public procurement. He insists that central government legislate that the purpose of public spending is to deliver public value – and recognises procurement spend as the most effective means to set a precedent in this regard.

Key to his proposals is embedding a 'social value purpose' in the design, award, and delivery of government contracts – as a means of weeding out corruption and other suspicious practices whilst moving away from simply value for money for individual budgets. As he rightfully says, committing to social value in this manner will encourage more collaboration, trust, and a more innovative and socially-conscious use of legislative flexibilities – as is evident across local government amongst those who have taken social value on expertly.

2.1.4 Future of social value

Since our report, the discourse and practicalities of social value have evolved considerably. Many local authorities are beginning to agree on specific social value themes that are relatable to wider strategies. From this, achievable outcomes that are proportional yet far-reaching are evident across the sector – which then become the basis of accountability, evaluation, and monitoring. Furthermore, social value processes are becoming increasingly integrated into day-to-day ways of working in the public sector and beyond – making the delivery of social value achievable, despite resource pressures.

Communities have become more well-represented in accountability and pre-procurement processes¹⁸. They have found representation on procurement boards, large contracts are increasingly involving community representatives in their processes, and there is a movement towards 'charters' wherein which social value is grounded in community consultation and captured on a basis of outcomes rather than outputs.

Social value has spread across departments, organisations, and sectors – significantly breaking down silos and encouraging collaborative working¹⁹. Links between local authorities, small and larger suppliers, social enterprises, anchor institutions, and community groups have formed for the purpose of social value delivery – and there are examples of the sector taking it upon themselves to build their own capacity in this regard.

There is also now a wealth of shared good practice and social value frameworks to help social value development and familiarisation within organisations. For a few examples, there is the national TOMs, the HACT Social Value Bank, and the Social Profit Calculator – each aiding with calculations of value beyond contract-by-contract cost-savings. The same applies sustainability-wise, with the rise of various sustainability accounting standards and other ESG frameworks. Sectors are beginning to know what the ‘good’ looks like in terms of social value practice – and as more transparency in reporting increases, so too will more effective social value offers and subsequent successes.

Central government departments are starting to catch up with contracting authorities who have quietly yet effectively led the charge in their areas. The Green Paper and PPN 06/04 set a welcome tone – shifting away from solely economical assessments of value towards ones that deliver social and environmental benefits, whilst explicitly assessing social value offerings on the supply side. The future of a values-led, ‘social’ procurement looks bright. However, the success of this model hinges on an authority’s ability to embed a refreshed public sector ethos and involve communities and other relevant stakeholders early in a collaborative process of setting local social value priorities. These priorities must then go on to inform the desired outcomes of each contract – with contract management operating to deliver on this basis.

Case study: Salford City Council

Salford City Council has a vision of procurement with three distinct parts: (1) to ensure procurement activity is anti-poverty, sustainable, and delivers maximum value for money, (2) to deliver a high quality, innovative service that is regulatory compliant, ensuring probity and minimising risk, and (3) for the council to be a respected provider of expert procurement advice in a timely and unbiased manner. To achieve this vision, Salford City Council has committed to focusing on four key

19 Crossley (2021) – Collaboration is the key to social value

themes: supporting the local economy and delivering social value, providing leadership, developing procurement skills, and achieving value for money.

As a first step to putting the council's vision into practice, the council comprehensively defines what procurement means to them – intimately linking it with the concept of commissioning and how both must come together to deliver key outcomes of the council's on going local needs analysis. Their procurement strategy is also rich with practical examples for each of the four themes.

However, arguably Salford's most effective practice has been its notable commitment to retaining local economic benefits and delivering social value. The council seeks to advertise procurement opportunities to local suppliers, encourage the use of mutual entities and social enterprises, improve access for and engagement with SMEs and VCSEs, retain and bring services back in house where appropriate, and provide public procurement training to staff and suppliers alike. All of which contribute to the maximisation of procurement spend across public bodies in Salford's local area to develop and strengthen local supply chains and diversify the provision of public services – rendering it more sustainable long-term. Regarding social value specifically, the council has adopted the city mayor's Employment Standards Charter, became a Living Wage employer, encouraged inward investment – both internally and externally – and, set up an initiative to get long-term unemployed residents back into work.

2.2 Towards a new ethical standard

2.2.1 Unethical procurement

Public procurement has been plagued by several unethical and sometimes illegal practices over recent decades, tarnishing perceptions of the public sector ethos. Excessive secrecy, suspect procedures, and inappropriate working relationships are all red flags for practices such as bribery, coercion, extortion, favouritism, illegal sourcing, and general traffic of influence – all of which contribute to public procurement losing sight of who's being served.

Other suspicious procurement practices include:

- The splitting of large contracts into several smaller ones – minimising visibility hence reducing opportunities for scrutiny.
- Unusually high prices or below standard levels of service – may indicate

bribery, with overpricing covering the cost of bribes and reduced quality aiding profits, which are then used to subsidise bribes.

- Similarities in the details of competing bids and other suspect bidding patterns – could indicate collusion or rigging.

Unfortunately, these practices have become far too commonplace. Beginning to remedy these ethical problems and avoid suspect practices requires codification of a new ethical standard by central and local authorities alike – ideally with suppliers doing the same.

It is not uncommon for suppliers to feel as though there is not enough consistency or transparency in how local authorities score and evaluate bids. This is justified given that local authorities do tend to change and switch their systems, and there are often inconsistencies in approach across and within localities. This has led to misleading tenders. An independent review of how local authorities approach scoring and evaluating bids would contribute greatly to achieving consistency and transparency across the sector and could reveal important practical lessons beyond this.

2.2.2 Codifying ethical procurement

Ethical public procurement is fair, corruption-free purchasing that avoids conflicts of interests, ensures external transparency and, most importantly for public authorities, delivers conspicuous and inconspicuous benefits for communities on the ground. A written procurement ethics policy is the key place to start for raising and maintaining a higher ethical standard – those involved in procurement must know what is expected of them and be able to make decisions promptly and efficiently. A clear and concise written policy, with general principles, specific rules, and adequate guidance on how they should be applied, would help with this. In addition to such a policy, incorporating countervailing practices and initiatives such as closed-loop supply chains, ethical purchasing, beyond reproach labour and human rights standards, reverse logistics, sustainability, and the use of a triple bottom line, would raise the ethical standard of procurement considerably, whilst making processes more effective and efficient at delivering for the public.

Determining the content of a refreshed ethical standard for public procurement, that can go on to guide subsequent policies by contracting authorities, does not need to be bogged down in the quagmire of ethics and politics. Practical and pragmatic principles can be found and there are rules of conduct regarding conflicts of interest, conduct with suppliers, and corruption that simply need to be accompanied by better guidance and resourcing to become more effective. Within the context of austerity, Brexit, and COVID-19 recovery, contracting

authorities, both central and local, should be seizing the opportunity to go further than just a codified reminder of basic ethical procedures.

It is time to be bold and pursue a new model of 'social procurement' that is built around and further entrenches existing ethical principles, as well as incorporating new commitments – such as collaboration, social value, sustainability, probity, higher labour standards, and prioritisation of prevention over penalisation – necessary for public procurement to serve society in the long term. It can never be assumed that doing the right thing ethically is automatic; ignorance, doubt, temptation, and fear are inherently human traits that must be dispelled by a clear ethical model for all to follow. This policy must be easily accessible and understood by staff and stakeholders – ideally with its own dedicated webpage, as well as systematic inclusion in subsequent reporting and other scrutiny processes. The policy would need to receive regular reviews, amendments, and improvements. Changes in laws, public opinion, and economic outlook will inevitably affect the content of such a policy. These changes should be embraced as part of an ongoing process to ensure that procurement practices remain relatively ethical regardless of context.

CHAPTER THREE

Procuring local

The strategic turn in procurement outlined in the Green Paper, bolstered by the lessons and experiences of ten years of the Social Value Act, has great potential to deliver real impact at the local level.

However, there are many considerations around the nuances of local government procurement which must be built into reforms if they are to be embedded across the whole public sector.

3.1 Local government procurement culture

3.1.1 Third-party spend

Local authorities currently find themselves weathering a perfect storm of real-term cuts, rises in demand for public services, and tremendous social care costs that now threaten to reach catastrophic levels – amid fraught post-Brexit supply chains and the ongoing volatility and impacts of COVID-19 and its aftermath. English local government had spent £180.6bn with third parties in the three years prior to the pandemic – approximately £63bn per year with suppliers and £1,075 per capita²⁰. All types of local authority have seen an increase in third party expenditure over the past three years. Most councils have spent relatively equal to the level of inflation. However, unitaries have increased their expenditure at almost double inflation – this is in part due to several new unitaries being created over the past few years.

It is likely that expenditure in relation to revenue-funded local government activity is reducing, whilst capital expenditure is increasing despite overall third-party expenditure generally increasing above level of inflation. Despite this, inflationary pressures combined with cost increases across a broad range of commodities and services to come will cause issues to deepen for authorities proceeding to act in accordance with a previously comfortable status-quo – especially as this has often led to an inefficient use of resources and overly complex, duplicate frameworks for management and delivery. All categories of spend have seen an increase over the same three years. The ‘vulnerable citizen’ category has consistently increased year on year, up by an average of £1bn per annum and has consistently remained the top category of spend for English metropolitan, unitary, and county councils – making up 39 to 52 percent of their total spend²¹.

Local government is operating under severe capacity constraints whilst now simultaneously spending a great deal of money on procurement. This is not reflected in the money spent on organisational processes or training around procurement, which leads to the disjunct between leadership ambitions and procurement processes. Virtually every public service now has at least some dependency on suppliers, yet a small fraction of government spend, whether central or local, typically goes on procurement skills and training, and managing contracts and relevant processes effectively.

A shift in mindset is beginning to develop, but this is not to be confused with

20 EY & Oxygen Finance (2020) – Local Government Third Party Spend 2019/2020 Almanac

21 Ibid.

an effective systemic transformation – which requires guidance, planning, and resources. Local government needs to be empowered to invest in people, from officers through to councillors, in training to change procurement teams and the overarching culture to be more mindful of public procurement’s potential strategic power and act to reflect this in policy and practice.

3.1.2 Organisational practice

Widespread effective local procurement is limited by widespread insufficient capacity, fraught reputation status, and a fundamental lack of commercial skills across the public sector. Procurement teams often have little involvement or oversight in a lot of key strategic decisions made by local authorities, despite being relied upon to manage and deliver on said priorities when the time comes. No doubt, it is paramount for councillors to be engaged with the procurement process but too often is this engagement typified by procurement being seen as an operational matter. Frequently there is a lack of vision and strategic priorities underpinning a local authority’s approach to procurement, meaning that engagement is piecemeal, and the practice is pursued on a disjointed, contract-by-contract basis – leading to poor quality decision-making, weak accountability and oversight, and the bare minimum in terms of the delivery of value and outcomes.

Whilst there is widespread understanding of the important role procurement plays in delivering value for money and efficiencies²², there is a tendency for local procurement to prioritise purpose goods and services over procuring for specific issues of strategic importance to a local authority, again demonstrating that procurement is typically treated as a back-office function²³. This is then reflected in the capability of procurement teams in handling different types of contracts and whilst there is an understanding that procurement is important in delivering value for money, it has been concluded that the sector has tended to fail in providing such value. Often there are not enough appropriate mechanisms in place to ensure the effective management or measurement of contracts, costs, and savings, or to evaluate a given approach after the fact.

Some authorities have centralised their purchasing, often achieving immediate savings. The Cabinet Office has previously sung the praises of centralising procurement as centralised deals for goods and services are bolstered by central government buying power and management prowess, allowing local

22 House of Commons, Communities and Local Government Committee (2014) – Local government procurement: Sixth Report of Session 2013-14

23 Uyarra (2010) – Opportunities for innovation through local government procurement

authorities the space to focus on more strategic procurement projects²⁴. Furthermore, centralisation tends to entail increased aggregation which is conducive to a more collaborative approach to procurement. However, aggregation of spend is not always as value-positive as is made out and can potentially have a negative impact on local employment – particularly if the delivery of contracts fails to consider local workforces. Although centralised arrangements do not necessarily mean that local is completely cut out of the picture. There is room for innovation in the local delivery of national arrangements that itself can boost local economies if managed holistically.

However, centralisation has tended to cause tension across departments and, in some cases, reduced flexibility and opportunities for innovation. Procurement centralisation also leaves the delivery of key services not under local democratic control. This means that councils can end up less responsive to residents and their concerns, despite bearing the brunt of them when services are inadequate. Furthermore, there are several goods and services that are necessarily local, such as children's services. Centralising such procurements could lead to outcomes that are too rigid and mass-produced, and not very favourable to levelling up. Local authorities must strike a difficult balance.

Making use of economies of scale, the sharing of good practice and expertise, and working to understand shared local and regional needs are all collaborative practices that – whilst becoming increasingly prevalent – still need to become much more widespread and embedded in each local authority's procurement process. This can be facilitated by cutting procedural costs, driving and managing down supplier prices, engaging in acute market analysis and subsequent shaping, and being mindful of commercial skills when recruiting or investing in the skills and training of existing staff members. However, there are many barriers to effective collaboration that exist across the sector – whether structural, such as differences in size or procurement profile between authorities, or cultural, such as a lack of commitment, trust, or insurmountable political differences. Furthermore, there is a fundamental mismatch between the short-term ambitions and priorities of a local authority's elected members and the much longer period that collaborating for the delivery of public value and local market shaping would require.

It is now crucial that discussions on the strategy and practice of procurement do not take place in isolation and that there is a more wholesale recognition that the strategic power of public procurement can only be facilitated by broadening the scope beyond the activity of procurement teams alone.

24 House of Commons, Communities and Local Government Committee (2014) – Local government procurement: Sixth Report of Session 2013-14

3.1.3 Short and medium-term trends

An increased awareness is developing around the need for a better understanding and management of supply chains, whether locally, regionally, or nationally, when exploring how local procurement spend can be leveraged to boost recovery and deliver benefits to localities and their communities. However, the extent of expertise and resources necessary to develop such an understanding and relevant management capabilities – particularly given the volatility of supply chains post-Brexit and COVID-19 – will require a critical mass only available at the sub-regional or regional level.

Nonetheless, local authorities have in the past decade become more entrepreneurial and entered more revenue-sharing partnerships, with an increased focus on maximising value and local benefits from public spending. This has been accompanied by a tremendous sector-wide push on 'social value' and the leveraging of procurement expenditure to create jobs, provide skills, and generate opportunities to strengthen local supply chains. Local authorities are looking to deliver better outcomes for residents and improve the economic, social, and environmental wellbeing of their locality and communities within. There has also been a significant increase in focus on greener procurements – to put climate emergency declarations into practice and meet net zero targets.

There has been an increased emphasis on collaboration within local authorities and at the local and regional levels, with an increased uptick in shared response units, growth boards, and partnership working. Networked informal cooperation has quickly become more formalised, developing into consolidated and integrated approaches to procurement that tap into the critical mass of regional stakeholders and improves access to economies of scale²⁵.

Off the back of the social value movement and other relevant political pressures, local government also seems to be moving towards a genuine commitment to proactive over reactive transparency. Whilst there is still a long way to go in changing the approach and mindset of the sector wholesale in this regard, there is a push to move away from 'transparency by Freedom of Information (FOI) request' – situations where it looks like local authorities have something to hide when procuring.

When COVID-19 took hold, local procurement very suddenly became of critical strategic importance in responding to the ongoing crisis as it happened – PPE, food parcels, supply chain support, and the impacts of working from home were

25 O'Donnell (2012) – Strategic collaboration in local government

key challenges in this regard. Over the course of the pandemic, local authorities have demonstrated their resilience and prowess in using procurement to deliver urgent healthcare goods and services to their communities and residents. Local authorities have worked closely with regional NHS trusts in the sourcing and targeted provision of PPE and vaccines. Many put their knowledge of local demographics to use whilst playing an important role in contact tracing and the delivery of food parcels²⁶. Furthermore, a spirit of local mutualism developed across England, particularly in the early stages of the pandemic.

In a survey regarding local government's response to the pandemic, 72 percent of participants reported collaborating more closely with their procurement teams due to COVID-19 whilst 93 percent agree that the pandemic has made them reconsider the way in which they prioritise their public spend²⁷. Ultimately though, services were too fragmented nationwide, and some failed significantly under the pressure of an ongoing crisis. As is stated in the Boardman Review of public procurement during COVID-19²⁸, PPE procurement was not scalable due to incompatible IT systems and overly complex organisational structures. Therefore, to make best use of local channels in future crises, systems and structures need to become more simplified, uniform, and streamlined with relevant powers devolved downward with entrenched regional collaboration to allow scale up to occur and for procurement to be more responsive to crisis mobilisation generally.

These are just a few of the many shifts in mindset and practice that the sector has experienced recently, intensifying over the course of the pandemic. Lessons learned must be shared and heard, and positive changes and opportunities must be seized upon and facilitated where possible going forward. 62 percent of public sector participants in the survey agreed that changes and measures adopted to assist public procurement should remain in place post-pandemic, whilst 84 percent agreed that procurement was now a more important job role within their local authority²⁹. Given the relatively huge proportion of public spend that procurement entails, leveraging this spend to deliver social value and better meet local need through more targeted and strategic contracts is critical going forward, and the pandemic has demonstrated the viability of such an approach.

26 Cabinet Office (2020) – Boardman Review of Government COVID-19 Procurement

27 iGov Survey & YPO (2021) – Responding to COVID-19 in Local Authorities

28 Cabinet Office (2020) – Boardman Review of Government COVID-19 Procurement

29 iGov Survey & YPO (2021) – Responding to COVID-19 in Local Authorities

Case study: North East Economic Response Group

The North East COVID-19 economic response group, a regional collaboration between the North East Local Enterprise Partnership (LEP), North East and North of Tyne Combined Authorities, the North East Joint Transport Committee, the Confederation of British Industry (CBI), and several regional universities, has been put together to provide a phased economic recovery plan that aims to help businesses, industry, places, and communities adapt after the impacts of COVID-19 whilst building confidence in the regional economy and its capacity. Formalised collaboration provides a platform for local and regional leaders to develop a shared understanding of how the pandemic has affected the region and its localities and pursue a shared approach to recovery on this basis. The region had wider ambitions of achieving net zero, delivering better-paid jobs, and developing an economy that is inclusive, strong and future-proof that have now been reinforced by the impacts of COVID-19 and subsequent regional collaboration.

A produced report by the group contains a phased economic response plan with key focuses, data-driven detail, actions and relevant support mechanisms, and a set of asks from central government to help facilitate recovery. As of June 2020, a coordinated response from regional leadership allowed businesses to continue operating, employment to be kept relatively high, and for support to be targeted to areas that need it most. Key to this has been a supply of data and intelligence that helps to refine interventions, produce up-to-date labour market information, and develop coherent and integrated offers to businesses, communities, and young people.

North of Tyne has also pledged £5m to help businesses and communities respond to COVID-19 how they see fit. Approximately £1.5m has been offered to each of the three local authorities within the combined authority boundaries – Northumberland County Council, North Tyneside Council, and Newcastle City Council – to meet local need. Tailored guidance and support are also available for businesses and communities in each locality, as well as a 'North East Growth Hub Covid Toolkit'. The growth hub also provides other toolkits on finance, funding, and mentoring as well as an array of other business support and key insights.

3.2 Pre-procurement

Procurement should be treated as an overarching project for local authorities – with a focus on outcomes and results to be achieved through a clear, structured

approach that involves procurement professionals and stakeholders from an early stage. This can only realistically be achieved if strong foundations are laid, social value priorities are clear, and upcoming procurement processes are effectively planned for.

Engaging with the market early, strategising and structuring contract management going forward, and embedding key performance indicators (KPIs) and the needs of communities throughout are all critical parts of the pre-procurement stage that must be handled with care and depth. Entrenching challenging, robust, and reflective means of accountability, scrutiny, and risk management are vital aspects here – to allow for self-improvement and the building of trust between key stakeholders. Key factors for success in this regard are moving towards a joint approach to managing delivery, effective and open communication between contract partners, and instilling mutual trust and understanding within procurement, and between contracting authorities and service users.

As a pre-requisite to a more mindful and strategic use of public procurement, there are two key areas a contracting authority ought to be mindful of: setting social value priorities and market consultation.

3.2.1 Setting social value priorities

The first step of ascertaining social value priorities according to place is for a local authority to define what social value means to them. The setting of these social value priorities ought to be collaborative and strategically-minded – so that the themes, outcomes, and measures are distinctly local. Having these be co-designed and well-defined allows them to be deferred and referred back to at every stage of a contract to ensure value is being delivered according to the ‘TOMs’ laid out in pre-procurement. If they are not being met, there is scope then for measures to be taken to facilitate improvements and get the contract back on track delivery-wise.

When setting social value priorities, it is critical to start with those who are going to be affected the most by contract outcomes, and who have been most affected by the relevant goods or service delivery previously. Communities should be the go-to for ascertaining the details of what social value priorities should consist of in this regard. If community and resident voices are not included right from the beginning, then it sets up too much room for error in how a local authority and relevant stakeholders defines value and subsequent success. A well-defined and locally shared vision can center social value, whilst making processes and outcomes more transparent and tangible for both suppliers and residents.

Therefore, making good use of relevant frameworks – such as the TOMs

framework³⁰ and 'Community Value Charters' put forward by Localis in 2020³¹ – is crucial. The priorities of local communities, and what they believe local strategic priorities should be, will differ from place to place, and even neighbourhood to neighbourhood – getting a sense of what these are, how they can be quantified, and how they fit into the broader strategic vision of place can only be achieved by involving communities and other granular local stakeholders in the pre-procurement process. This will develop into an outcomes-based approach to procurement and contracting solutions that reflects on the inequalities and individual needs of communities.

A good balance between quantification and qualitative understanding is required. Data utilisation and KPIs are of course necessary to evaluate bids and outcomes of social value offers. However, in setting the parameters for action and evaluation pre-procurement, there must be a qualitative interpretation framed in local context. This will allow for a local authority to be clear about the importance placed on social value, remove any confusion as to how they define social value, and ensure that social value outcomes are linked to local priorities – forming this basis pre-procurement is critical.

If transparency is not implanted and well-understood in the pre-procurement phase, it becomes much more difficult for accountability and transparency mechanisms to be effective from then on. A situation arises where there is an attempt to 'retrofit' contracts and reactively work out processes and outcomes, leading to shoddy delivery and potential contract failure. It can also seriously undermine the strategic potential of procurement and public trust overall if it is claimed that a contract will deliver social value but there is a lack of means of accountability or transparency from the get go.

It is particularly important that councils are transparent in their application of social value and indeed all other weightings at all stages of the tender. Suppliers often find that the weighting applied to social value at the top-level of the tender is stripped away by the time procurement has moved onto the more detailed, lower-level calculations of a tender – therefore social value is essentially removed from the final consideration and value for money once again trumps all.

Measurement is critical to facilitating transparency and the delivery of desired strategic and social value outcomes. Inevitably, there will be differences in the metrics used by different contracting authorities. However, through collaborative discussion between local stakeholders and making good use of data analytical

30 Social Value Portal – National TOMs Measurement Framework

31 Localis (2020) – Brighten All Corners

capacity at the pre-procurement stage, outcomes can be set and a shared measurement for these outcomes can be ascertained – so that all stakeholders are accountable to one another and the local space they inhabit.

3.2.2 Market consultation

Engaging with potential bidders as early as possible allows for a local authority's key messages to be conveyed and for emphasis to be placed on the importance of strategic goals and social value priorities, as well as the potential for unique social value offers from suppliers to be identified and considered. Suppliers are often keenly aware of what opportunities for social value are available and achievable in their industry. Speaking to them, as well as existing users of goods or services, will allow for a balanced and realistic view of how a particular contract can be leveraged towards achieving strategic goals and social value priorities. Doing so will also ensure a more equitable and holistic approach to the supply market, encouraging a more level playing field.

Contracting authorities can now choose to reserve procurements for either local SMEs, VCSEs or large firms with strong local links, thanks to recent reforms. This means that market consultation is even more important as a potential means of identifying and densifying local supply chains, therefore supporting local economies, and retaining benefits in a more circular fashion. Through pre-procurement market consultation, a platform can be set up for local stakeholders and relevant suppliers to engage with one another, knowledge gained from which can go on to develop the procurement approach from the contracting authority. This allows for networking between local organisations for delivery and instilling a healthier understanding of how contract management and reporting can be better undertaken to support and ensure the delivery of social value priorities.

Furthermore, those suppliers with commitments of a particularly high ethical standard – e.g. those with strong net zero strategies in place, or pay a living wage organisation-wide – can be identified and brought into the fold of a network of relationships and ethical arrangements, that all work towards circular, sustainable local growth and prosperity. The earlier this network is developed, the stronger these relationships can become.

Whilst social value is an exciting movement that is demonstrative of a growing will and desire to see procurement deliver better outcomes for communities, it should be noted that social value offerings and ethical procurement are not one in the same. A supplier may score well on social value by delivering on specific asks but at the same time behave unethically in their day-to-day practices. Ensuring an evaluation of supplier ethics is a key part of a local authority's pre-procurement

process will be crucial to securing the delivery of social value whilst encouraging more wholesale ethical practice.

3.3 Contract management

Contract management is about ensuring accountability for commitments made as part of the tendering process, administration of the contract itself, delivery of the actual procured good or service, and wider relationship management between the contracting authority, supplier, and relevant stakeholders. Transparent and accountable contract management is crucial for all involved to buy into social value commitments, a more ethical public procurement practice, and maximising the potential to deliver local transformative change.

Often what is deemed unethical public procurement is the result of poor contract management – where relationships and delivery are mismanaged, and the governance of contracts are far below standard. Contracts are often complex, involve multiple actors and stakeholders, resource intensive, and long-lasting. Therefore, effective and efficient contract management is critical to achieving ethical public procurement that delivers strategic goals and social value priorities. Local authorities should be aiming for their contract management to be recognised as essential to driving ongoing improvement and improved service outcomes – with well-developed policies, systems, procedures, and staff all working holistically to drive forward planning and cost control, whilst consistently delivering on strategic goals and social value priorities. The contract management process, once underway, can be split into contract administration, delivery management, and relationship management³².



1

Contract administration is the formal governance of the contract itself, ensuring that everyday aspects are ran effectively and that relevant changes are efficiently taken care of and reflected in documentation and monitoring. Such practices include asset management; budgeting, payment, and ordering procedures (incl. authorisation, receipts, and transfers); change control; cost monitoring, operational and management reporting; and resource planning and management. Tender documentation, as early as the drafting stage, must set out a clear framework for the governance and working relationship between parties, as well as containing clear and precise outcomes and measures. Documentation must be clear, detailed and precise to provide the basis for effective enforcement, review and evaluation.



2

Delivery management consists of ensuring that what is being procured is delivered to necessary levels of quality and performance – in accordance with contractual and service-level agreements. Again, having robust and reflective means of accountability, scrutiny and risk management carry over from pre-procurement commitments into contract management and delivery is vital. In this regard, contract performance controls, with clear and distinctly local measurements are key. Local authorities should prioritise a small set of controls over a large number, and these ought to be easily processed, timely, and useful. They should be able to reflect soft and hard measures and be dependable in providing more value than just cost benefits. They will be highly relevant to the essence of the contract and accepted and understood by all relevant stakeholders – including those with a vested interest in the outcome of a contract, despite not necessarily being a buyer or supplier.



3

Relationship management is ensuring that the relationship between a local authority, contract partner(s), and other relevant stakeholders is kept open and constructive. As mentioned, making use of collaborative practice and a joined-up approach to working together, and instilling mutual trust and understanding of each contract and its respective role, will be essential in improving accountability and strengthening local relationships. Approaching relationship management through collaboration and partnership working will drive greater value out of contracts, strengthen local networks and supply chains, and will begin to manifest public procurement as a project working towards the betterment of local areas through social value, rather than a contract-by-contract process dissonant from local priorities.

To get contract management off on the right foot, it is important to set up an inaugural meeting, as well as diarising future performance reviews and participatory stakeholder scrutiny sessions. The initial meeting, ideally taking place as part of the transition from pre-procurement to the beginning of a specific tender, allows for roles and responsibilities, implementation, relevant issues, control mechanisms, and other key aspects of the contract going forward to be made clear and understood by all from the get-go. Meetings thereafter will allow for all of this to remain on track and for problems to be tackled as effectively and efficiently as possible.

3.4 Barriers to good local procurement

Various assessments, evaluations, and policy reviews have highlighted constraints on the efficacy of local procurement. These include:

Communication throughout the procurement process from all parties³³³⁴

Interaction, and therefore collaboration and the like, is often hampered by a lack of communication between a contracting authority, suppliers, and service users. Local authorities and suppliers can often use inconsistent language, that can lead to a lack of clarity on contract details and outcomes, as well as inconsistent and dissonant reporting. Furthermore, a lack of communication between relevant organisations can lead to the same behavioural issues repeated – as accountability and evaluation processes exist within an echo chamber. Rising above this and developing open channels of communications between a local authority, suppliers, and service-users will develop a local procurement system that is more reliable and strategically minded.

Also, perhaps more importantly, poor communication is common *within* a contracting authority. There can be a breakdown in communication between elected members, procurement teams, and the council departments responsible for the needs of service-users. A lack of cross-departmental working in procurement or a too heavily centralised procurement function within a contracting authority tends to be responsible for this structural barrier. To ascertain the priorities, needs, and desired outcomes of suppliers and service-users, local authorities must supersede this structural disconnect and innovate to provide a platform for open and constructive dialogue between *all* parties. This becomes increasingly pressing, the greater number of parties involved drives a greater need for interaction between them.

33 Uyarra et al. (2014) – Barriers to innovation through public procurement: A supplier perspective

34 Royal Academy of Engineering (2014) – Public projects and procurement in the UK

Inconsistent application of policy³⁵³⁶

There are often gaps and inconsistencies in how the public sector uses procurement rules, regulations, and policy – this can be off-putting to potential suppliers and ultimately hinder the potential for better outcomes being achieved locally and nationwide. Procurement strategies can be written up, procedures put in place, and even performance management structures established, without proper application of often advantageous procurement policy. Suppliers are negatively affected by these inconsistencies – as it becomes difficult to decipher how procurement is being conducted from place to place and what it is a particular local authority is looking to get out of procurement. This risks developing local procurement as an overly jarring and rigid process that could put off more innovative suppliers and fails to maximise local economic benefits, particularly regarding SMEs or VCSEs due to their idiosyncratic nature.

The discretion around public procurement policy, whilst not without significant benefits, has led to these inconsistencies becoming systemic – that too often lead to a lack of clarity and certainty on the appropriate application of policy, causing confusion amongst suppliers and stakeholders. A lack of understanding, time constraints, and the poor proliferation of technical procurement skills often prevent processes from being used most effectively – unfamiliarity and lack of training on new reforms risks entrenching this barrier further.

Limited knowledge-share³⁷³⁸³⁹

Knowledge-share can be a powerful tool and is key to unlocking the potential of public procurement more wholesale across the sector. It can also lead to more innovative approaches as it strikes realisation about the possibilities of local procurement, as well as mitigating risk aversion. However, as the National Audit Office has stated previously, there is a way to go before enough networking and sharing of information is occurring for the public sector and local contracting authorities to be considered a more “intelligent client”.

Best practice does seem to get recognition and praise in the sector, but the specifics of these examples often go amiss and more widespread knowledge-

35 Loader (2018) – Small- and medium-sized enterprises and public procurement: A review of the UK coalition government's policies and their impact

36 Uyerra et al. (2014) – Barriers to innovation through public procurement: A supplier perspective

37 Local Government Association (2017) – Encouraging innovation in local government procurement

38 National Audit Office (2016) – Commercial and contract management: insights and emerging best practice

39 House of Lords, Science and Technology Committee (2011) – Public procurement as a tool to stimulate innovation

sharing on practical application and action lacks considerably. Whilst improvements have been made in recent years, there is still a notable lack of comparable data and strong sharing networks amongst local authorities. Evaluations and learnings from each tender can often go undocumented or are not shared effectively enough between authorities, practitioners, and suppliers, or within procurement teams.

Previously, the European Commission funded two networks linking buyers, suppliers, and researchers engaged in public procurement and developing best practice. Both platforms encouraged the exchange of knowledge through various information sharing tools, as well as offering wide-ranging guidance. This will now no longer be available to UK local authorities, so developing a suitable and stronger replacement, particularly in the context of unfamiliar reforms, will be critical going forward and ideally sector-led.

Capacity and skills gaps⁴⁰⁴¹⁴²

Pressed for funding, local authorities tend to have trouble in an environment of purchasing services instead of funding them. A lack of contracting skills and too great a focus on reducing costs short-term are symptoms of this. Furthermore, contracts can end up understaffed at key stages due to shifts in skill requirements, and resources are inefficiently tailored due to a lack of early-stage planning. A failure to identify where resources and staff are best placed is a further symptom of maturity and skills gaps in local procurement teams. Where maturity and skills gaps are most prevalent, procurement decisions tend to be made by those who are not procurement professionals and therefore lack the necessary skills and know-how to get the most out of the practice. Within these authorities, there is a lack of understanding of how procurement skills fit into the broader commissioning responsibility. This tends to manifest because of a common, confused understanding of the definitions of commissioning, procurement and outright purchasing. This is not to say that there is a universal, definitive definition of such terms, just that local authorities can lack a shared understanding of how they ought to be strategised for, practiced, and delivered.

This lack of capacity and relevant skills leaves local authorities with difficulty in understanding and shaping the local market they operate within. For the public sector to become a more 'intelligent' partner and be able to unlock the strategic

40 OECD (2016) – Roadmap: How to Elaborate a Procurement Capacity Strategy

41 National Audit Office (2016) – Commercial and contract management: insights and emerging best practice

42 Uyarra (2010) – Opportunities for innovation through local government procurement

potential of procurement, there is a dire need to develop relevant skills across the sector. The active and effective engagement needed for procurement to deliver on strategic goals and social value priorities requires cross-sector, cross-departmental skills development – as gaps in capacity and skills are off-putting to the private sector and will see the practice fail to deliver on its strategic potential.

Capacity building, through analytics, skills, and training is a costly investment – which is why, whilst this ought to be sector-led, an agenda to this end should be funded and facilitated centrally for the sake of levelling up and a more complete uplift in capacity across the nation. In the context of financially constrained local authorities still needing to deliver adequate services with a push towards additional, strategic value, a centrally funded, national public sector skills push is even more critical.

Poor data utilisation & market intelligence⁴³⁴⁴

There is a fundamental lack of a comprehensive dataset that is coherent and comparable for the national public procurement market, and often, local procurement markets too. This seriously hampers understanding of local economic drivers, trends, and composition, which sees local authorities and their places lose out on opportunities for better, more strategic tenders and for those most in need of better services go unnoticed – representing a fundamental disconnect at the heart of local procurement practice. Furthermore, the lack of information and data utilisation at lower tiers of governance, leads to the use of aggregated data which can often miss acutely local dynamics and financial streams – as well as failing to account for service needs between neighbourhoods.

Plugging these gaps and improving market intelligence where possible will be critical to the responsibilities of place leadership and enhancing local economic benefits garnered from public procurement. As local authorities are uniquely plugged into their local communities and economies, they have the potential to build a picture of the market that is more granular and strategically useful. This positions them well as mid-market operators with the potential to drive decision-making and demand management, as well as putting data to better use by systematically collecting, refining, and applying insights in further procurements. This market-shaping role can also encourage partnership working as well as eventually reducing the risks for SMEs and VCSEs when entering the market – as there will be a much clearer picture on what a local authority wishes to get out of its procurement process.

43 Local Government Association (2017) – Encouraging innovation in local government procurement

44 Cabras (2010) – Mapping the spatial patterns of public procurement

Poor risk management & risk aversion⁴⁵⁴⁶⁴⁷

The public sector has had a poor track record with risk management and, more acutely, risk aversion. Safe, tried, and tested procurement options are opted for and prioritised, with practitioners being rewarded for following rules stringently, whilst more innovative solutions, that may require more distinct risk management processes, tend to be avoided. Innovative solutions are seen as too much of a 'gamble' and suppliers are required to demonstrate a documented track record – that can be overly time-consuming, off-putting, and disincentivises smaller or younger suppliers with potentially fresher, more innovative solutions.

45 Local Government Information Unit (2011) – Risk and reward: Local government and risk in the new public realm

46 OECD (2017) – Public Procurement for Innovation

47 House of Lords, Science and Technology Committee (2011) – Public procurement as a tool to stimulate innovation

CHAPTER FOUR

Recovery and levelling up

The procurement reforms, along with the imperative of recovery after the pandemic and boosting local economies following Brexit, are considered part of the wider levelling up agenda to reduce regional inequality and produce more and better-distributed economic growth.

Understanding how the procurement reforms can best be tailored to enable strategic local procurement to drive levelling up is crucial to achieving the maximum impact of public spending on the key targets of the agenda.

4.1 Identifying the left behind and stimulating recovery

Procurement is an important strategic tool, both in 'levelling up' left behind places and in stimulating economic recovery from the pandemic. To put this idea into practice however, the terminology must be defined and placed into a local context – where are the left behind areas? What are the priorities for economic recovery locally? These questions must first be answered by councils for procurement to be used strategically. Understanding how communities most in need can be served alongside priorities for economic recovery allows for a holistic view of where those goals dovetail and how procurement can help drive both simultaneously. This must also be balanced against wider economic context – procurement in a single council is part of the wider ecosystem of local government procurement. Consideration must also be given to optimising supply chains and looking at how large, national suppliers fit into the local picture in terms of potential economic benefits.

If levelling up is to be about uplifting the most 'left-behind' places, communities, and people up to a worthy standard of economic, social, and environmental wellbeing, then the upmost priority for localities must be to identify where a lack of life's essentials is most prominently felt – particularly post-pandemic, where many have fell further behind. In this sense, it is useful to consider 'doughnut' economics, first put forward by Kate Raworth in 2013⁴⁸. Envisioning a doughnut, the inner ring represents a minimum standard of 'social foundation' necessary for people to live a 'good' life – typically including the likes of energy, water, food, health, education, income, housing, et cetera. Identifying and uplifting those within the doughnut's 'hole' without overshooting beyond the ecological ceiling – and reducing aspects of ecological overshoot that are already occurring – is the key challenge for public governance. Ensuring safe and just spaces for people to inhabit, ensuring progress means progress for *everyone*, and reconfiguring the local economy to be 'circular' by design are key success factors for central and local government – particularly when considering how procurement power can be leveraged to 'level up'.

This kind of policy approach is often described in terms of 'community wealth building', as defined by the Centre for Local Economic Strategies (CLES)⁴⁹ and has been famously put into effect in Preston⁵⁰ and Manchester⁵¹. The concept has also

48 Tenorio Llanos, Hülsemann & Chanchalani (2021) – Doughnut Economics : turning a radical idea into irresistible practice

49 CLES – Progressive procurement of goods and services

50 Preston City Council (2016) – Preston City Council Procurement Strategy 2016-2019

51 Jackson (2010) – The power of procurement

been promoted by Danny Kruger MP⁵² and the Local Trust⁵³, who have advocated for budget allocations from central government to help aid in community wealth building.

Developing productive local enterprise is crucial to increasing the wealth of communities, the multiplier effect of what might be a relatively small amount of money spread across several different small firms in key areas can be significant. Yet 'local SME' is another concept that councils must have clearly defined when thinking about strategic use of employment – the SMEs and VSCEs which are staffed by and operate within target communities should be borne in mind in the drawing up and distribution of local contracts. In cases of extreme deprivation, those communities that are 'left behind' on any scale, some business support and training will likely be required from the council in helping people access procurement opportunities. This kind of activity should be factored in and considered a part of the broader push to use procurement to drive levelling up in left behind places.

Case study: Amsterdam

Amsterdam's city governance is embracing Raworth's doughnut economics, making it the driving force behind strategic action. Primarily, the *Amsterdam City Doughnut* is intended to encourage and facilitate collaboration and innovation between neighbourhoods, start-ups, civil society, government, business, and anchor institutions to drive systemic change and provide a social foundation for all of Amsterdam's residents. The strategic tool is constructed around a portrait of what a thriving Amsterdam could look like, what it would mean for the city to thrive as part of a healthy ecosystem, and how Amsterdam can respect the wellbeing of its citizens.

Key to this was a recognition of the impact and patterns of Amsterdam's public procurement. This included a realisation of the best and worst of the practices that were in place, whether the adverse impact on labour conditions worldwide, or how it supports job creation and sustainable development domestically. In the context of COVID-19 recovery, aiming procurement, as well as all other aspects of Amsterdam's city governance, towards building the doughnut's social foundation, without overshooting ecologically, is the approach being taken by Amsterdam.

52 Danny Kruger MP (2020) – Levelling up our communities: proposals for a new social covenant

53 Local Trust (2020) – 'Left behind' areas missing out on community facilities and places to meet

The 'City Portrait' tool at the heart of the strategy insists on building a network of all key stakeholders, connecting knowledge and practice between all levels, using a breadth of consistently evolving tools and methodologies, and instilling a cycle of co-creation and co-delivery.

Moving towards a local economy that uplifts those most left-behind, contracting authorities should aim to increase the level of retention generated by their procurement spend at the local level. Key to this is mapping a local authority's spend amongst suppliers – including the geography of spend, subsequent re-spend by suppliers, the ethos of suppliers regarding their contributions to 'social foundation', and gaps in spend by ward and type of industry. These findings should then be mapped spatially to better understand how public procurement operates locally, allowing for a powerful evidence base that can then go on to inform a strategy of achieving cost-savings, densifying local supply chains, and retaining procurement's economic benefits locally.

Of course, it is not possible or desirable for a local authority's spend to stay entirely within its boundaries, this could potentially reduce dynamism and shut firms out of the market by creating a public contracting closed loop. Being able to differentiate, particularly when dealing with very large suppliers, between the differing potential impact of national companies on the local economy is therefore critical. To this end, there is great value in clearly communicating with major suppliers what the goals of a council's procurement strategy are and what targets for recovery and levelling up have been identified. Rather than contract-by-contract social value, this can allow suppliers working at a regional level (housing associations for example) to tailor their offers in different areas to the overarching goals of those local authorities and to maximise local economic benefits in their own activities and supply chain.

However, within a tendering system that is open market and favours broadened competition, maintaining procurement spend spatially and reducing 'leakage' of money outside boundaries is no simple task. On the one hand, there are several complex dynamics that influence local procurement; geographical location, online purchasing, supplier sector, and the relative feasibility of re-investment. On the other, collecting, collating, and analysing the data required for such a mapping remains far too big of a task for any single local authority. Therefore collaboration, networked partnerships, and full utilisation of the critical mass available at the sub-regional, regional, and even national level is of utmost importance. Making good use of growth bodies such as LEPs and relevant industrial strategies will help here.

4.2 Boosting local economic benefits

4.2.1 Collaboration & partnership working

Partnership working is crucial to effective public procurement, due to its potential for significant cost-savings, efficiencies, increased capacity, knowledge-sharing, and contributions to innovation, productivity, and a shared sense of working towards place prosperity. Positive collaboration, prompt payment cultures, and the sharing of knowledge and resources are all key practices of strong partnership working that have the ongoing effect of strengthening accountability and trust between local stakeholders.

Working with local authorities is not, however, an easy task for any business. There are multiple barriers to accessing opportunities to bid for local contracts, both in terms of the time taken to prepare a bid for submission and the money spent on the resources used in the process. For many companies, particularly smaller enterprises, it is easier to be embedded within the supply chain of a large bidder than deal directly with the complexities of local government procurement. This, however, greatly reduces the scope of local authorities to target outcomes and act in the kind of strategic and informed way outlined above. Excessive barriers and bureaucracy must therefore be reduced wherever possible, and at times calculated risks on new local suppliers may need to be taken, in pursuit of more strategic and locally beneficial procurement.

It is also important to engage with those large-scale, major suppliers which all local authorities work with to some degree or other as part of the process. These organisations can work with councils in the development of works programmes which encompass a plurality of priorities and interests, like bringing in local firms as partners or working with further education colleges in the area on medium- to long-term skills pipelines. Long-term partnerships with large organisations can therefore generate aggregated social value benefits through multiple multi-year contracts. Councils must identify prospective partners and work towards mutual understanding of how a relationship with the council can work in relation to local goals. The early market engagement aspect of the Green Paper facilitates this kind of action.

Bespoke mapping of how partnership working could work locally will be key to generating benefits for all parties and driving place prosperity. When a local authority establishes and manages collaborative relationships and partnerships, it is useful to position themselves in relation to relevant actors and how all could work in tandem. For example, suppliers are 'upstream' in relation to a local authority, communities and residents are 'downstream', partners are 'horizontal', and those working between departments or across functions are 'internal'

partners. Procurement strategies for recovery and levelling up can use this kind of process to clarify the roles of and expectations for different actors over time. Boiled down, it is as simple as maintaining the conviction that organisations of all capacity, status, or size can achieve more working together than they can working separately.

As recovery develops and reveals itself, the importance of boosting local employment, retaining local economic benefits, and building stronger communities will be greater than ever. Using early market engagement to identify potential large-scale partner organisations and developing contracts which maximise local economic benefits can help build robust relationships to the aggregated benefit of local economies.

Case Study ISO 44001

- The ISO 44001 standard specifies requirements for the effective identification, development, and management of collaborative relationships within or between organisations. The standard is applicable to private and public organizations of all sizes.
- Application of ISO 44001 can be achieved on several different levels. A single application can be made to a specific unit, division, or project. It can be applied to an individual relationship, whether one-to-ones, alliances, partnerships, or joint ventures, or multiple relationships, such as consortia, networks, or end-to-end supply chains. Finally, there is scope for full application across an organisation and all relevant relationships.
- When applied well, benefits such as enhanced competitiveness, better performances, and the delivery of value on the ground, have been achieved. Not to mention the immense potential of a procurement system driven by local collaboration.
- Why some public bodies are reluctant or uninterested in adopting standards such as the ISO4401 is hard to know for certain. Some immediate observations suggest a lack of awareness, lack of resources, or a procurement culture still steeped in isolated, contract-by-contract cost-savings, could be culpable.

4.2.2 Local economic anchors

A local procurement strategy should not only be delivering distinctly local social value priorities but should be relating and broadening the access of local communities to the wealth creation opportunities of contracts. In our 2018 report *Prosperous Communities, Productive Places*⁵⁴, Localis defined local economic anchors as “an area’s major employer, rooted in a place and synonymous with it”. As an integral part of the local economic landscape, they have a major role to play in driving place prosperity and a localised social value process. They can improve health through their influence on local social and economic conditions by adapting the way they employ people, purchase goods and services, use buildings and spaces, reduce environmental impact, and work in partnership. Anchors can support local SMEs and VCSEs by working in partnership to build local supply chains, help local business sectors grow, and leading by example on good, ethical employment practices – such as paying a living wage or trade union recognition. Collaborative and partnership working between local economic anchors, SMEs, VCSEs, and larger organisations can be enabled by a common shared vision of improving the social, economic, and environmental outcomes of a local area.

A shared vision and narrative can help make the case for coordinated place-based action. It can help identify and unite disjointed work across local economic anchors and partnerships, while providing flexibility for individual organisations to progress their action at different rates. Identifying and developing this shared vision should be a collaborative process that is driven by the consistent involvement of communities and other relevant stakeholders. Practices for local economic anchors could include joint purchasing to leverage their collaborative purchasing power as a means of stimulating local economic activity and relating it back to communities, the spaces they inhabit, and the infrastructure and services they rely on.

4.2.3 Community value charters

The ‘Community Value Charter’ model is a six-step process involving a local authority, major providers at large, and community groups proposed by Localis in our report *Brighten All Corners*. The model attests to three key success factors for localised social value; a framework for setting local outcomes, a standard model for evaluating social value of bids, and an accepted language for social value.

54 Localis (2019) – *Prosperous Communities, Productive Places*

Community Value Charters

PROCESS

- 1** First, a local authority lays out social priorities and invites community responses and submissions
- 2** Then, the local authority invites stakeholder responses on social priorities from contractors. We previously suggested giving equal weighting to SME and large providers in this regard. However, reforms now allow for local authorities to reserve procurements for small businesses and VCSEs – the same principle should be reflected here by prioritising responses by SMEs over large providers if appropriate.
- 3** Thirdly, the local authority publishes a draft ‘Community Value Charter’ – as an addendum to their ‘Local Plan’ – setting out short, medium, and long-term priorities for social uplift, regeneration, and recovery, inviting further feedback.
- 4** Once reworked in accordance with feedback, the Community Value Charter will display local priorities and objectives alongside thematically appropriate ways of measuring social value in these areas.
- 5** Then, the local authority submits a final revision of its Community Value Charter to an appropriate central government for evaluation. We previously suggested the DCMS for this, but the Cabinet Office or the Department for Levelling Up, Housing & Communities may be better suited for this given the logic of public procurement needing to align with the government’s wider levelling up strategy.
- 6** Lastly, the relevant department evaluates and approves or amends the Community Value Charter.

OUTCOMES



A clear, codified set of local priorities for social value bids to be measured against.



Improved information on decision-making and reasoning around procurement for commissioners, contractors, and residents.



An accountability tool to show where progress is being made or stalling in delivering on the priorities of the local community.

Engaging in a standardised model that is rooted in collaboration and an understanding of the functionality of social value brings meaning to the concept, captures excess value, breaks down silo-thinking, enables the collection of shared data, minimises deviation, and ensures that the discourse surrounding the Social Value Act is more accessible and coherent.

Case study: Durham County Council

Recently, Durham County Council has set out their 'County Durham Pound' project – which has two distinct aspects: social value and local wealth building. Social value is as expected – a commitment to improving the economic, social, and environmental wellbeing of County Durham's communities through public procurement decisions and a more socially conscious scope of considerations. On the other hand, local wealth building is a locally collaborative effort between the council, businesses, communities, and other local stakeholders. The effort looks at how best to create and retain wealth within County Durham's local area – whether through densifying local supply chains or empowering community ownership.

The overarching aim of the initiative is to maximise the value of every pound spent within County Durham and work to ensure that it benefits as many residents and businesses as possible. This expands out to leveraging the locality's collective buying and employing power to attract inward investment and the participation of national major employers. There is notable collaboration in training, educating, and understanding the objectives of each local stakeholder and working together to deliver key social value outcomes and a more circular local economy.

The initiative has resulted in an increased tender threshold from £50,000 to £189,330, a minimum of 10 percent social value weighting applied to all tenders above this threshold, and 68 percent of annual spend being invested within the North East and 46 per cent in County Durham.

4.3 Proposed reforms and levelling up

Whilst levelling up has become ubiquitous in discussions of British public policy, the debate around its substance remains structured around some unhelpful dichotomies. The post-industrial North vs. the prosperous South, economically thriving urban centres vs. deprived rural peripheries, et cetera. may have a kernel of truth about them, but they are oversimplifications that risk undermining

the levelling up agenda as a way of bettering both people and place. The role of the Levelling Up White Paper must be to clarify the key strategic goals and measurements of success for the agenda, defining its targets and explaining the rationale. Whatever prognosis is offered by the white paper, however, it is clear that the government intends levelling up to be a holistic agenda cutting across departmental silos, with the Green Book Review of 2020 being a clear statement of intent.

It is imperative that central government departments go on to use their own procurement spend as a means of achieving key 'levelling up' goals. Marrying up procurement with the 'levelling up' agenda would match rhetoric with practice and send a profound message to the UK's private sector. In the local government context, levelling up and procurement could fairly be assumed to be connected through the kind of strategies for local economic uplift described in this report, yet there is a clear role for national legislation in laying the groundwork for a culture shift. Whilst it is important that places embrace circular, 'doughnut' thinking powered by leveraging procurement power, hard-baking social value priorities, and working in partnership, the economic and legislative powers to surpass barriers still lie with central government. Proposed reforms do show signs of a break from the status quo that these barriers have developed under. Fleshing out social value expectations, allowing for the prioritisation of local economic impact when procuring, and a fundamental shift in tone away from simply economic assessments of value, are all very welcome in this regard. However, despite being freed of various EU directives, the lack of local nuance and information on how stated objectives can be achieved in practice still leaves the deck heavily stacked in favour of incumbent providers

Beyond enabling action through legislation, central government must also modify its approach to the capacity funding of local government, which must be adjusted in terms of both scale and timeframe if local procurement is to work towards the goal of levelling up. The serial underfunding of local government has been a theme of British politics for over a decade, and the impact on capacity for developing and implementing strategies has been significant.

For procurement to be used as a strategic instrument of the levelling up agenda, in a way which is transparent and accountable, a reorientation of how the job is carried out in local government is required. This can be enabled by legislation but it cannot be implemented without resources, a long-term vision and steady finance is required for widespread organisational change.

Resourcing aside, the lack of long-term certainty in finance is also an obstacle to the kind of cultural change required. The aim of using procurement to drive the

levelling up agenda is about moving from a fragmented to holistic approach, which will take time and planning, requiring certainty. Short-term cycles and additional funding coming in the form of competitions between local authorities are counterintuitive to the goals of levelling up via procurement. By running repeated short-term financial cycles, central government restrict the ability of councils to plan. At the same time, the competitive, 'bid for pots' model of funding makes clear that levelling up is a zero-sum gain, where only some may benefit.

The pressures of low and short-term funding, combined with the competitive bidding model, creates a negative cycle where resources in councils are consistently pulled into attempts to win competitions and thereby prove their need and abilities to level up. All of this creates a distraction from the key acts of capacity building for a new approach to procurement, which ought to be training for staff and networking across organisations.

The challenge of a cultural shift in procurement must be met both in individual local authorities and across the network of local government, in a way that is guided by central government priorities and resources as part of the wider push to level up. Individual authorities must be able to determine what the role of procurement should be in their broader economic development strategy, in a way which aligns with the goals of the levelling up agenda. Alongside these individual efforts, councils must share best practice and experience, making use of the local government network embodied by institutions such as the LGA and CIPFA, so that organisations working with councils across the country can observe a consistency in principles even if the approaches differ depending on locality. This cannot be an entirely optional endeavour if levelling up is to work across the country, guidelines must be set by central government for both training and networking to ensure a minimum standard.

Recommendations

A local English charter for ethical procurement

A written procurement ethics policy is the key place to start for raising and maintaining a higher ethical standard – those involved in procurement must know what is expected of them and be able to make decisions promptly and efficiently. A clear and concise written policy, with general principles, specific rules, and adequate guidance on how they should be applied, would help with this. Below is a charter for councils to follow when drawing up procurement policies, and to guide relationships between local authorities and suppliers.

1. **Good Jobs**

- Suppliers should all pay the Living Wage, as determined regularly by the Living Wage Foundation.
- Councils should commit to a diverse workforce and expect the same of suppliers.
- In cases of large suppliers, workers should be represented on the board where possible.
- Career progression opportunities should be available to the employees of council suppliers.

2. **Transparency**

- Councils must take a proactive, not reactive, approach to transparency.
- Contract registers should be made publicly available in *the simplest form possible*, with dashboard overview of council spend and impact available to residents.
- Key performance indicators for public value should be agreed by the council.
- Weighting for social value in tendering should be applied equally and consistently throughout the process.

3. **Good business**

- At the front end of the contracting process, councils should engage and consult with the market to ensure opportunities are well communicated and tailored to local specifications.
- At the point of application, councils should ensure that the application

and tendering process is as simple as possible and consistent across council contracts.

- At the back end of the contracting process, it is vital that councils commit to prompt and timely payment of suppliers, with suppliers carrying this commitment onto their own supply chain.
- Councils should sign up to the ISO 44001, which details requirements for the effective identification, development, and management of collaborative relationships within or between organisations

4. **Understanding local impact**

- When dealing with large suppliers, councils should understand the impact the supplier could have locally, on the labour market and in the community.
- Councils must seek to maximise the 'multiplier effect' of spreading SME spending across as many local firms as possible.

5. **Carbon commitments**

- Councils should ensure that all smaller suppliers, within reason, undertake carbon accounting and are aware of their carbon footprint.
- In the case of major suppliers, councils should wherever possible ensure that large suppliers are on a path to net-zero emissions before 2030.
- This information should be aggregated and made available so residents can be aware of the carbon impact of their council's procurement.

6. **Good training**

- Councils must be aware of and communicate to suppliers the desired outcomes of procurement policy on the local labour market, using a robust evidence base.
- Councils must act as a coordinator between suppliers and local educational institutions to ensure commitments around training and skills provision are upheld in the most constructive and effective way possible.

7. **High standards**

- Upon signing up to this charter, councils should, wherever possible, ensure that the standards of doing business with the council are passed down the supply chain of large suppliers.

Unlocking strategic procurement: central government procurement reforms

The Procurement Green Paper and subsequent policy notes provide the beginnings of a positive step-change in procurement across the public sector. Building on this reorientation of the discipline, the following recommendations for procurement reform are designed to unlock strategic procurement at the local level and promote levelling up through procurement across the public sector.

- **Long term, stable funding for local government to build strategic procurement capacity.** Local procurement can be used as a strategic instrument of levelling up, providing resources are provided to fund a long-term reorientation and widespread organisational change.
- **A move away from ring-fenced and competition-based funding.** The ability of the local government to use procurement towards strategic goals is greatly diminished when much of what they procure is paid for through ring-fenced, one-off capital injections, often at the back end of a costly competition process.
- **Training pathways and standards for procurement officers and senior councillors.** Changing the emphasis and principles of public procurement must be accompanied by appropriate training for procurement officers. The government should ensure that all council procurement teams are brought up to speed, using institutions like CIPFA or the LGA to provide training and set standards.
- **A regional competition policy to replace EU competition law.** With the UK no longer subject to EU competition law, there is an opportunity for central government to rework the rules for local procurement in line with the aims to be outlined in the Levelling Up White Paper.
- **A shift in the onus of local procurement officers from value-for-money to local impact.** An explicit and statutory duty should be placed upon local procurement departments to consider the local impacts – economic and social – of procurement first, and value-for-money second.
- **Clear and consistent metrics of local impact, aligned with the Levelling Up White Paper.** The Levelling Up White Paper should definitively state the criteria for measuring a place's success in levelling up. These should be aligned with guidelines for measuring impact in the procurement reforms.

- **A responsibility for central government departments to prove impact of their procurement spend in priority areas.** As major contracting authorities, central government departments should have to demonstrate how their spend has been targeted to help achieve levelling up goals as outlined in the White Paper.
- **An independent review of how local authorities approach scoring and evaluate bids.** This will contribute greatly to achieving consistency and transparency across the sector and could reveal important practical lessons.



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