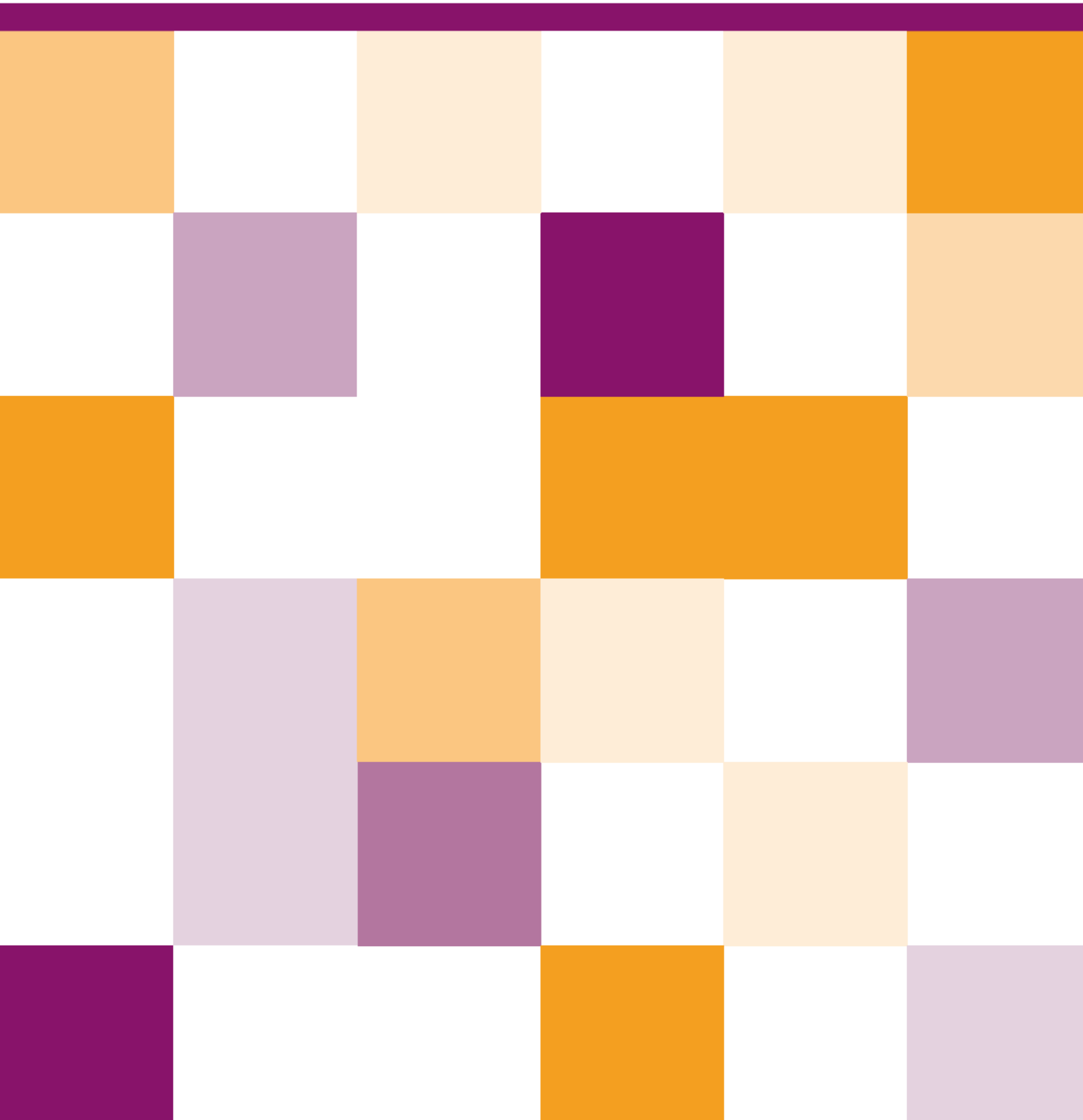




Social Clauses Project

Report of the Social Clauses Project 2008



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Executive Summary

The Partnership in Public Services Action Plan¹ identified four different elements of the government's engagement with the third sector: commissioning, procurement, learning from the third sector, and accountability.

The action plan required the Office of the Third Sector to examine the use of social clauses, barriers to their use, and the potential for template clauses. The social clauses project was established with the North East Centre of Excellence working with the Office of the Third Sector and a project board to take forward the work on social clauses.

The project was set up to: consolidate knowledge on the existing use and best practice of social clauses, provide clarity on the merits of using social clauses, and support good commissioning and procurement by producing user friendly materials to help decision makers.

Desk research and a web survey were used to bring together information on the use of social clauses and the project was taken forward by two local authorities who were examining their use of social issues in public procurement within their recycling and re-use contracts. A third local authority looked at the issue of addressing social issues through procurement in general.

The two local authorities looking at social issues in the recycling and re-use sector were unable to provide examples of contract conditions which addressed social issues during the time period of the project and are continuing to consider these issues in designing future contract specifications.

The main barriers to the use of social clauses were identified as confusion about when they can be legally used, concern about the processes needed to include them in any contract specification and how to evaluate them.

This report highlights the confusion inherent in the use of the term "social clauses". The term "Social Clauses" was not defined in the Partnership in Public Services Action Plan, so the

project work was set up using a definition which is broadly about addressing social issues in the procurement process rather than just the use of specific conditions within the contract. Social clauses are more usually defined as specific contract conditions which must relate to the performance of the contract and be identified within the Official Journal of the European Union (OJEU) contract notice.

This report has attempted to provide clarity on the use of the term 'social clauses' through only using it when referring to specific contract clauses, whilst using the term 'social issues in procurement' where the reference is to wider considerations within the procurement cycle.

Future work on this field by the Office of the Third Sector will focus on the measures needed to enable commissioners to address social issues in procurement with greater confidence. This will include work on making the evaluation of outcomes and costs associated with incorporating social objectives in procurement through improved understanding of social return on investment. Additionally, the National Programme for Third Sector Commissioning will include a section on evaluating tenders where social issues have been incorporated in the procurement process.

¹ Partnership in Public Services: an action plan for third sector involvement, December 2006

Section 1 – The Project

Project Background

The social clauses project was set up following the two action plans published by the Office of the Third Sector (OTS) in late 2006². Both action plans included the commitment for the Office of the Third Sector, in collaboration with the North East Centre of Excellence (NECE), to “consult partners on how to tackle barriers to the use of social clauses, and will develop a small number of template social clauses for key social outcomes as tools to assist and focus their use.”

The action plans identified social clauses as a means to incorporate social requirements into contracts. They also discussed potential barriers to their use such as the complexity of social clauses, the risk of legal challenge and “the difficulty of including social clauses in ways consistent with value for money requirements and the EU procurement rules.

The social clauses project started in spring 2007 with representatives from the Department of Communities and Local Government (CLG), Office of Government and Commerce (OGC), HM Treasury (HMT) Local Government Association (LGA), Improvement and Development Agency (IDeA), Social Enterprise Coalition (SEC) and the National Council for Voluntary Organisations (NCVO) on the project board which was led by OTS and NECE. Membership was later extended to the Department for the Environment, Food and Rural Affairs (DEFRA).

Project Objectives

Three objectives were set within the project scope and specification. A fourth objective was added by the social clauses project board for the second phase of the project which focused on the development of social clauses in pilots supported

by the social clauses project. The objectives were:

- To consolidate knowledge of what experience exists of the use of social clauses, and capture leading practice.
- To provide more clarity about the advantages and costs of using social clauses and the circumstances in which they could be useful tools to deliver particular outcomes.
- To support good commissioning and procurement by providing a user-friendly package of draft template clauses and clear supporting materials to help decision-makers.
- To develop and test an approach to supporting the appropriate – in terms of legalities and where the social clause adds value – use of social clauses within procuring organisations.

For the purposes of this project the term “social clauses” was defined by the project board as follows:

‘Social clauses describe relevant, legitimate and value for money aspects of a procurement lifecycle which fulfil a particular social aim. This may include social requirements within the technical specification and award criteria or a contract, where they are relevant to the subject of the contract and compliant with public procurement legislation, as well as the UK’s value for money policy (or equivalent commitment).’

Consolidation of existing knowledge

A scoping exercise on the current use of social clauses was undertaken in parallel with the establishment of the Social Clauses Project Board. Research was established to collect existing information and build a data library on social clauses. The scoping report was based on phone interviews and a review of documentation.

² Partnership in Public Services: an action plan for third sector involvement, December 2006 and Social enterprise action plan: Scaling new heights, November 2006

Following the development of the definition of social clauses used by the project board a web-based survey was initiated. It was hosted by NECE with links from the OTS and Regional Centres of Excellence (RCOE) websites. In addition to initial press work;

- 20 independent organisations were sent e-alerts
- The Regional Centre of Excellence (RCE) network was alerted to the project with a request to promote
- The networks of Regional Development Agencies (RDA) and cross governmental Third Sector Liaison Officers were similarly informed and requested to promote

Reference and links to the survey site were also present in electronic information distributed by a number of third sector umbrella organisations and networks.

The survey, undertaken between July and September 2007, looked at the use of social clauses, using the definition provided by the project board. The survey questions were aimed at a mixed audience of commissioners, procurers, suppliers and representatives from the public, private and third sectors. The web-based questionnaire allowed for the use of a mixture of tick box and free text questions. The site received 194 submissions, converted to 158 usable returns. The full report of the survey, is available on request.

Survey findings

Survey results confirmed that legal uncertainties on the status of social clauses and EU procurement rules, as well as lack of information and understanding, were barriers to their use. Additionally, responses from stakeholders frequently identified a further two barriers to the use of social clauses:

- Difficulty in formulating the social clause as a core contractual requirement
- Difficulty in measurement at evaluation stage

Some survey recipients suggested that further guidance on the use of social clauses was needed from central government in order to clarify their use and the legal issues under European and UK procurement policies. In the course of the project, the Office of Government Commerce published new guidance in June 2008³ that addressed many of the concerns mentioned by survey respondents and provided clarity around using contracts to address social issues. The OGC guidance is referred to throughout this report and should be read when considering how to address social issues in public procurement.

Outcomes

As well as the results of the survey, comments were received by the project from individuals, phone interviews were undertaken with local authorities known to have an interest and/or experience of using social clauses, and discussions were had with a wide range of agencies on more general social clauses issues. Following this feedback, it was decided that the creation of template clauses should not be considered, as it was clear that any contract terms need to be tailored to the particular procurement, must relate to the performance of the specific contract and be assessed on whether their inclusion represents value for money.

The project therefore moved from the original aim in the action plan of creating template contract conditions to exploring how and when social issues could be addressed in the procurement process and what package of support should be created for commissioners looking to address social issues through procurement activities. The Board agreed to delay the development of the package of support until there was clarity as to the needs of trial participants.

³ Buy and make a difference: How to address social issues in public procurement

Section 2 – Pilot Projects

Background

A briefing paper inviting local authorities to consider becoming pilot sites was produced. This was promoted in parallel to, and where appropriate accompanying, the survey promotion. Specific contact was made with Defra; public sector infrastructures including the Waste Information Network⁴ (WIN), the Waste and Resources Action Programme⁵ (WRAP), and Local Authority Recycling Advisory Committee⁶ (LARAC); and a range of third sector agencies. This activity allowed the identification of three options:

1. local authorities undertaking or planning specific procurements where there was a view that additional benefit of addressing social issues may be achievable
2. local authorities with a more generic interest
3. a regional procurement exercise of considerable scope and technical complexity.

Several local authorities were identified under option 1. The project worked with four local authorities who were examining the use of social clauses in public sector contracts, with specific reference to re-use and recycling contracts. The local authorities were Medway Council, Braintree District Council, Leeds City Council and North Yorkshire County Council. Cumbria agreed to engage with the project to explore a generic policy-led approach.

The pilot looked to develop and test an approach to supporting the appropriate use of social clauses within the local authorities. Information and support was provided to officers from the pilot local authorities. Workshops, specialist legal support opportunities, contextual guidance and continued support from NECE were provided.

The project board concluded that examining the use of social clauses through pilots in the re-use and recycling sector could provide information on

the effect of addressing social issues in the procurement process, or the effect of specific social clauses, on the supplier base, the costs and the processes needed to use them. Although it was recognised that contracts within the re-use and recycling sector tend to be 2 – 5 years in length and contracts in the waste sector are traditionally of a long-term nature (10-25 years), and that results from the pilots would take a number of years to see it was agreed that the pilots should be focused on this sector.

Unfortunately two of the local authority pilots were unable to take the work of the project forward due to staff changes, resource limitations and strategic policy decisions. The remaining pilots originally ran until the end of March 2008. During the period of the initial phase of the pilots no contracts were awarded. The two local authorities involved in the pilot have taken the work on social clauses further and are examining their use (following business case analysis) in project initiation documents and contract specifications. Interest in the potential use of social clauses and addressing social issues through procurement is also ongoing from procurement officers in the two local authorities that were unable to take an active role in the pilots in early 2008.

Pilot Outputs

Leeds City Council

The work of Leeds City Council on looking at social issues in procurement progressed throughout the early summer and a Project Initiation Document (PID) for the development of a re-use shop at East Leeds was issued by the Environmental Services Directorate in August.

It is planned that the store will be operated by an organisation, possibly from the community and voluntary sector, which is able to ensure that social inclusion clauses, added social benefits and cross council working are maximised. The project benefits are seen as:

- an increase in recycling and re-use performance;
- an increase in public awareness on waste issues and the start of a step-change in attitudes towards second hand goods/re-use;
- providing added social benefits to the local and wider community through

⁴ <http://www.win.org.uk>

⁵ <http://www.wrap.org.uk>

⁶ <http://www.larac.org.uk>

- providing jobs and increasing social inclusion for vulnerable groups in society;
- contributing to the 'One-Council' approach by supporting Housing/Social Services clients in provision of good quality household items at low cost.

The project is seeking external assistance from the North East Centre of Excellence, under the Social Clauses Project, to assist in the development of best practice in terms of social inclusion clauses.

North Yorkshire County Council

The North Yorkshire County Council social clauses work centred on setting up reuse shops in Household Waste Recycling Centres. There is little scope for progressing the project under the current contracts which expire in March 2010.

The social clauses project work will be re-examined at the beginning of 2009 when the County Council will begin rewriting the Household Waste Recycling Centre contracts.

The project is considering seeking external assistance, from the OTS Social Clauses Project advisers, to assist in the early stages of the process.

Cumbria County Council

Cumbria County Council looked at the wider use of social issues in procurement. The council had introduced a policy led approach to procurement and wanted to use the social clauses project to help further develop this work and increase awareness across the council and the wider Cumbrian procurement community on the value and use of addressing social issues through procurement. In addition, Cumbria County Council was already undertaking a project to work with the third sector and felt this project would complement and support a holistic approach to procurement. The project has three aims:

- to develop the third sector's capacity to respond to procurement opportunities

- to develop an intelligent procurement process through which local communities can secure services which are more responsive to local need
- to improve the value for money of services delivered through procurement.

Cumbria County Council views the work as having strategic importance as commissioning and procurement activity will be the subject of new Key Lines of Enquiry (KLOE) in the Use of Resources element of Comprehensive Area Assessment. Such KLOE's include consideration of wide sustainability and policy issues, including the use of social clauses and focus on outcomes in the community.

Under the project a time-limited role was established to:

- develop staff in both the Community & Procurement units understanding of social clauses, as part of looking at social issues in procurement, in order to develop existing processes and embed compliance with policy documents such as the Third Sector Strategy, and Compact.
- devote time to individual procurement activities and tenders to apply good practice and secure wider community benefits by ensuring that social clauses are used in every appropriate procurement contract.
- work with procurement staff to identify and apply opportunities for an innovative approach to the use of 'social' clauses encompassing evaluation of community benefit, including the production of written guidance aimed at longer term sustainability.
- facilitate two-way skills transfer between the procurement and community teams, particularly in relation to contract management
- develop a deeper understanding of how to monitor and evaluate council contracts.
- embed learning within county-wide procurement work including Local Area Agreement commissioning

Activity is ongoing under all these areas of work. In particular:

- In order to develop staff in the Community & Procurement units understanding of social clauses the Third Sector Officer attended team meetings to gain understanding of the environment in which the Strategic and Commercial Procurement Unit (SCPU) operates. The Third Sector Officer circulated a brief description of social clauses to team members and the Third Sector Officer & Head of Unit delivered a detailed session on social clauses to key team members.
- The Integrated Youth Support Services (IYSS) commissioning was identified as an opportunity. The Third Sector Officer worked with the Procurement Officer (AB) assigned to support the process to integrate social clauses as part of the tender evaluation criteria. This allowed
- access and input to the Commissioning Team and secured an early stakeholder meeting before the service specification was finalized resulting in additional time being built into tender phase of process as a direct request of those that attended the session. Such early, regular and structured involvement meant social issues focusing on community benefit were embedded at every stage of the procurement process.
- The Third Sector Officer examined the contracts register and spent time with the SCPU Business Manager to establish feasibility of the application and appropriateness of social clauses on contracts due for renewal. This process of familiarisation with the range of tenders also enabled early identification of opportunities to include social clauses and ensure third sector engagement whilst embedding such factors into procurement processes.

Findings and Outputs

Early feedback from the pilots suggested that it is not just heads of service (commissioners) that need to be involved in determining whether to address social issues through procurement. Other parts of the organisation, e.g. service managers, procurement officers and legal advisors should also be involved. When they worked together it resulted in greater

understanding of social clauses and their role in maximising social value from procurement when appropriate to the contract. Comments received identified that support from senior managers and Councillors within the commissioning authorities was integral to the success of the work on addressing social issues in the procurement process.

A selection of outputs from the project, in addition to this report, will be available on request and include: the survey results as well as the contextual document provided to the pilot local authorities at the start of the process. The contextual document, as issued at the beginning of the pilots, was tested in the field and through the quality assurance mechanism. Additionally a community benefits model from Leeds City Council and a decision process map 'From Recognising an Opportunity to Initiating a Project' created by North Yorkshire County Council will be available on request.

The North Yorkshire County Council process map outlines the steps needed to move from taking the decision to look at whether an opportunity to address social issues through procurement exists in a scheduled procurement exercise to consideration of the business case and, potentially, the development of a project initiation document. Steps include policy review /development, securing process resources, identifying any negative impact of the potential opportunity, examining mechanisms for supply side engagement, and setting up a provisional project board to include end users, supply side and the legal / procurement teams. The process marks how the decision not to proceed may be taken very early on in the process or at the consideration of the business case stage.

The Leeds City Council Community Benefits Model was drawn from initial work for the Leeds City Council Keeping House Programme.

Project Assessment

An external assessment of the approach of the social clauses project fieldwork was commissioned from the Furniture Re-use Network to cover the project from the decisions on which local authorities would be involved with the pilots. The assessment was asked to view the support provided to the pilots in order to provide learning

for future steps on the work to examine the potential for the use of social clauses. The report noted that:

- the interventions provided by the NECE and the separate legal support had allowed the local authority contacts to boost support across the authority.
- the project timescale was too short and that officers from the local authorities would have liked longer before the start of the project and after the end of the project. More time was suggested before the start of the project to ensure that the work on social clauses would sit alongside the procurement and budget processes as well as having a longer period in which to garner support for considering the potential use of social clauses. More time was suggested for the overall length of the project in order to maintain access to specific expertise along the full time period in which the contracts would go from initial commissioning to completed development and sign-off.
- the level of engagement with the project deliverers was a significant factor in the ongoing development of the project
- the project would have benefited from involving a greater number of local authorities in order to reduce the risks of participant drop-off.

Additionally, an assessment of the web-based dissemination options was provided in a report by a further independent author. The report on the dissemination options concluded that the report and outputs from the project would need to be placed on a range of different websites to reach the different audiences; commissioners, procurement officers and legal advisors; sustainable procurement practitioners or policy advisers; service delivery providers in the public, private or third sector; policy and corporate performance professionals; trainers and educators; and equalities professionals.

Section 3 – Measurement Tools

One of the barriers to working with social clauses that was identified by the social clauses project survey was the difficulty in measuring outcomes and the costs associated with incorporating social objectives into procurements.

The first phase of the social clauses project identified this as a concern but was unable to take work forward on measurement processes during this stage of the project.

Future work by the Office of the Third Sector will include a project examining the potential use of social return on investment (SROI) and will be used to address the second objective from the social clauses project scope and specification which was to provide more clarity about the advantages and costs of addressing social issues in procurement.

The Office of the Third Sector is tackling the need to improve information about impact through a new, three year programme on measuring social value. The project will be supporting the development of new guidance, training and infrastructure for social return on investment, which is a tool to help define and explain the achievement of social value. OTS will be working with investors, grant makers and commissioners, and with the third sector, to ensure that SROI becomes an accessible, affordable and well understood route for articulating the social value they create. This should help everyone involved make better decisions. The project will be run by a consortium led by SROI UK.

OTS will be working closely with the Scottish Government, which will be running a complementary project. The two projects will be closely aligned, with OTS taking the lead in creating appropriate guidance, and the Scottish Government leading on training materials and a new portal to help people undertaking SROI find the right measures and proxy values.

SROI is a useful tool for understanding and managing the impacts of a project, organisation or policy. It is based on stakeholders and puts financial value on the important impacts identified by stakeholders that do not have market values.

SROI is a framework to structure thinking and understanding. SROI has the benefit of being transparent and consistent. It aims to create a more tangible currency in social value that everyone can understand.

More information and the latest news on the SROI project is available on OTS's website at www.cabinetoffice.gov.uk/third_sector.aspx.

Section 4 – Next Steps

Future work on looking at social issues in procurement will cover a number of different areas which include;

- increased commissioner understanding of social issues in procurement;
- more accessible evaluation and measurement tools;
- continued involvement with the local authorities involved in the pilots to follow the development of service delivery contracts in the re-use and recycling sector and any inclusion of contract conditions which allow for social issues to be addressed through procurement.

Understanding

Historically, a lack of understanding on the use of social issues in procurement has limited their use by commissioners when commissioning public service contracts. The social clauses project survey results, as well as anecdotal evidence, suggests that commissioners are hesitant to consider including social issues in procurement due to a low understanding of how social issues can be included in service delivery contracts and how they can be evaluated within tender evaluations.

The National Programme for Third Sector Commissioning was set up as one of the main actions under the Partnership in Public Services Action Plan with the aim of providing training and awareness of the benefits of involving the third sector in public services. The programme aims to provide training for 3000 commissioners involved with public services from across the public sector including staff in Jobcentre Plus, primary care trusts, the National Offender Management Service and local authorities.

In order to address the concern revealed by the survey, the National Programme for Third Sector Commissioning is looking to include a section in its training programme, on the tender evaluation of social issues in commissioning.

Measurement

Before considering whether to incorporate contract conditions through social clauses, or design contract specifications that allow for social issues to be included within public service delivery contracts, commissioners will want to know that there will not be any negative financial outcomes. In order to examine the costs and benefits of incorporating social issues within contracts, measurement tools need to be available so that service delivery organisations are able to provide quantitative, as well as qualitative, results.

The development of the SROI measurement tool is one step that will help provide commissioners and service delivery organisations with a measurable financial outcome. The OTS project on SROI is due to report a revised methodology for the SROI process in the spring of 2009.

Involvement

The local authorities actively involved with the pilot, and those who expressed an interest but were unable to take part within the original timeline, will be contacted on a regular basis to provide updates on their incorporation of social issues within any procurement process they undertake.

Information from the local authorities suggests that it is unlikely that relevant contracts will be agreed before 2010. However, learning from the commissioning process, including identification of a need, and the potential for addressing social issues through procurement process may be available earlier to highlight and promote best practice. This will be examined again in autumn 2009.