

**REPORT TO:** Executive Board

**DATE:** 18 September 2014

**REPORTING OFFICER:** Strategic Director, Policy and Resources

**PORTFOLIO:** Resources

**SUBJECT:** Public Services (Social Value) Act 2012 Policy and Procurement Framework

**WARDS:** All

## **1.0 PURPOSE OF REPORT**

- 1.1 To seek endorsement from the Board for the work undertaken to date on developing a Social Value approach, including a Policy and Procurement framework for both Halton Borough Council and NHS Halton Clinical Commissioning Group carried out both in response to the needs of the Public Services (Social Value) Act, 2012 in conjunction with the Halton Health and Social Value Programme.

## **2.0 RECOMMENDATION: That the Board**

- 1) Note the work carried out to date on developing a Social Value Approach for Halton Borough Council and the NHS Halton Clinical Commissioning Group;**
- 2) Approve the attached Policy Statement and Procurement Framework; and**
- 3) Support the sharing of the Council's approach to the wider partnership for their use (as appropriate) through both the Health and Wellbeing Board and the Halton Strategic Partnership.**

## **3.0 SUPPORTING INFORMATION**

- 3.1 The Public Services (Social Value), 2012 introduces a statutory requirement for public authorities to have regard to economic, social and environmental well-being in connection with 'public services contracts' within the meaning of the Public Contracts Regulations. The new duty, therefore, only applies to contracts for services where the value exceeds the OJEU threshold (currently £172,514) and those public services contracts where there is only an element of goods or works. It doesn't apply to public work contracts or public supply (goods) contracts. However, there is widespread interest in and support for public bodies

considering social value in all forms of contracts where appropriate.

- 3.2 The Act requires the Council only to consider how what is being procured might improve the well-being of the relevant area and how the procurement process might act with a view to achieving that improvement. Whilst the Act positively encourages economic, social and environmental well-being to be taken into account, this still needs to be done within the context of existing constraints within EU public procurement rules and other legislation. This means that any specific benefits which may be sought from a procurement exercise must remain relevant to the contract and proportionate and not risk distorting the outcome of the competition by giving them undue emphasis.
- 3.3 The definition of social value contained within the Act is “the additional benefit to the community from a commissioning/procurement process over and above the direct purchasing of goods, services and outcomes”. Social value makes it possible to weigh social benefit against the cost of investment, to think differently about the way resources are used and to show the additional value created by organisations. Social value can therefore be a way of thinking about how scarce resources are allocated and used, looking beyond the price of each individual contract and instead looking at what the collective benefit and additional gains to the community may be.
- 3.4 These gains could be in local employment, local sourcing of materials and goods, apprenticeship and training programmes for disadvantaged groups, volunteering programmes, the use of sustainable products and much more. Commissioning and procuring for social value can therefore help join up all the strategic aims of a public body. For example, every local authority has a best value duty to improve the economic, social and environmental well-being of an area. For Halton, this means our commitment to meet our needs to provide goods, services, works and utilities in way that produces social, economic and environmental benefits for the borough. Social Value can be used as another tool to help us consider how economic, social and environmental well-being may be improved, and how procurement may secure those improvements.
- 3.5 The Public Services (Social Value) Act, 2012 in line with the Best Value Duty, sets out three key themes to be addressed in seeking social value:
  - Social
  - Economic
  - Environmental

#### **4.0 POLICY OPTIONS**

- 4.1 For Halton, Social Value sits within the overarching framework of the Halton Sustainable Community Strategy 2011-2026, the document that sets out our

priorities and vision as a Borough and which is agreed by the Halton Strategic Partnership. The strategy was refreshed and endorsed by the Halton Strategic Partnership in June 2014.

4.2 Our vision under the Sustainable Community Strategy is that:

*“Halton will be a thriving and vibrant Borough where people can learn and develop their skills; enjoy a good quality of life with good health; a high quality, modern urban environment; the opportunity for all to fulfil their potential; greater wealth and equality, sustained by a thriving business community; and safer, stronger and more attractive neighbourhoods.”*

And this is outlined through our key priorities of:

- A Healthy Halton
- Employment, Learning and Skills in Halton
- A Safer Halton
- Halton’s Children and Young People
- Environment and Regeneration in Halton

4.3 In addition, this work on Social Value has been managed in order to take place in conjunction with a piece of partnership work being undertaken with funding through Social Enterprise UK as one of 4 national pilots looking at how we can create social value through health. As part of this activity, the 6 priorities of the Marmot review into Health Inequalities, Fair Society, Healthy Lives, have provided a context and focus of activity. These seek to:

- Give every child the best start in life;
- Enable all children, young people and adults to maximise their capabilities and have control over their lives;
- Create fair employment and good work for all;
- Ensure a healthy standard of living for all;
- Create and develop healthy and sustainable places and communities;
- Strengthen the role and impact of ill health prevention

4.4 An approach has therefore been taken to align, wherever possible, the environmental, social and economic focus of the Act with the duty of Best Value, Halton Sustainable Community Strategy and the Marmot priorities as there are clear correlations across all of these documents in relation to social value. Halton’s bid was successful as being part of the first cohort alongside 4 other CCGs and LAs. It is widely recognised that Halton and Salford are the leaders in this approach across the UK.

4.5 A Social Value policy statement has been developed (attached), setting out a commitment, that through our commissioning and procurement activity and under the Public Services (Social Value) Act 2012 we will consider and, where appropriate, seek to secure wider social benefits for Halton as a whole. The policy statement will also support the Halton Social Value Charter which is

being developed in partnership across the borough as part of the social value in Health programme.

- 4.6 To aid implementing the policy statement, a Social Value Procurement Framework has been produced and will be applied in the following way:
- For each procurement opportunity, above £1000, we will undertake a Social Value “Opportunity Assessment” which will identify output Indicators and outcomes that are appropriate for inclusion in the procurement process
  - The output indicators and desired outcomes will be thematic and linked to the priorities of the Halton Sustainable Community Strategy and at least one of the six Marmot Priorities
  - The outcomes identified will be both relevant, transparent and proportionate for each procurement opportunity
  - Our processes will be fully compliant with EU procurement law and the council’s own Procurement Standing Orders, thus minimising any risk
  - Our approach to Social Value will be a bespoke approach, tailored for each and every Tender or Request for Quotation (RFQ) opportunity
  - We aspire to include where appropriate in each procurement at least one Social Value outcome
  - Where outcomes are applied they will form part of the award criteria and included in the evaluation matrix. How this happens will be clearly explained
  - Outcomes where appropriate will be built into awarded contracts and monitored; winning bidders will be expected to report on them to evidence how they are achieving Social Value
  - Where we undertake procurement support on behalf of other Public Sector bodies we will encourage to use this Framework wherever appropriate
  - We will endeavour to integrate wherever possible our methodology for the purpose of best practice.
- 4.7 Within Halton we procure a wide range of goods and services, and it is recognised that there can be no ‘one size fits all’ model. The policy and framework will therefore need to be applied in a proportionate manner and be tailored to reflect what is being procured and how it will be the role of service commissioners and procurement leads to consider, on a contract by contract basis, what Social Value opportunities and outcomes may be relevant to that contract.
- 4.8 Both the policy and framework have been consulted on with relevant stakeholders (internal and external) and the suggested approach has received universal support.

## **5.0 POLICY IMPLICATIONS**

- 5.1 The Public Services (Social Value) Act, 2012 sits alongside other procurement laws. Value for money is the over-riding factor that determines all public sector procurement decisions even with a growing understanding of how value for money is calculated, and how “the whole-life cycle requirements” can

include social and economic requirements. The Act in essence builds upon, rather than being a replacement for, existing procurement legislation so the duty will need to operate within the existing boundaries of the legal framework. The Act acknowledges this by noting that the authority "must consider only matters that are relevant to what is proposed to be procured" and that authorities "must consider the extent to which it is proportionate...to take those matters into account".

- 5.2 The recent consolidation of EU procurement framework also makes it clear that social requirements can be embraced in procurement practice providing certain criteria are met. These criteria are:
- Social requirements should reflect policy adopted by the public body;
  - Social requirements should be capable of being measured in terms of performance;
  - Social requirements drafted in the specification become part of the contract;
  - Social requirements should be defined in ways that do not discriminate against any bidders across the European Union.
- 5.3 The Equality Act 2010 introduced a general equality duty which applies to the procurement (including commissioning) function of public authorities. The duty extends to external contractors which carry out public functions. It repealed the Local Government Act 1988 provisions in relation to permitted race relations questions in public tenders; instead, local authorities are explicitly permitted to take non-commercial matters into account during the procurement process, when they consider it is 'necessary' or 'expedient' to do so
- 5.4 Local authorities, under their statutory duty to achieve best value they must already consider social, economic and environmental value and this duty has not been repealed. The Act therefore sits alongside this commitment.
- 5.5 The Act is also important in the context of supporting other key pieces of legislation such as the Modernising Commissioning Green Paper, the Open Public Services White Paper and the Localism Act, particularly around the Community Right to Challenge. It also contributes to the civic society agenda and emerging policies around strengthening society through encouraging and creating social growth.

## **6.0 OTHER IMPLICATIONS**

- 6.1 The Act is also viewed as being of significance to the Voluntary and Community sector as a whole as well as public services as it provides greater focus on outcomes and impacts rather than outputs and could improve the chances of the VCS successfully bidding to win contracts when it comes to procurement exercises. Voluntary and Community Sector organisations and public sector organisations will need to engage effectively in developing a joint understanding of needs and priorities and consider how they will measure and demonstrate social value. The work undertaken by the Health and Social

Value programme in Halton will assist in support this, however it is proposed that this work on the policy and framework be formally shared with both the HSPB and Health and Wellbeing Board following Executive Board approval and made available to partners to use if appropriate.

- 6.2 Social Value is an emerging area for policy development and is gaining in prominence. There are a range of tools and systems available to measure social impact and social value such as Social Accounting and Auditing (SAN), Social Return on Investment (SROI), Local Multiplier Effect (LM3) as well as other systems being developed to give some legitimacy to measuring social value and social impact, as these can be subjective measures. It may be beneficial to consider the potential of a small number of relevant council officers undertaking formal training in some of these areas in order to lend additional rigour to the process of measuring social value and in supporting embedding social value within the community.
- 6.3 It is recognised that there can be no 'one size fits all' model. The policy and framework will therefore need to be applied in a proportionate manner and be tailored to reflect what is being procured and how. It will be the role of service commissioners and procurement leads to consider, on a contract by contract basis, what Social Value opportunities and outcomes may be relevant to that contract. If Social Value opportunities and outcomes are decided as being relevant, and form part of a contract award, these should be capable of being measured and monitored by the service commissioner.
- 6.4 Using the framework to undertake Social Value opportunity assessments will be an additional process stage in procurement and commissioning activity. However, the framework seeks to minimise this by setting out a simple set of steps and it is vital that we show that we have considered social value in pre-procurement in accordance with the Act. It should also be remembered that the additional benefits to Halton in seeking and embedding social value outcomes within our spend should far outweigh any initial time costs in considering it.
- 6.5 There will be a need to cascade this approach as widely as possible. It is anticipated that this can be done within existing planned programmes of work such as Procurement Training and Meet the Buyer events as well as through existing structures such as the HSPB and Health and Wellbeing Board, therefore the additional cost to officer time should not be excessive.
- 6.6 If it is agreed that accredited training in the use of techniques such as Social Return on Investment would be beneficial there would be a cost per officer trained. Estimates are that this is in the region of £550 per officer (although discounts may be available depending on numbers). This would need to be considered.
- 6.7 It is likely that there will be additional support available under the Social Enterprise UK Health and Wellbeing programme (and other sources) for Halton in rolling out the programme further and that this could be used to offset some of the costs involved (such as facilitation, print and venue costs etc.) in any further development of the Social Value approach in Halton.

## **7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### **Children and Young People in Halton**

None other than those outlined in the body of this report.

### **Employment, Learning and Skills in Halton**

None other than those outlined in the body of this report.

### **A Healthy Halton**

None other than those outlined in the body of this report.

### **A Safer Halton**

None other than those outlined in the body of this report.

### **Halton's Environment and Regeneration**

None other than those outlined in the body of this report.

## **8.0 RISK ANALYSIS**

- 8.1 Social outcomes, benefits and dis-benefits should always be critical to procurement decisions as much as price and direct service quality but should never be an excuse for a failure to secure value for money. Procurement should be based on the pursuit of value for money, public value, quality services and social value. There will always be a balance to be struck and transparency about how such balances are decided and the consequences of such decisions.
- 8.2 The Act should also not be misconstrued as permitting public bodies a broader scope than before in setting unrelated specifications or criteria to achieve social and environmental policy outcomes. Wherever possible, for all contracts over £1000, social value opportunities will be considered. However, it should be always be remembered that social value clauses may not be appropriate for every contract The key words contained within the Act around this are in relation to keeping social value 'relevant' and 'proportionate'.
- 8.3 If the procurement is carried out in emergency circumstances, not due to any delay on our part, making it impractical to comply with the Act, then we may need to disregard the requirements. This is set out in the Act as permissible.
- 8.4 The way in which evidence of Social Value benefits is measured is not set out either in the Act or this policy and framework. Dependent on the requirements

of each procurement exercise, we may choose to specify requirements explicitly within a tender or ask suppliers to come up with their own innovative ideas and voluntary clauses. In all cases we will ensure we are clear as to how Social Value elements have been weighted in the evaluation and decision-making process. It is the job of commissioning and procurement managers and officers to specify what social values outcomes are sought and relevant to each procurement or commissioning exercise.

- 8.5 Whilst the Act only requires Social Value to be considered at pre-procurement stage, officers commissioning or procuring goods, where social value has formed part of the awarding criteria, are encouraged to monitor and measure this as part of their contract management.

## **9.0 EQUALITY AND DIVERSITY ISSUES**

- 9.1 The Equality Act 2010 brings together into one Act all previous legislation around Equality and Diversity. Under the Duty a public authority must, in carrying out its functions, take into account the need to: -

- (a) Eliminate discrimination, harassment, victimisation and any other conflict that is prohibited by the Equality Act 2010
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

- 9.2 The Act defines a number of characteristics which are protected: -

- (a) Age
- (b) Disability
- (c) Gender reassignment
- (d) Marriage and civil partnership
- (e) Pregnancy and maternity
- (f) Race
- (g) Religion or belief
- (h) Sex
- (i) Sexual orientation

- 9.3 The Equality Act 2010 introduced a general equality duty which applies to the procurement (including commissioning) function of public authorities. The duty extends to external contractors which carry out public functions. It repealed the Local Government Act 1988 provisions in relation to permitted race relations questions in public tenders; instead, local authorities are explicitly permitted to take non-commercial matters into account during the procurement process, when they consider it is 'necessary' or 'expedient' to do so.



## **10.0 REASON(S) FOR DECISION**

- 10.1 To endorse and enable implementation of the joint Halton Borough Council and Clinical Commissioning Group Social Value Policy and Procurement Framework. This work has been developed in line with optimising opportunities to further maximise the social value benefits for Halton from relevant public sector procurement and commissioning in line with the duties set out in the Public Services (Social Value) Act.

## **11.0 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 11.1 It is a requirement of the Public Services (Social Value) Act that relevant public bodies such as Halton Borough Council and the Clinical Commissioning Group consider economic, social and environmental benefits at pre-procurement stage so the option of doing nothing would not be appropriate.
- 11.2 Whilst it is recognised that in many procurements social value outcomes are already considered, a formal mechanism to help contract managers consider and record their considerations will ensure that opportunities are identified as a matter of routine and built into contracts as appropriate and will make the practice more widespread across Halton Borough Council and the Clinical Commissioning Group.
- 11.3 The scope of the Act is narrow as to which contracts social value considerations are required for (i.e. only those for works and services over the EU threshold). Furthermore, there is only a requirement to 'consider' social value with no requirement to actually follow through on the considerations. Therefore, complying solely with the letter of the law is a legitimate option and a less holistic framework would suffice. It is felt however, that by expanding the approach in Halton to cover contracts over £1000 and to ensure this is monitored (if forming part of an awarded contract) this will allow for social value to be realised more innovatively and the benefits felt in Halton.
- 11.4 It was recognised that social value elements may not be appropriate in all contracts; therefore the framework has been developed to guide contract managers rather than be prescriptive. Whilst outcomes are suggested it was felt that these should not be made the only available ones and that managers should have the flexibility to decide what outcomes (if any) are most appropriate to each procurement opportunity.

## **12.0 IMPLEMENTATION DATE**

- 12.1 The policy and framework is recommended for immediate implementation.

**13.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

Document	Place of Inspection	Officer
<a href="#"><u>Public Services (Social Value) Act 2012</u></a>	Municipal Building	Lisa Driscoll
<a href="#"><u>Procurement Policy Note Public Service (Social Value) Act</u></a>	Municipal Building	Lisa Driscoll
<a href="#"><u>Best Value Statutory Guidance</u></a>	Municipal Building	Lisa Driscoll

