

---

# **SUPPORTING CARE COMMISSIONERS AND PROCURERS TO PROMOTE “SOCIAL VALUE” MODELS OF DELIVERY**

A collaborative exploration of the transformational agenda set out in  
Section 16 of the Social Services and Well-being (Wales) Act 2014

DECEMBER 2020



**ewmpas**



Llywodraeth Cymru  
Welsh Government

# PREFACE : A COLLABORATIVE EXPLORATION

This document is the outcome of work commissioned from the Wales Co-operative Centre (the Centre) by the Welsh Government in mid-2019. The intention was for the work to “influence commissioners and procurers to promote co-operatives and other social value models”. It forms part of a suite of documents on related topics commissioned from both the Centre and the Association of Directors of Social Services (ADSS).

All the authors involved have worked collaboratively and the outcome is a set of reports that reinforce and complement each other. The reports are:

- Mapping Co-operative Provision (ADSS)
- Rebalancing the Market (ADSS)
- Information from two pilot initiatives (Wales Co-operative Centre)

It is the result of conversations, email exchanges and four workshops, with commissioners and others, particularly in south west and north east Wales, enriched by joint working with colleagues from ADSS, Welsh Local Government Association (WLGA) and Wales Council for Voluntary Action (WCVA). One outcome of all this collaborative exploration was a reframing of the original brief, away from a narrow focus on models of organisation and towards a focus on outcomes and effective ways of working. This was particularly a consequence of re-visiting Section 16 of Part 2 of the Social Services and Well-being Act and building on the actual language of the Act and Codes. This helped to resolve uncertainties arising from ill-defined phrases like “social value organisations” and opened up a way forward for commissioners which embraced the transformative aspirations of the Act, but also embraced the realities of current care markets and contract regulations. The piece of work will help take forward the rebalancing agenda of the social care market.

The exploration came to a premature end with the outbreak of Covid-19, and the recommendations partly reflect the need for further practical work. But there is a need for more than just time-limited project work. The long-term goal of Welsh well-being legislation is for Wales to have a sustainable pattern of services and supports that enable people to achieve great well-being outcomes. This will involve embedding the principles of co-production and prevention into the core work of commissioners, procurers and others over a period of many years. This took the conversations into an area beyond the market, to explore the role of commissioning in developing community self-help activities and organisations working “upstream” of care provision.

On the basis of this collaborative exploration, there is an enormous amount of talent and commitment to take on this challenge. Some practical guidance will help. But so will clear and sustained high-level policy messages. The Section 16 Duty is important, and this needs to be widely communicated and understood.

## **Rebalancing the Market for Social Care**

Welsh Government policy is to develop a stable and resilient social care sector delivering options and choice, quality and support, and good outcomes for all service users. To do this, it has articulated a need to develop a more sustainable balance of provision across Wales, and create a more diverse provider base, to ensure the longer-term viability of the social care sector. This report is very much in alignment with this rebalancing agenda, but it focuses not so much on the merit of “diversity” for achieving sustainable social services as on the merit of “values” - of nurturing organisations that fully embrace the core principles of Welsh well-being laws. It offers commissioners a rationale and some legal options for nurturing providers whose values and behaviours will do the most long-term good, and it throws out a challenge to all providers to adopt those values and behaviours as the best way forward for everyone.

## **Challenge**

Given the level of priority that Part 9 has been given, and the inevitable tendency for business-as-usual to continue unless challenged, it is hardly surprising that the commissioning of care in Wales still often feels like a top-down, arms-length affair. Nor is it surprising to learn that the planning and oversight of preventative services is highly variable. But what is heartening is the level of interest and commitment amongst care commissioners to challenge the status quo. They want to engage with an agenda of sustainable well-being. They want to put the principles of co-production, prevention and added value into practice. Some are already champions of this agenda, and where they find allies in their area or region, they are building trusted relationships, pushing forward with experiments, and aiming for radical transformation. But it can be a lonely place for a commissioner, pushing for change, if many of those around them have no ownership of the change agenda. What they need are more allies, and the clearest messages that Part 2’s hour has come...

## **NOTE :**

Although the exploratory work behind this document took place before the Covid-19 outbreak, it is worth noting the potential offered by Section 16 for a programme of Covid-related recovery. Public funding is likely to face continuing constraints – so the re-shaping of services in order to make the best use of available resources (paid and unpaid) makes a lot of sense. The pandemic has also surfaced the extraordinary capacity of people and communities to help themselves and each other. This needs to be maintained. It has also highlighted the potential for collaboration between providers – and between commissioners and providers – when market forces are not driving them apart. These are all features of the pandemic which encourage a greater focus on Section 16 and the delivery of services shaped by the principles of the Act.

# PART 1: CONTENTS

Introduction	05
Definitions	06
What is social value?	07
The actual wording of Section 16, Part 2 of the Social Services and Well-being Act	08
The implications of Section 16 for including “for profits” in social value models in Wales	09
The five principle-based reasons from the Act and why not-for-profits might have an edge	10
Why the Section 16 duty is important - and due for attention	11
Achieving multiple outcomes - commissioning options in the real world	12
Commissioning for multiple outcomes based on the five principles – the procurement route	13
Commissioning for multiple outcomes – before and after procurement	14
Commissioning beyond the market – for prevention and sustainability	15
Building capacity beyond the market – policy objectives and commissioning activities	16
Putting Section 16 and the principles of the Act into practice – case studies	17
Summary	24
Recommendations	25

# PART 2 : CONTENTS

Introduction	27
Stakeholder engagement	28
National policy and legislative drivers	31
National procurement policy supporting the promotion of social value delivery models	34
The Public Contracts regulations 2015	39
Procurement and commissioning guidance documents	44
Recommendations	53
Bibliography	55
Appendix 1: Applicable CPV codes for reserved contracts under Regulation 77	56
Annex A: How the five principles of the Act align with other key Welsh laws and policies	57
Annex B: Information on the Furzy Park Pilot Project	58

# INTRODUCTION:

## *OR HOW TO READ THIS REPORT*

This report follows the path of a conversation that began with the question:

**How can those who commission and procure social care in Wales be encouraged to promote social value organisations?”** Some further questions arose straightaway.

### **1. What IS a social value organisation?**

It turned out to be a contentious subject (see Page 7). However, the phrase was sometimes used as a short-hand reference to Section 16 of the Social Services and Well-being Act, so we dug out the Act and had a look at Section 16 (see Page 8). It turned out to be helpful, in lots of ways. It was about arrangements and ways of working as much as it was about organisation types. This opened a space for the for-profit sector which was welcomed by many, although it also identified implications for that sector (see Page 9).

### **2. Why SHOULD commissioners and procurers promote social value organisations?**

Using Section 16 as a firm legal basis on which to proceed, we reframed the question to be about the promoting of Section 16 organisations, arrangements and ways of working, and we called these “social value models of delivery”. The Statutory Codes offer plenty of explanation about what the Section 16 duty is all about: it is about implementing the principles of the Act. We surfaced five principle-based reasons for promoting social value models, and we noted that not-for-profit organisations might have an edge in implementing these principles, but that this couldn't be presumed (see Page 10). We noted how the five principles of the Act align with other key Welsh laws and policies (see Page 57). We identified that the Section 16 duty (and consequently the promotion of social value delivery models) was central to the transformative aspirations of Part 2 of the Act. It offered a route map for achieving multiple outcomes that all contributed to greater sustainability. However, principles such as co-production and prevention had been marginalised by a strong policy focus on Part 9 of the Act and the different agenda of statutory health and social care integration (see Page 11).

### **3. HOW can commissioners and procurers promote social value models in a market environment?**

We surfaced the requirements of Public Contract Regulations, and the need for commissioners to operate a fair and transparent system for awarding contracts (Page 12). Shifting the focus from types of organisation to models of delivery offered a way forward for procurement activities, as did the development of specifications based on the five principles (see Page 13). Contributors also surfaced the importance of commissioning activities before and after procurement: role modelling co-production and collaboration and using contract management measures to encourage and recognise transformational provider achievements (see Page 14).

---

**Looking at Section 16 of the Act also prompted a further question: What is the role of commissioning “beyond the market?”**

We surfaced a range of activities which were essential for reducing pressure on health and care services, but typically fell outside of care contracting systems (see Page 15). We explored potential commissioning activities which could nurture this part of the wider world of community well-being (see Page 16).

This section closes with case studies exemplifying “social value models of delivery” and appropriate commissioning and procurement activity (see Page 17), a brief summary (see Page 24), and a few Recommendations (see Page 25).

We hope this is not the end of the conversation. We recommend that commissioners and others are resourced and encouraged to collaborate on taking forward Wales’ transformational agenda.

## DEFINITIONS :

- ♦ **Commissioning**

means the process public sector organisations use to assess the needs of an area and how to meet those needs, how it then organises, contracts with a suitable provider and then monitors the contract performance.

- ♦ **Procurement**

means the purchase of goods or services by a public sector organisation from another, external organisation. It is one part of the commissioning process – although often the mechanics and demands of the procurement process can dominate.

- ♦ **The Act**

this means the Social Services and Well-being (Wales) Act 2014.



# WHAT IS SOCIAL VALUE?

## What is Social Value?

Social value is the quantification of the relative importance that people place on the changes they experience in their lives. Some, but not all of this value is captured in market prices. It is important to consider and measure this social value from the perspective of those affected by an organisation's work.

SOCIAL VALUE UK

SOCIAL VALUE  
INTERNATIONAL

## Definition of Social Value



*"the additional benefit to the community from a commissioning/ procurement process over and above the direct purchasing of goods, services and outcomes".*

*The Social Value Guide: Implementing the Public Services (Social Value Act, Social Enterprise UK)*

As the above slides illustrate there is no single, agreed definition of "social value". For some it is about what is important to the end-users of a service. For others it is about extracting additional community benefits from a supplier. In social care in Wales it has been used to create phrases like "social value organisations" and "social value forums", but the result has often been arguments about who should be included. These phrases have come to be used as short-hand for organisations referenced in Section 16 of Part 2 of the Social Services and Well-being Act. It's therefore helpful to have a closer look at what Section 16 actually says.



# THE ACTUAL WORDING OF SECTION 16, PART 2 OF THE SOCIAL SERVICES AND WELL-BEING ACT

## **“16 Promoting social enterprises, co-operatives, user led services and the third sector**

(1) A local authority must promote—

- a) the development in its area of social enterprises to provide care and support and preventative services;
- b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;
- c) the involvement of persons for whom care and support or preventative services are to be provided in the design and operation of that provision;
- d) the availability in its area of care and support and preventative services from third sector organisations (whether or not the organisations are social enterprises or co-operative organisations)."

**The wording of the Act describes five models, and only three of them are “organisations”:**



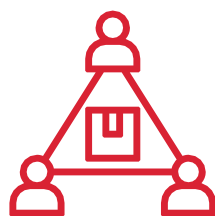
**USER LED SERVICES**



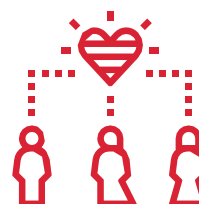
**SOCIAL ENTERPRISES**



**CO-OPERATIVE ORGANISATIONS**



**CO-OPERATIVE ARRANGEMENTS**



**OTHER THIRD SECTOR ORGANISATIONS**

- The inclusion of “co-operative arrangements” as well as “co-operative organisations” within the section 16 duty encourages authorities to consider the potential value of arrangements that might extend from informal self-help groups to multi-agency consortia.
- The use of the phrase “user led services” in the heading, rather than “user led organisations”, should also be noted, along with the emphasis in 16.1.c on user involvement in the design and operation of provision. Whilst user involvement might be particularly likely in a “user-led organisation”, the Act is encouraging the promotion of a user-led approach in all organisations.

# THE IMPLICATIONS OF SECTION 16 FOR INCLUDING “FOR-PROFITS” IN SOCIAL VALUE MODELS IN WALES



Section 16 does reflect a strong push in the direction of not-for-profit organisations, and sets an expectation to promote and grow this sector, but it also includes a rationale for including the for-profit sector:

- ◆ They too can co-operate with others
- ◆ They too can involve users in the design and operation of their provision
- ◆ They can also change...

This is important because Section 16 and the whole of Part 2 of the Act is intended to support the transformation of services in Wales so that they achieve better outcomes and are more financially sustainable. A focus solely on not-for-profits would mean excluding a massive part of the care sector from this agenda. Pragmatically, both commissioners and citizens need for-profit agencies to operate confidently now, and this is likely to be the case for the foreseeable future. Some for-profits are also exemplars of quality and innovation. It makes far more sense to engage for-profits in a process of improvement and transformation than to leave them outside. And Section 16 opens the door for this.

But there is a price of entry. The Codes underneath section 16 make it very clear that there is an expectation of values and behaviours which reflect the principles of the Act. So whatever sector or business type an organisation might be, it needs to demonstrate its commitment to these principles. Above all, they should be striving to work with people in accordance with the principles and practice of co-production. Co-production is writ large all over the Codes. It is the key tool for achieving great well-being outcomes and long-term sustainable services.

For-profit organisations should also reflect on the implications of adopting co-production principles for their governance. Genuinely empowered users of services are likely to ask questions about what happens to profits made by their support provider. They are likely to be strong advocates of profits being reinvested into quality of service and fair pay for care workers. At some stage, we might expect the best of our for-profit care providers to re-examine their constitutional identity and re-model themselves as social enterprises, charities and co-operatives.

# THE FIVE PRINCIPLE-BASED REASONS FROM THE ACT: AND WHY NOT-FOR-PROFITS MIGHT HAVE AN EDGE



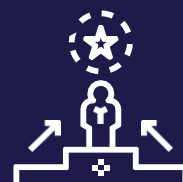
WELL-BEING  
OUTCOMES



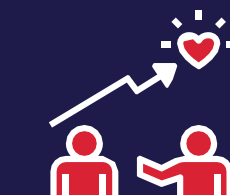
CO-OPERATION



CO-PRODUCTION



PREVENTION



ADDED VALUE

## The 5 reasons for promoting social value models

### Well-being outcomes:

They do what matters - as people define it

### Co-production:

They mobilise people's own opinions and assets – including community assets

### Co-operation:

They work with others for shared public benefit

### Prevention:

They think long-term and act to reduce or avoid dependency

### Added Value:

They strive to go beyond just delivering a contract

## Not-for-profit credentials

Often directly linked to core purpose. If user-led, they have more chance of appreciating "what matters"

Often have strong local connections. If user led or multi-stakeholder co-op, these assets are mobilised through membership

Local roots and ethical values may encourage collaboration, if market conditions allows

Local connections and user/carer involvement encourage whole-life/whole population engagement

Values and constitutions should encourage added value, but may depend on current leadership

But commissioners can't just presume an organisation has an edge, especially when applying contract regulations.

# WHY THE SECTION 16 DUTY IS IMPORTANT: AND DUE FOR ATTENTION..

## Sustainability

Implementing Section 16 is all about creating a sustainable pattern of services and supports that enable people to achieve great well-being outcomes. It means using the principles that underpin Welsh well-being laws and policies: principles like co-production and prevention and added value. These principles are not just about achieving great outcomes: they aim for sustainability by making the best use of all available resources. That means shaping the market so that more and more provision is delivering on the principles and adding social value. It also means empowering citizens and communities - inside care provision so that it delivers what matters to them, and outside care provision so that potentially they never need it.

**Implementing Section 16 is all about creating a sustainable pattern of services and supports that enable people to achieve great well-being outcomes.**

## Transformation

This transformational aspiration of Part 2 of the Act needs to come back into focus. Its relevance is reinforced by the requirements of the Future Generations and the goals of policies such as Healthier Wales and the Foundational Economy. Since 2015 there has been a lot of emphasis placed on Part 9 of the Act and the integration of health and social care. The creation of Regional Partnership Boards has been much more clearly linked to Part 9 than Part 2. A review of their Terms of Reference will show that the principle and practice of Co-production is not included - or is misconstrued as inter-agency collaboration. They also make no reference to duties under Sections 15 and 16 in relation to the development of preventative services. The focus on high level statutory activities such as population assessments and the pooling of budgets has left the transformational, citizen-enabling requirements of the Act on the outer margins of planning and commissioning.

**Transformational aspiration of Part 2 of Social Services and Well-being Act needs to come back into focus. Its relevance is reinforced by the requirements of the Well-being of Future Generations Act and the goals of Healthier Wales and the Foundational Economy.**

# ACHIEVING MULTIPLE OUTCOMES: COMMISSIONING OPTIONS IN THE REAL WORLD



The apparent credentials of social enterprises, co-operatives and charities might suggest that simply giving them more care contracts would lead to a whole raft of policy objectives being fulfilled\*. But the world is not that simple.

- ◆ Public Contracts Regulations don't allow commissioners to award contracts on the basis of organisation type (other than reserved contracts for "Supported Businesses" under Section 20 or for time-limited periods under Section 77)
- ◆ Commissioners currently depend on private organisations for a lot of services and some of them are very good
- ◆ Commissioners can't safely assume that not-for-profits will deliver multiple outcomes simply because of their organisation type

A more inclusive "level playing field" approach to the Section 16 duty can overcome these problems. Instead of focusing on the label of an organisation, commissioners should focus on specifying, scoring and measuring the things they want. And unless the contract is particularly specialist, commissioners should want their providers to deliver multiple outcomes against the principles of the Act and, in alignment, a raft of other policy objectives.

By taking this approach, commissioners will create an environment in which social enterprises, co-operatives and charities are more likely to flourish (providing they live up to their billing) - whilst simultaneously encouraging for-profit providers to develop their capacity for delivering public benefit. Those who choose not to will gradually leave the market, but only as others step up.

- ◆ Public Contracts Regulations allow commissioners to award contracts on the basis of specified outcomes and to assess track records and references in the qualification stage
- ◆ Meaningfully scoring against overarching policy objectives will lead to multiple well-being and sustainability outcomes
- ◆ Measuring performance against over-arching policy objectives will help to identify and reward genuinely trusted suppliers.
- ◆ Support should be offered to for-profits who are ready to transform themselves into social businesses.

\*See Annex on Page 57 for a table showing the alignment between Welsh well-being laws and related policies.

# COMMISSIONING FOR MULTIPLE OUTCOMES BASED ON THE FIVE PRINCIPLES :THE PROCUREMENT ROUTE

There is a lot more to commissioning than the design and implementation of a procurement process, but tendering exercises do offer a clear opportunity for shaping the market so that more organisations are delivering multiple outcomes related to sustainable well-being objectives. The following is a basic framework:

## Policy driven objectives:

1. Increased presence of models of delivery that are geared towards achieving great **well-being outcomes**

2. Increased presence of models of delivery that give users a strong **voice and real control**.

3. Increased presence of models of delivery that have a proactive, **preventative** orientation

4. Increased presence of models of delivery involving **collaboration** (aka co-operation and partnership).

5. Increased presence of models of delivery that **add value** (social, economic and environmental).

## Commissioning activities:

1. Award points for organisations that achieve well-being through co-production and enabling people to connect and contribute

2. Award points for organisations that empower users in a) their constitution, b) their model of support

3. Award points for organisations that can make a compelling case of their commitment to prevention.

4. Award points for organisations that can make a compelling case of their commitment to collaborate.

5. Award points for organisations that can make a compelling case of their commitment to adding value.

It is for commissioning to specify the sort of capabilities and experience required of tendering organisations and for procurers to work with them on how they build this into the procurement assessment process.

A scoring approach is nothing new to commissioners - but using the above approach to shape models of delivery and achieve multiple strategic objectives will require leadership support and ongoing development and learning.

NB. Although it is not a procurement process, another commissioning activity relating to **voice and control** would be to increase the availability of Direct Payments. This is not something explored in this document but worth noting.

# COMMISSIONING FOR MULTIPLE OUTCOMES: BEFORE AND AFTER PROCUREMENT

Good commissioning is a multi-faceted activity that involves walking the patch, building relationships and shaping behaviours throughout the years before and after a tendering exercise. It requires more than a transactional exchange centred on a competitive tendering process. The added element is a commitment to building relationships. The phrase relational commissioning is sometimes used to distinguish it from the arms-length transactional approach, but good commissioning is about combining transactional and relational approaches. Investing time in contract relationship management is an example of this integration of approaches. To do both well requires sufficient capacity and the right mix of skills and confidence, and this in turn needs investment and support.

## Commissioning activities that reinforce the adoption of social value models of delivery for the achievement of multiple outcomes

### Role model **co-production** by talking with users and carers as an on-going activity

- ◆ What (and who) is working for them?
- ◆ Does anything need to change?

### Develop and use **measures** with providers to encourage the delivery of multiple outcomes

- ◆ This helps everyone track and evidence their achievements

### Role model **collaboration** by talking with providers as an on-going activity

- ◆ Are they delivering on the principles of the Act?
- ◆ Can you help?

All these activities can inform decisions to re-tender....or not re-tender, providing an authority is not locked into a rigid cycle of retendering. They can also help to inform the assessment of provision after procurement. Did the provider deliver what they promised?

A tender is a snapshot – the goal should be long-term trust.

**To effect positive change in respect to Section 16, the change needs to happen in the pre-contacting stage, and assured in the contract management stage. Although tenders and contracts need to be less onerous, they can only support the before and after.**

Workshop participant



# COMMISSIONING "BEYOND THE MARKET": FOR PREVENTION AND SUSTAINABILITY

It is easy to lose sight of the fact that two of the key principles underpinning Section 16 and Part 2 of the Social Services and Well-being Act are completely dependent on the involvement of citizens and communities. And not just their passive or tokenistic involvement, but their equal or even predominant participation. Co-production requires citizen and community assets and voices to be valued and mobilised. Prevention requires citizens and communities to take some responsibility for their well-being and to have information and activities which keep them upstream of "care".

So if commissioners are going to pro-actively seek to switch on unpaid self-help capacities, and switch off avoidable future demands, they need to think citizens and communities.

They need to value and nurture the infrastructure of local community and citizen organisations. This would be a different approach than in the awarding of competitive care contracts (although they could build some community benefit activities into care service specifications). The approach would more usually include gentler tools for encouragement, from small grants to shared facilities and information. This requires "under threshold" pilot activity that can support and encourage grassroots activity. Commissioners need help to do this because of their uncertainty around the use of grants and the need to dovetail the grant approach with other procurement processes that may be running alongside.

Commissioners could also find valuable insights and connections from elected members in their role as community representatives.

Care commissioners should also work with other departments with a view to including preventative services as an option for large contractors to offer in their 'community benefits' in public procurement tenders. This could be aligned to the Themes, Outcomes and Measures (TOMS) work that WLGA is exploring with the Office of the Future Generations Commissioners. It would involve thinking pan-authority and aligning with other departments, for example economic development and regeneration, for shared goals focused on community resilience and well-being. Such an agenda extends across agencies and sectors, from health sector to business sector. A corporate position on social value will help support this.



**For example, Cardiff Council has introduced a 'Socially Responsible Procurement Policy' that aims to ensure the Council maximises the social, economic, environmental and cultural well-being benefits for communities through its annual £410 million procurement spend. The Policy aims to provide an overarching framework for the delivery of key Welsh Government initiatives including Community Benefits, wider associated legislative and policy-driven requirements and delivery of the Council's own commitments as set out in its Capital Ambition document.**

# BUILDING CAPACITY “BEYOND THE MARKET”: POLICY OBJECTIVES AND COMMISSIONING ACTIVITIES

Building capacity beyond the market is currently on the fringes of care commissioning work-streams. It is another area where long-term leadership support and investment in capacity and learning is required. The table below offers some suggestions for this work.

## Policy objectives

- ◆ More people are able to obtain “what matters” to them without (direct) recourse to public services.
- ◆ More people are engaged in helping each other at the family and community level.
- ◆ More people are able to choose and access a wide range of well-being related activities.
- ◆ More people are experiencing empowerment through peer groups and collective action.
- ◆ More people are able to engage with public services as confident (and constructive) citizens.
- ◆ More people retain their well-being and independence for longer.
- ◆ There are valuable citizen-led organisations in every community of viable size.

## Commissioning Activities:

Develop a networking system for obtaining insight into how citizens and communities are doing (in-house and external, including outside health and social care)

Support Dewis Cymru ([dewis.cymru](http://dewis.cymru)) and other initiatives which surface community and citizen activities and support groups – and reflect on the quality and spread of this infrastructure

Evaluate Information Advice and Assistance (IAA) systems and invest in their improvement as necessary

Connect with community-oriented initiatives led by other departments of the local authority – for reciprocal benefit

Use grants to support community initiatives (and local anchor organisations) that strengthen people’s ability to maintain well-being and help one another

Award points in tenders for agencies that add value through their ability and commitment to build community – including enabling their users to contribute

Build a locality orientation into care and support contracts whenever appropriate

Use Social Value Forums and County Voluntary Councils as vehicles for pooling knowledge, resources and energy in support of citizen empowerment (co-production) and independence (prevention)

Maximise the value of resources such as Community Connectors and Local Area Coordinators so that their impact is felt beyond those using care services.

# PUTTING SECTION 16 AND THE PRINCIPLES OF THE ACT INTO PRACTICE: CASE STUDIES

All these case studies offer models of delivery based on two or more of the five principles of the Act: well-being outcomes; co-production; collaboration; prevention; and added value.

## GWYNEDD HOME CARE



Gwynedd Home Care is currently run along traditional lines, with a mix of providers receiving packages of care through a central brokerage system. The focus is on delivering care plans, with very little time or leeway for finding out what actually matters to people, or for switching on alternative supports in the community. The only assets being deployed are the council's funds and the agencies' staff. Although delayed by the pandemic, the authority is set to re-tender the services in a way which reflects the aspirations of the Act. Agencies will work in their own geographic patch and be a part of the MDT for that patch (Collaboration). The whole integrated team will be responsible for addressing new needs, with no time wasted on allocation procedures. Care staff will be encouraged to explore what matters (and who matters) to the people they visit (Co-production). They will also be encouraged to explore the least dependent options for people, and make and use strong connections with the community (Prevention).

**Care staff will be encouraged to explore what matters (and who matters) to the people they visit (co-production). They will also be encouraged to explore the least dependent options for people, and make and use strong connections with the community (prevention).**

# THE BETTER LIVES PROJECT



The Better Lives project used a genuinely co-productive approach to help adults with learning disabilities speak out, gain confidence and take control of their lives. This approach put People First groups on equal terms with local authority officers, not only in Torfaen County Borough Council, but across the region of Gwent. Members of the groups were treated equally for the strengths and skills that they contributed (Added Value). A product of the Better Lives project is the 'Gwent Charter for Working Together' that commits public bodies, charities and third sector organisations to listen and respect the rights of people with disabilities. As a consequence, adults with learning disabilities are provided with choices about decisions that affect their lives and are supported in positive risk-taking to achieve what matters to them (Well-being outcomes). The Charter is being embedded into care and support commissioning and service contracts throughout the region and the co-productive approach to commissioning is leading to more innovative practices in learning disability services. Changing commissioning practices so that people can influence service design has allowed the partners to 'think bigger' about what it is possible to achieve.

**Co-production put People First groups on equal terms with local authority officers, not only in Torfaen County Borough Council, but across the region of Gwent. Members of the groups were treated equally for the strengths and skills that they contributed (Added value).**

# GOFAL SEIBIANT



Gofal Seibiant is a for-profit home care provider operating in north-west Wales. It was invited to participate in a pilot project in the Llyn Peninsula by Gwynedd County Council to explore ways in which home care and primary care could work together (Collaboration) in order to augment the delivery of services from GPs and District Nurses. In particular, care workers have been trusted to carry out basic health care tests whilst out on their rounds and to use their mobile phones to pass the results to the person's GP and enable GP/patient dialogue. If required, the care workers can also immediately pick up prescriptions so that patient recovery can begin without delay (Well-being Outcomes). This delegation of tasks to home carers reduces pressure on GPs and District Nurses, enhancing their prevention work and adding value to the delivery of home care. Timely diagnosis and remedy is also "what matters" to the people being supported (Co-production). In order to carry out these additional responsibilities, the care workers have been freed up from the obligatory routine of "time and task" commissioning, and feedback indicates that they are feeling more valued and motivated in their work (Valued Workforce).

**In order to carry out these additional responsibilities, the care workers have been freed up from the obligatory routine of "time and task" commissioning, and feedback indicates that they are feeling more valued and motivated in their work (Valued Workforce).**

# FURZY PARK



Furzy Park is an area of Haverfordwest in Pembrokeshire where two men with learning disabilities receive 24/7 support in their rented accommodation. Until recently, this arrangement was viewed by commissioner and provider alike as a focused contract in which the only assets to be mobilised were the funds of the commissioner and the staff of the provider. By thinking about the situation in the light of the principles of Co-production and Collaboration, something different is emerging. Building on weekly help given to a neighbour to ensure all rubbish/recycling bins are placed on the street for collection, an idea flowed for a neighbourhood-wide crisp and snack packet recycling scheme to integrate the men better into their residential community. The two men are now viewed as potential assets for their community, and their contribution to their community leads to enhanced well-being outcomes. The staff team can be re-oriented from a sole focus on the two men to be a potential resource for others in the local area. And in doing so it became apparent that there were agencies and community resources operating in the area who had previously been invisible to each other. Now they are talking about sharing resources and combining energies to help the community flourish (Collaboration and Added Value).

**Information on the Furzy Park pilot with Pembrokeshire County Council is available as an annex to this report (Page 58).**

**The two men are now viewed as potential assets for their community, and their contribution to their community leads to enhanced well-being outcomes. The staff team can be re-oriented from a sole focus on the two men to be a potential resource for others in the local area.**



# YOUR CHOICE



Your Choice is an initiative in the Vale of Glamorgan which involved a high degree of collaboration between commissioners and for-profit domiciliary care agencies. The service offers a new way of providing care and support for people who need help to remain healthy, safe and independent in their own homes. It is designed to give individuals greater freedom, promote their independence and increase their well-being in a way that matters to them. Adopting this outcome-focused approach has seen a shift away from delivering inflexible care timetables to providing flexible and outcome focused care that is defined by service users and giving them control over how their care needs are met. This dynamic way of working places a strong emphasis on partnership working, as Social Workers, Social Work Managers, Care Agency Brokerage Staff, Commissioners and Domiciliary Care agencies work together with the service user to plan care and support. The significance of this approach means that for the first time there is an equal partnership between the person in receipt of care (Co-production) and the care agency and social worker (Collaboration), with everyone focused on achieving well-being outcomes.

**The significance of this approach means that for the first time there is an equal partnership between the person in receipt of care (Co-production) and the care agency and social worker (Collaboration), with everyone focused on achieving well-being outcomes.**



# CARTREFI CYMRU CO-OP



Cartrefi Cymru Co-operative was established a charity providing support to people with learning disabilities in 1989. In response to the expectations of the Social Services and Well-being Act it has transformed itself in two significant ways. Firstly, it became a multi-stakeholder co-operative in which the people it supports, employees and community supporters now have voting membership rights and elect a Council of Members that appoints the Board of Trustees. This has built co-production into the organisation's governance. This co-production approach is replicated in local Co-op Forums, most of which are co-chaired by a person receiving support. Secondly, it has set itself a new objective. As well as the provision of care and support, Cartrefi now seeks to build community. This has led to increased opportunities for people receiving support to be visible contributors to their community (Well-being Outcomes), and for the whole organisation to be oriented towards outreach and helping others, rather than just delivering on a contract (Added Value).

**As well as the provision of care and support, Cartrefi now seeks to build community. This has led to increased opportunities for people receiving support to be visible contributors to their community (Well-being Outcomes).**

# FLINTSHIRE MICRO-CARE ENTERPRISES



The County Council is working to improve the supply side of care through the promotion of social value delivery models, and is supporting the growth of micro-care enterprises. What differentiates the authority from other initiatives is that Flintshire County Council aims to directly commission micro-care providers. Developing the micro-care sector in the county is a strategic response to shortages of services in rural communities and the ambition to work flexibly and through local solutions. The new micro-care providers will deliver domiciliary care or well-being related services which are highly person-centred (Co-production and Well-being outcomes). Research suggests micro-care enterprises have several benefits; the ability to offer more personalised support than larger providers particularly for home-based care, create outcomes which are more valued by people receiving the service, potentially better value for money through delivery of meaningful services to the care recipient and wider community (Added Value). Firmly rooted in their local community, micro-care providers can make links to other community services to join up support for people (Co-operation) and create employment in the local area. The County Council is keen to build a peer network of micro-care enterprises who work co-operatively to support each other for mutual benefit.

**A pilot project with Flintshire County Council worked alongside the Commissioning Manager for Social Services to delve deeper into the practice of commissioning and procuring new micro-care providers. The report on the pilot explores commissioning and its component parts, such as procurement. It also includes information on regulation, inspection, workforce registration and other matters that bear on the growth and sustainability of micro-care providers. Recognising the potential for micro-care enterprises, the relevant stakeholders have laid the groundwork to assist developments. The report, 'Expanding the use of micro-care providers in social care in Flintshire' is available as a reference document.**

# SUMMARY

- ♦ Implementing Section 16 is all about creating a sustainable pattern of services and supports (paid and unpaid) that enable people to achieve great well-being outcomes.
- ♦ It means using the principles that underpin Welsh well-being laws and policies: principles like co-production, collaboration, prevention and added value.
- ♦ These principles are not just about achieving great outcomes - they aim for sustainability by making the best use of all available resources.
- ♦ That means shaping the market so that more and more provision is delivering on the principles and is adding social value.
- ♦ It also means empowering citizens and communities – within care provision so that it delivers what matters to citizens and communities, and outside care provision so there's greater potential they will never need it.
- ♦ This is not just an agenda for commissioners and procurers. Providers and citizens can and should pursue this agenda, once they recognise the principles underpinning sustainable well-being.
- ♦ But commissioners and procurers are crucial. If they are to be enablers of the desired local pattern of services and support, they need to be properly resourced valued, developed and given clear direction.



# RECOMMENDATIONS



## Recommendation 1:

Awareness and understanding of the principles-based change agenda of Part 2 of the Social Services and Well-being Act needs to be raised, with particular emphasis on Sections 16 and 15. This should be pursued in a range of ways, but consideration should be given to reviewing and revising the terms of reference of Regional Partnership Boards and Social Value Forums.

Commissioners have welcomed a focus on Section 16 of the Act for many reasons. Some were only vaguely aware of it. Some welcomed the fact that it does not exclude the for-profit sector, unlike some interpretations of “social value”. All approved of its underpinning by the principles of the Act: Co-production, Prevention, Collaboration and Well-being Outcomes, and its alignment with the Future Generations Act, Healthier Wales and the Foundational Economy agenda. Its surfacing of both care and prevention services as distinct areas for attention was also welcomed.

## Recommendation 2:

The role of commissioners in promoting preventative community self-help activities needs to be recognised and encouraged.

Section 16 relates to preventative services as well as contracted care services and this needs to be approached in at least two ways. Commissioners can develop specifications for care contracts which include scope for preventative activities. More importantly, and in keeping with the Section 15 duty, commissioners can use their influence and grant-giving ability to strengthen and sustain the capacity of communities and citizen focused organisations to provide all sorts of activities and opportunities upstream of contracted care services. This is currently a neglected area for commissioning.

## Recommendation 3:

There needs to be increased and sustained investment in the capacity and skills for commissioning and reinforcement of the status of commissioners as agents for achieving sustainable social services.

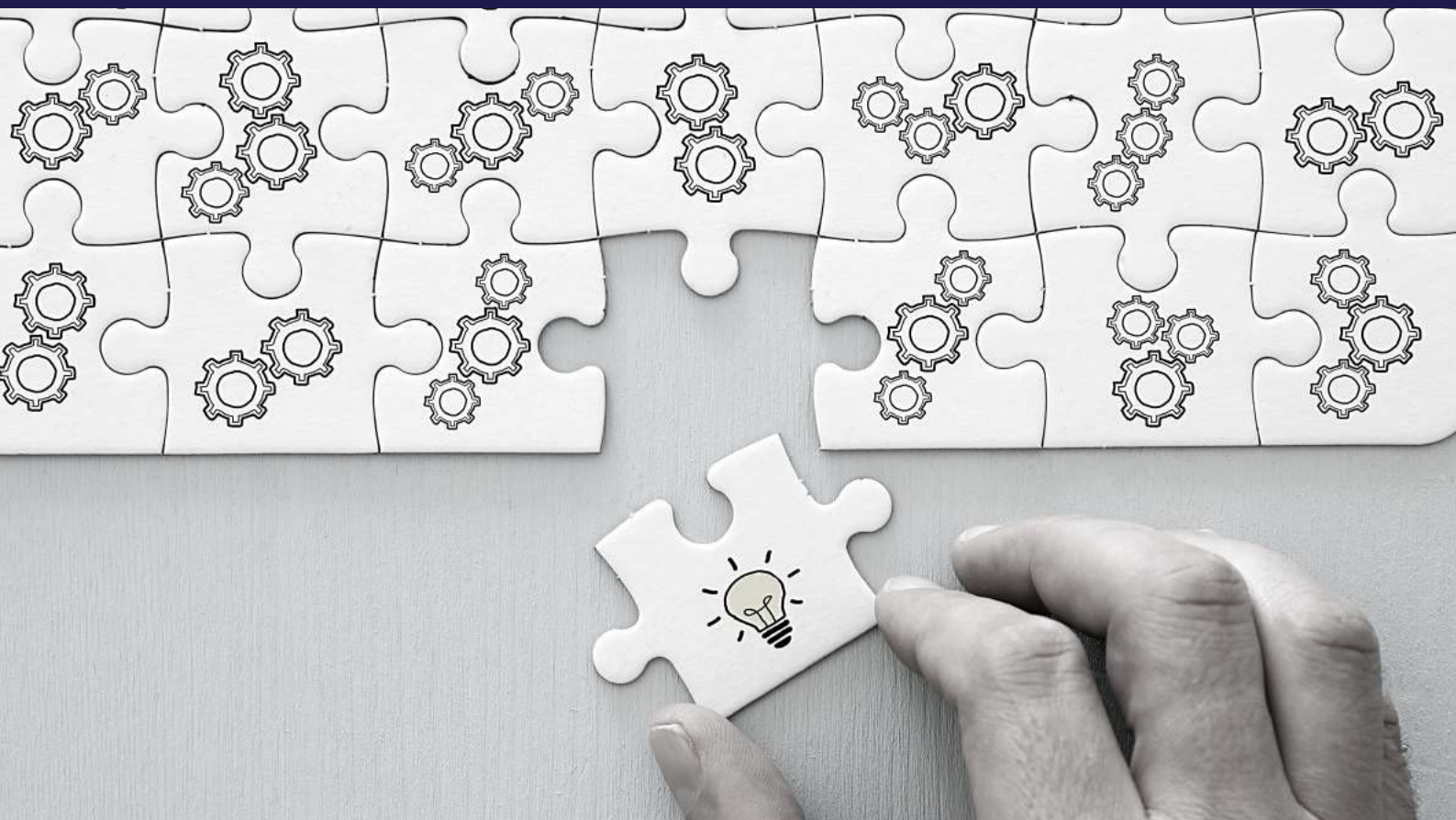
We recommend that this be principally achieved through existing vehicles including the National Commissioning Board, the National Commissioning Group, and the work to develop an Academy for Commissioning and Planning of Health and Social Care. On-going learning and pan-Wales sharing is vital.

See page 53 for a further three recommendations relating to commissioning and procurement.



---

# PART2: INFLUENCE AND SUPPORT CHANGE IN COMMISSIONING AND PROCUREMENT PRACTICES



# INTRODUCTION

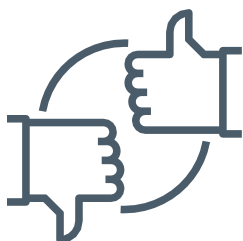
The Wales Co-operative Centre was commissioned to deliver the following activity:



Undertake desk research to identify existing commissioning and procurement guides including relationship commissioning.



Assess effectiveness of guides to help public bodies invest in social value delivery models.



Review the gaps in the information assessing what should be included in a guide and toolkit.



List recommended contents with an emphasis on tools required for an effective toolkit.



Create a project brief for a procurement specialist to develop tools for investment in social value models in the toolkit. Specialist service to be procured via Sell2Wales.

## 2. STAKEHOLDER ENGAGEMENT

To ensure the voice of the Commissioner was considered in this work, two workshops with Commissioning and Procurement staff from a range of local authorities took place, one in West Wales and one in North Wales. A discussion on procurement was centred on a current state to future state analysis, looking at what needed to be put in place to achieve the desired outcome. The following section provides feedback from the event, grouped under specific themes:

<b>What is social value?</b>	<p>There seemed to be a void in leadership around the definition of social value and what this means to each buying authority. Senior leaders need to set the strategic vision, commit to positive change, and drive good practice throughout the organisation.</p> <p>For some authorities, they saw co-production and social value as one thing, whereas in others they saw co-production as a means to achieve better social value for citizens.</p>
<b>No need for another toolkit</b>	<p>People weren't particularly enthusiastic at the prospect of another toolkit being prepared. They felt there was a plethora of information available on how procurement can be used as an enabler to achieve better outcomes for people. People felt more training opportunities, case study stories, and peer to peer learning exchange opportunities would be more useful in effecting change.</p>
<b>Pre-contracting stage is critical</b>	<p>To effect positive change in respect to S16, the change needs to happen in the pre-contracting stage and assured in the contract management stage. Although tenders and contracts need to be less onerous they can only support the before and after.</p>
<b>Need senior leadership buy-in</b>	<p>You need to get cross-organisational senior buy-in to a change process.</p>
<b>Procurement is not the only game in town</b>	<p>Procurement isn't the only vehicle for pursuing social value objectives, some of which may be better achieved using different policy tools within the council</p>



<p><b>Investment needed to support new model development</b></p>	<p>Where new models have been developed and taken forward, there have been four critical factors cited:</p> <ul style="list-style-type: none"> <li>a) Clear strategic intention, purpose and outcomes identified from the start.</li> <li>b) Time allowed to fully develop the new model.</li> <li>c) Investment in additional staff at the development phase to allow key personnel to be released from normal day-to-day activity.</li> <li>d) Investment into the provider market to help them develop to meet the new requirements.</li> </ul>
<p><b>Need for partnership working between Commissioning, Procurement and Legal teams</b></p>	<p>Developing relationships between internal stakeholders is critical. Engaging procurement, finance and legal teams from the outset and bringing them on the journey is considered more vital than any toolkit or supporting documentation.</p>
<p><b>Show value for the service user</b></p>	<p>People wanted to see stories of how new approaches to delivering care added personal value to service-users.</p>
<p><b>How do we do co-production better?</b></p>	<p>The principle of co-production was well accepted by both workshops, but participants felt they needed more support on different ways to apply co-production within the procurement process. People felt they didn't know how to apply co-production well in very short timescale pieces of procurement. Guidance on how to do co-production well in different contexts and for different models of delivery was cited as being of value to those in attendance.</p> <p>There is a need to better consider co-productive commissioning as well as commissioning for co-production.</p>
<p><b>Run a pilot to evidence potential</b></p>	<p>Running a pilot can help provide evidence to show the potential impact from new models of delivery, and also how to manage risk. This would help build confidence in new approaches.</p>

### **Engagement with the provider market**

Engagement with, and investment in the provider market is critical. You can't just rely on a procurement process to achieve change. You have to communicate with the provider market what you're looking to do differently and why, and invest in them to help better position themselves to respond positively. In this process you will uncover which providers want to support change and those that don't, and those who won't be able to respond to your requirements moving forward.

There seemed to be confusion on who should lead on market development and market engagement between commissioning and procurement.

### **Risk Management**

There needs to be a more innovative approach to risk taken to help support the development of new models and approaches. Some people felt there could be a different approach to risk taken with social value delivery models who may be delivering smaller packages of support. For example, could there be flexibility on the reserve levels that would usually need to be in place for a delivery contractor?

### **System Barriers**

Some attendees cited systems such as Proactis which could be a barrier for smaller social value based organisations going through the tender process.

### **Clarity needed on grants**

Some felt there was no prescribed policy on how to deal with grants going to social value delivery models to deliver care services. The relationship between grant funding and contracting within the procurement process needed clarification.

### 3. NATIONAL POLICY AND LEGISLATIVE DRIVERS

1. The opportunity for social innovation under the current national policy and legislative framework in Wales has never been more explicit. The section below references the key policy and legislative drives in Wales which have an impact on the delivery of social care. Specific references are made to how the use of social value delivery models can respond to the obligations inherent in each.

#### Prosperity for all

**“Social businesses are at the heart of the foundational economy. They provide much needed local services where mainstream business has withdrawn from the market and in doing so create local employment opportunities.”**

Prosperity for All is a key strategic document launched by Welsh Government in 2017. It sets out the WG commitment to “health in all policies”, to make a difference to wider social and economic influences such as housing, parenting, education and employability. One of the stated aims of this document is to build resilient communities, culture and language. It aims to work with communities to help maintain local facilities that bring people together, helping communities take ownership of assets in their local area. Core to these aims are supporting a strong foundational economy. Social businesses are at the heart of the foundational economy. They provide much needed local services where mainstream business has withdrawn from the market and in doing so create local employment opportunities.

#### The Social Services and Well-being Act 2015

The Social Services and Well Being (Wales) Act's overarching intention is to achieve sustainable social services. The Act puts a duty on local authorities to promote the development of social enterprises as well as the development of co-operative organisations or arrangements to provide care and support and preventative services.

The Act expects local authorities to involve the people for whom care and support or preventative services are to be provided in the design and operation of that provision. The Act is based on key principles, including: -

- ♦ Well-being outcomes
- ♦ Voice and Control
- ♦ Co-production
- ♦ Co-operation and Partnership
- ♦ Prevention and early intervention

## **A Healthier Wales 2018**

**“Third sector organisations and social businesses are well placed to support the desired shift of services from hospitals to communities, and from communities to homes.”**

A Healthier Wales (2018) sets out a broad framework of commitments and actions to ensure everyone in Wales has longer, healthier and happier lives, and remain active and independent in their own homes for as long as possible. The strategy sets out an ambition for a whole system approach to health and social care, with the Third Sector, including social businesses, being referenced as a key delivery partner to support the transformation of services.

Third sector organisations and social businesses are well placed to support the desired shift of services from hospitals to communities, and from communities to homes. Third Sector organisations tend to be embedded in the local community and develop services using co-production principles with its community stakeholders. The Third Sector is referenced as a key partner in delivering innovation in health and social care delivery mechanisms with good outcomes and demonstrated value for money. Over 10% of third sector organisations in Wales are active in the field of health and social care, accounting for the highest rates of employment by the sector .<sup>1</sup>

## **The Parliamentary Review into Health and Social Care**

The Parliamentary Review into Health and Social Care was established on a cross-party basis, to advise on how the future challenges of health and social care could be met. Recommendation 3 has particular relevance to the social business sector, promoting ‘bold new models of seamless care – national principles, local delivery’.

**“Move to a seamless new way of working in localities – guided by the vision and Quadruple Aim with national good practice principles. There should now be rapid acceleration of action to develop, implement, and evaluate: seamless care close to home in localities; proactive improvement of population health and well-being; and reoriented specialised care.”**

The Parliamentary Review into  
Health and Social Care

1. <https://www.wcva.org.uk/what-we-do/policy-latest/2019/05/sector-and-government-come-together-for-health-and-social-care-conference>

## Welsh Commission on Co-operatives and Mutuels 2013

**“The Commission identified that opening up public and private sector purchasing to cooperatives and mutuels is a significant opportunity for Wales, and considered that inflexible approaches to public procurement and lack of development of the co-operative and mutual supply chain limit access to important markets.”**

In 2013, the then Minister for the Economy, Science and Transport established a Welsh Commission on Co-operatives and Mutuels to examine how the co-operative and mutual business sector in Wales could be grown further in order to create jobs and wealth in support of the Welsh Government's aims and ambitions for the Welsh economy. The Commission identified that opening up public and private sector purchasing to cooperatives and mutuels is a significant opportunity for Wales, and considered that inflexible approaches to public procurement and lack of development of the co-operative and mutual supply chain limit access to important markets.

Specific recommendations relating to procurement were included<sup>2</sup>:

- ◆ Reference to co-operatives and mutuels is made in all Welsh Government guidance on procurement.
- ◆ Vigorous efforts are made to implement the revised EU procurement rules that could benefit co-operatives and mutuels in due course.
- ◆ Develop co-operative and mutual supply chains, for public, consumer and private services, to open new markets for co-operatives and mutuels, utilising the Joint Bidding guidance.
- ◆ A pilot project is established to demonstrate the potential of public procurement to develop co-operatives, similar to the Evergreen Co-operatives project.

## 4. NATIONAL PROCUREMENT POLICY SUPPORTING THE PROMOTION OF SOCIAL VALUE DELIVERY MODELS

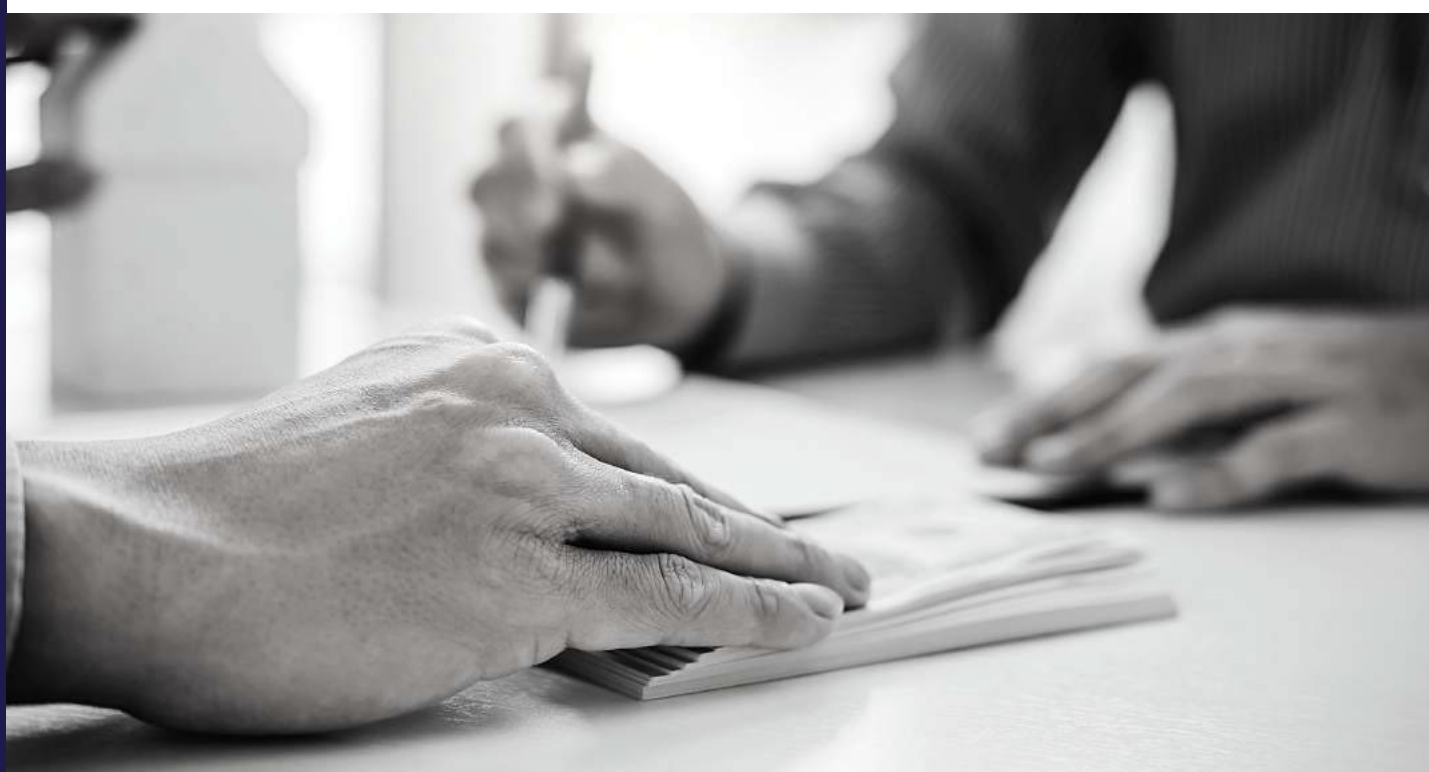
4.1 There are a number of national procurement policies which provide a framework for maximising the social, economic and environmental impact of public sector procurement activity. The table below references the key national procurement policy drivers which help reinforce the importance of the use of social value delivery models in the supply chain.

### **Well-being of Future Generations (Wales) Act**

Procurement is one of the seven corporate areas for change in the statutory guidance and should be a key area of focus for public bodies in meeting their obligations under the Act.

**“Procurement is one of the seven corporate areas for change in the statutory guidance and should be a key area of focus for public bodies in meeting their obligations under the Act.”**

The office of the Future Generations Commissioner has now published a series of Journey Checkers relating to each of the seven well-being goals. Each journey checker focuses on a number of key themes. 'Fair and Local Procurement' is a theme that is referenced against three of the goals. The recommendations linked to promoting social value delivery models in the supply chain are referenced in the following pages.



## A Prosperous Wales

**“Take a strategic approach to embedding community wealth building into your work, incorporating it into your corporate plans.”**

- ◆ Identify local business networks for SMEs and social business to improve knowledge of local businesses and the services and goods they could provide.
- ◆ Appoint social value champions to raise awareness of social value within your organisation and to act as a point of contact for social value delivery models.
- ◆ Support the formation of local consortia to help small SMEs work together for larger contracts.
- ◆ Participate in days and campaigns that reflect a commitment to local inclusive growth and businesses e.g. Social Enterprise Day.
- ◆ Commit to using local SMEs and social businesses where appropriate.
- ◆ Increase capacity for local businesses and social businesses to bid for contracts.
- ◆ Support and promote local finance that is accessible to SMEs, micro enterprises and social businesses.
- ◆ Publish tenders in good time to give social businesses time to prepare and respond.
- ◆ Use existing Public Contracts Regulations to help enable the presence of social value delivery models in the supply chain.
- ◆ Use community-benefits clauses in contracts below the £1m threshold.
- ◆ Integrate and pool budgets to ensure joined up services and prevention.
- ◆ Ensure social, environmental and cultural commitments are detailed as conditions of contracts.
- ◆ Take a strategic approach to embedding community wealth building into your work, incorporating it into your corporate plans.
- ◆ Default support for local SMEs and social businesses as standard practice.

## A Globally Responsible Wales



- ◆ Support sole traders, small businesses, social enterprises, Community Interest Companies, and BAME businesses to successfully deliver services.



## Welsh Government Wales Procurement Policy Statement (2015)

The Welsh Government Wales Procurement Policy Statement (2015) requires Procurement Bodies to generate positive economic, social and environmental impacts through their procurement activity. Within this, the concept of value for money should include:

- ◆ Consideration of benefit to society,
- ◆ The economy, and
- ◆ The environment

In carrying out procurement activity, the public sector in Wales is required to adopt a number of policy principles proposed by the WPPS. The principles which provide opportunity for better engagement with the social business sector are:



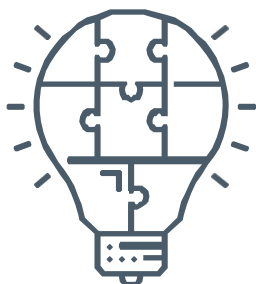
### 1) Principle 3 - Economic, Social and Environmental Impact

- ◆ Consider benefit to society, the economy, and the environment, both now and in the future.
- ◆ Identify areas of expenditure which can be reserved for suppliers with a workforce of 30% or more disadvantaged workers and whose primary objective is the social and professional integration of disadvantaged workers.
- ◆ Identify areas of expenditure which can be reserved for suppliers with a social ethos e.g. Co operatives and Mutuals at first tender.



### 2) Principle 4 - Community Benefits

- ◆ Apply a Community Benefits approach to all public sector procurement.
- ◆ Apply the Measurement Tool to all such contracts over £1m, as a minimum.



### 3) Principle 5 - Open, accessible competition

- ◆ Use appropriate 'lotting' strategies.

### 4) Principle 8 - Supplier Engagement and Innovation

- ◆ Consider opportunities for using new innovation partnership provision of the Public Contract Regulations.



### 5) Principle 9 - Policy Development and Implementation

- ◆ Deployment of policy which supports the achievement of the seven well-being goals for Wales as set out in the Well-being of Future Generations (Wales) Act (2015).



## WG Public Sector Sustainability Risk Assessment (SRA)

The SRA templates are designed to help public sector buyers identify the sustainability impacts linked to the goods or services being procured and to help them plan how, where and when the risks or opportunities will be addressed. They also help public sector bodies in Wales meet the requirements of Principle 3 of the Wales Procurement Policy Statement and to take actions in support of the requirements of the Wellbeing of Future Generations Act 2015.

The Risk Assessment and Action Template has specific questions which should encourage the consideration of the use of social businesses in the delivery of the goods or services required:

- ◆ 'Are there opportunities for this product to be supplied by Small Medium Enterprises (SMEs), Black and Ethnic Minorities (BMEs), supported enterprises or the "third sector", i.e. voluntary & community organisations, charities, social enterprises, mutuals and co-operatives?'
- ◆ 'Are there any opportunities to use this contract to support economic regeneration?'

The suggested 'minimum actions which relate to social business engagement include:

- ◆ Follow the Joint Bidding Guidance to aid consortia bids.
- ◆ Ensure SMEs / third sector are aware of organisational objectives and are informed about the tendering process.
- ◆ Ensure contract is written in such a way that SMEs etc. are encouraged / able to supply, e.g. split contract into regional lots.
- ◆ Consider lotting strategies and invite collaborative bids to make the contract more accessible to SMEs.
- ◆ Consider reserved contracting under Article 20 for Supported Businesses.
- ◆ Consider reserved contracting under Article 77 reserved contracts for certain social, health or education services.
- ◆ Steer suppliers to business support groups e.g. Business Wales
- ◆ Make advertising of sub-contract opportunities a condition of contract to ensure Wales based businesses and SMEs in particular have the opportunity to bid.

The suggested 'push the boundary' actions which relate to social business engagement include:

- ◆ Consider using the Community Benefits approach making working with supported businesses a condition of contract or nominating a supported business instructing the main contractor to direct some or all of sub-contract requirements to that business.

### Welsh Government Community Benefits Guidance (2014)

Public sector bodies are required to apply a Community Benefits approach to all public sector procurements, and specifically have to apply the Value Wales Community Benefits Measurement Tool to all contracts over £1m. Supply chain Community Benefit objectives focus on initiatives to maximise the opportunities for smaller and more local suppliers and contractors to compete for tenders or sub-contract or supply chain opportunities.

Exploring the potential for third and voluntary sector enterprises, including Supported Businesses, in the supply chain is referenced as an important consideration as these businesses can deliver multiple socio-economic benefits.

## The Code of Practice on Ethical Employment in Supply Chains

**“Social businesses are well placed to help support the commitments of the code. Many social businesses exist to provide supported employment opportunities to those furthest away from the jobs market.”**

The Code of Practice on Ethical Employment in Supply Chains has been developed to ensure all public sector organisations are taking action to eradicate unlawful and unethical employment practices and to ensure all workers at every stage of the supply chain are treated fairly.

Social businesses are well placed to help support the commitments of the code. Many social businesses exist to provide supported employment opportunities to those furthest away from the jobs market. Supported Employment promotes social and economic inclusion and allows participants to fulfil their employment goals. The model can be adapted to suit the support needs of individuals with a range of disabilities or disadvantage. It is designed to support individuals who do not necessarily meet traditional criteria for 'job readiness' or 'employability'. Fundamental to Supported Employment is that everyone can work, with the right job and the right support. Supported Employment services should be able to offer a nil rejection policy, as everyone should have the opportunity to work and contribute to society.<sup>3</sup>

## Opening doors charter

The charter promotes the engagement of third sector organisations and all SMEs in Wales to supply public sector service and product delivery. The charter aims to set a minimum level of good practice for the public sector and the full range of SMEs and to help create a level playing field for all suppliers wishing to tender for public sector contracts.<sup>4</sup>

Commitments within the Charter that can help encourage social business sector involvement in the supply chain include:

- ◆ Look for best overall outcomes from procurement activity using broad value for money criteria.
- ◆ Provide opportunities for SMEs to deliver elements of appropriate contracts.
- ◆ Welcome bids from SMEs that are collaborative or on a consortia basis.
- ◆ Assess the impact of economic, environmental and social factors.
- ◆ Keep the tender process as simple as possible.
- ◆ Package larger contracts into separate elements or make use of regional lots if appropriate to ensure SMEs aren't excluded from tendering.
- ◆ Use outcome specifications.
- ◆ Accept alternative information from newer businesses.
- ◆ Pay within 30 days from receipt of invoice.

3. <https://elitesea.co.uk/about-us/what-is-supported-employment/>

4. Opening Doors: The Charter for SME Friendly Procurement, 2008, Welsh Government

## 5. The Public Contracts Regulations 2015

1. Procurement bureaucracy is often cited as the cause of erosion of innovation within public sector procurement. However, the Public Contracts Regulations 2015 helpfully provide a number of opportunities to help maximise social value and engage the social business sector into the supply chain of contracting authorities. To ensure procurement teams can utilise these enablers to best effect, time needs to be built into the commissioning and procurement process. Commissioning teams need to work with procurement teams in the very early stages of programme design so that procurement teams can explore all the options available in taking an opportunity to market and achieve desired outcomes. The principle opportunities are outlined below. Information in these tables has been reviewed alongside the publication 'The Art of the Possible in Public Procurement', 2016.<sup>5</sup>

### Reserved Contracts

The Regulations helpfully recognise that in some cases it is more beneficial working with a social business supplier than mainstream alternatives, enabling commissioners to pursue a Reserved Contract. Reserved contracts are essentially a subset of the 'Light Touch' regime as advised by the Cabinet Office<sup>6</sup>.

#### Regulation 20 – Reserved Contracts for 'Supported Business'

**“Supported Businesses are economic trading entities like any other SME but they enhance social value as they enable disabled or disadvantaged persons to become more independent and active in the workplace and in their communities.”**

Regulation 20 can be used to reserve the right to participate in public procurement procedures to businesses that can be defined as a 'Supported Business' under the following definition:

- a) sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or
- b) provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

Supported Businesses are economic trading entities like any other SME but they enhance social value as they enable disabled or disadvantaged persons to become more independent and active in the workplace and in their communities. Benefits of using reserved contracts include:

- ◆ Support the development and growth of local social businesses.
- ◆ Develop local employment opportunities for citizens furthest from the labour market.
- ◆ Demonstrate social value and adherence to the Well-being Goals enshrined within the Well-being of Future Generations Act.
- ◆ Focus procurement spend locally, on the areas that should benefit from it.

5. The Art of the Possible in Public Procurement, 2016, BWB, E3M and HCT Group.

6. The Public Contracts Regulations 2015, Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts, Crown Commercial Service

The Regulations are however silent on how a sheltered workshop or economic operator might demonstrate that its “main aim is the social and professional integration of disabled or disadvantaged persons” or how a sheltered workshop or economic operator might demonstrate it meets the threshold of 30% of employees being either disabled or otherwise disadvantaged. This lack of clarity and its consequent effect that contracting authorities are unable to verify such credentials of prospective bidders, has resulted in public sector organisations in Wales being unable to utilise Regulation 20 to realise the social and economic benefits this regulation was intended to support.

Interestingly, many existing social businesses could self-define as supported businesses, however many are unaware of the status, how it applies to their social business and the opportunity it could present them in a procurement context. According to the 2019 ‘Mapping the Social Business Sector in Wales’ report 15% of social businesses can be classified as a ‘Supported Business’.<sup>7</sup> However the report also shows that there is scope to increase the proportion operating as a supported business further. This would create reserved contract opportunities for more businesses, as 50% already have the workforce to meet the eligibility criteria and by adjusting their social objectives and constitutional documents the other two criteria could be met. Only 56% of organisations meeting the supported business criteria currently reported that they promote their supported business status.<sup>8</sup>

**Regulation 77 – Reserved Contracts**

**“Regulation 77 can be used exclusively for social sector organisations as long as the contract is for a specific type of service, and the organisation fulfils a number of conditions”**

Regulation 77 can be used exclusively for social sector organisations as long as the contract is for a specific type of service, and the organisation fulfils a number of conditions:

- Their objective is the pursuit of a public service mission.
- Profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations.
- The structures of management or ownership of the organisation are
  - a) based on employee ownership or participatory principles, or
  - b) require the active participation of employees, users or stakeholders.

The list of relevant CPV codes can be found in Appendix 1 with those relating the health and social care highlighted.

The regulation could be considered to be an early-stage competition shield for public sector spin outs and mutuals. As such, there is a three year maximum contract length for a reserved contract issued under Reg. 77 and the winning organisation cannot win the same contract again if it is let using the same process. There is nothing stopping the organisation re-winning the tender if a regular, open competition process is run.

7. Mapping the Social Business Sector in Wales, June 2019, Social Business Wales  
8. Mapping the Social Business Sector in Wales, June 2019, Social Business Wales

## General Provisions to Support the use of Social Value Delivery Models

### Regulation 5 and 74 -77 Light Touch Regime

The Light Touch regime allows contracting authorities to design its own procedure for the services it wishes to procure; there is no requirement to use the standard EU procurement procedures (open, restricted and so on)<sup>9</sup>. Contracting authorities can also include conditions on participation, this could, within reason, relate to a requirement that the bidder be a Social Business.

If the contracts are below threshold (this is currently £615k for the services procured via the Light Touch regime) then the procurement regime can be relaxed even further, but will still have to adhere to the principles of equality and transparency, and having a due degree of competition (for example by advertising on Sell2Wales).

### Regulation 6(14/15) – Small Lot Exemption

### Regulation 46 – Division of Contracts into Lots

Under principle 5 of the WPPS 2015, public bodies should adopt risk based, proportionate approaches to procurement to ensure that contract opportunities are open to all and that smaller, local suppliers are not precluded from winning contracts individually, as consortia, or through roles within the supply chain. Specifically under this principle, contracting authorities are encouraged to consider the use of appropriate 'lotting' strategies to help create fair opportunities for smaller businesses, including social businesses.

Under Regulation 6, contracting authorities may award contracts for individual lots without applying the open procedures, but only if the estimated value, net of VAT, of the lot concerned is less than:

- a) 80,000 euro for supplies or services, or
- b) 1 million euro for works.

The aggregate value of the 'small lots' should not exceed 20% of the aggregate value of all the lots into which the proposed work has been divided. An example could be an estates services contract where one service required could be easily separated from the others as a 'small lot' as long as the value met the threshold requirements and did not account for more than 20% of the overall requirement for estate services.

9. Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts, Crown Commercial Services

<p><b>Regulation 46 – Division of Contracts into Lots</b></p>	<p>Under Regulation 46 contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject matter of such lots. This is particularly helpful for social businesses which tend to have a narrow service focus and a more localised delivery business model. Contracting authorities can also limit the number of lots per tenderer which can help better engage a mixed portfolio of social businesses in delivery.</p>
<p><b>Regulation 31 - Innovation Partnerships</b></p> <p><b>“This is an exciting opportunity to support the transformation of social care services where the market solution to respond to need doesn’t yet exist.”</b></p>	<p>The public sector can use an Innovation Partnership if it can prove the service is not currently available in the market. The aim of such partnerships is to allow suppliers to develop innovative goods and/or services with some certainty that should the research and development phases be successful, the relevant goods and/or services can proceed to the final production and supply stages without the need for a further procurement.<sup>10</sup></p> <p>This is an exciting opportunity to support the transformation of social care services where the market solution to respond to need doesn’t yet exist. This is particularly helpful where the public sector wants to build social outcomes as a core contractual requirement of a service which radically transforms the delivery requirement being sought from the market.</p>
<p><b>Regulation 33 – Framework Agreements</b></p>	<p>A Framework agreement allows the contracting authority to decide what mix of contractors and what mix of volumes to award. Framework agreements can allow businesses on the framework to be awarded a volume of work that is appropriate for their financial and organisational capacity.</p>
<p><b>Regulation 34 – Dynamic Purchasing Systems</b></p>	<p>DPS arrangements under Regulation 34 have the potential to increase access to hard-to reach suppliers, including SMEs and social businesses. DPS arrangements can be considered a useful mechanism to engage social businesses in the supply chain as the flexibility helps enable suppliers to get up-to-speed to be able to compete and deliver under a DPS, by allowing them to apply at any time once the DPS is ‘live’ or enabled, plus if they don’t match the selection criteria first time around the ability to re-apply if unsuccessful.<sup>11</sup></p>

10. Use of the NHS Terms and Conditions when procuring “Innovation Partnerships” for goods and/or services Briefing Note, December 2016, Department of Health

11. A Guide to Dynamic Purchasing Systems within the Public Sector, LGA



<p><b>Regulation 40 - Market Consultation</b></p> <p><b>“This ability to consult with the social business sector is critical to get a sense for how the sector would be able to respond to an opportunity and could helpfully inform how the opportunity was structured, for example around regional lots.”</b></p>	<p>Regulation 40 allows the contracting authority to talk to the market about their procurement plans and requirements and seek advice on specifications. The contracting authority can also use the market to help ‘inform the planning and conduct of the procurement procedure used’.</p> <p>This ability to consult with the social business sector is critical to get a sense for how the sector would be able to respond to an opportunity and could helpfully inform how the opportunity was structured, for example around regional lots. If the market is dominated by lots of small providers, the buyer could also get a sense of whether a consortium approach is valid and adjust the procurement process to support consortia bids, allowing both lead body and special purpose vehicle bids.</p>
<p><b>Regulation 67 - Contract Award Criteria</b></p>	<p>Contracting authorities have to base the award of public contracts on the most economically advantageous tender (MEAT). The definition of MEAT for award criteria now explicitly references the ‘environmental and/or social aspects’ of the price/quality ratio.</p> <p>Embedding social value within the procurement process and award criteria will allow the social business sector to play to their strengths, showcasing the wider impacts that they create in the context of the specific contract e.g. the employment and training of people most disadvantaged from the marketplace.</p>
<p><b>Regulation 70</b></p>	<p>Allows for contract clauses to address economic, innovative-related environmental, social or employment-related considerations, provided that such terms are linked to the subject-matter of the contract and advertised in advance.</p>

**New thresholds for contracts subject to the public procurement regime will commence in January 2020. These are summarised below:**

**£122,976**

Supplies and Services – Central Government Authorities (named in Schedule 1)

**£189,330**

Supplies and Services – other contracting authorities

**£663,540**

Social and other specific services (Schedule 3)

**£4,733,252**

Works

## 6. Procurement and Commissioning Guidance Documents

1. The information below references a range of procurement and commissioning guidance documents that have been produced to encourage social innovation within the commissioning and procurement process. The literature has been ordered against date of publication rather than according to relevance or importance. This section reviews the literature and considers how they help promote the use of social value delivery models in the supply chain.

2. **Modern, Outcome Based Collaborative Procurement 2019 (WG, WLGA, ADSS Cymru)**<sup>12</sup>

- The guide sets out a legal overview and good practice guide for the public procurement regime for social care services.
- The guide focuses on the flexibilities provided under the Light Touch Regime in the Public Contracts Regulations (PCR) 2015 and provides a very detailed legal breakdown on the provisions and processes required within Regulations 74 – 77. It also provides comprehensive detail on general procurement principles within the PCRs 2015.
- The guide does reference the difference between contracting and giving a grant.
- The provision for reserved contracts under Regulation 77 is referenced in Part 1 of the guide however, it is referenced for its limited value and lack of use, in part because the contract period is too short to be an effective approach for many procurements, and also because the qualifying criteria can be too broadly applied by many bidding organisations.
- Part 2 of the guide looks at developing and delivering a Light Touch procedure for regulated domiciliary care, driven by the need to move the service model away from 'time and task' to being person centred.
- Under Part 2 the guide only looks at the procurement process itself, assuming that commissioning and pre-commissioning market shaping has been carried out. This does therefore miss the key message that procurement teams need to be fully engaged at the commissioning stage to understand what is trying to be achieved and how the provider market looks.
- Although the guide provides an overview of what the Social Services and Well-being (Wales) Act requires to achieve effective procurement in accordance with their principles, it does not make any reference to Section 16 of the Act and the use of social value delivery models in the delivery of services.

“Procurement is an enabler,  
commissioning is driving”

12. <https://www.wlga.wales/procurement-of-services>

## Pros

- ♦ Very comprehensive guide to the procurement process linked to the Light Touch Regime and the use of the regime for the procurement of domiciliary care.
- ♦ Excellent regulatory framework to ensure procurement activity complies with the requirements of the PCRs 2015.

## Cons

- ♦ Feedback on this document from stakeholders is that it is too process driven and too complex to effectively aid early stage internal discussion on new approaches to delivery.
- ♦ No reference to co-production within the procurement process and how to involve service users and wider stakeholders into the design and evaluation of the process.
- ♦ Does not adequately deal with how social value and social outcomes could be considered within the criteria for evaluation and award.
- ♦ Does not offer any example clauses to include in the tender documentation to help maximise social value return from the provision of the service.
- ♦ Does not reference the use of Regulation 20 as a mechanism to deliver a reserved contract for social value delivery models.
- ♦ Does not reference social value delivery models against the definition provided in Section 16 of the Social Services and Well-being Bill.

### 6.3 Social Services: The national outcomes framework for people who need care and support and carers who need support 2019 (Welsh Government)

- ♦ The document puts in place a framework for meeting the challenges facing social services in the next decade.
- ♦ The use of social value voluntary sector organisations in the delivery of the national well-being outcomes is specified in the national outcome indicators as follows:
  - a) Securing rights and entitlements / Control over day-to-day life - % of voluntary organisations offering family welfare and children activities.
  - b) Contribution made to society - % of voluntary organisations offering community or youth activities and % of voluntary organisations offering disability activities.
  - c) Suitability of living accommodation - % of voluntary organisations offering housing activities.

#### 6.4 Sustainable Public Procurement 2019 (Wales Centre for Public Policy)

- ◆ The report summarises key evidence to support public service leaders when engaging with the sustainability ambitions of their respective organisations. The term sustainability is used in the broad sense to include economic, environmental and social considerations.
- ◆ The report briefly touches on the value of social businesses in the delivery of local services as they act as intermediaries to engaging communities and stakeholders in design and decision-making. The report also makes brief reference to the use of Regulation 20 and 77 as enablers to social business use within the PCRs 2015.
- ◆ Interestingly, the report notes that a certain level of expertise and confidence is required amongst procurement professionals to interpret and apply the legal framework when pursuing new procurements.

##### Pros

- ◆ Provides robust evidence to support the inclusion of social value within the procurement process.
- ◆ Provides a useful model to illustrate where time should be spent in the procurement process to add real value.
- ◆ Discusses the discrepancies between wanting to be seen to be doing the right thing, and putting in place effective contract monitoring processes to capture social value in the delivery of service.

##### Cons

- ◆ Feels more like a position statement to support the consideration of social value in the procurement process rather than a guidance note to influence process and activity.
- ◆ Doesn't give real practical advice on how to manage social value in the procurement process.
- ◆ Doesn't provide examples of where the inclusion of social value has impacted at a service-user level.
- ◆ References the value of social value delivery models, but doesn't provide practical advice on how to develop initiatives to better engage with the sector in the delivery of service.

Tendering and contracting needs to do what the commissioner wants; not the other way round

### 6.5 Beyond Contracting: Public service Stewardship to Maximise Public Value 2019 (Wales Centre for Public Policy)

- ◆ The report discusses a range of ideas to support the development of procurement and outsourcing strategies that enable effective stewardship of public services.
- ◆ The report references the important role of the third sector, being seen as a 'middle way' for public services outsourcing. The report also states that third sector bodies are well placed to "support a new approach to public services based on co-production".
- ◆ The report references the need for public sector bodies to consider "making value-led choices about which types of provider are appropriate for providing public services", and using reserved contracts as a way of managing this with the market. However this is not an isolated procurement decision, throughout the commissioning process there must be a detailed understanding of the existing provider market and clarity on how the transition to a new pool of providers could be achieved without any negative consequences for service users.
- ◆ The report considers market stewardship at a national level, which could involve supporting the development of new entrants into the supply market, including third sector bodies and user and/or staff co-operatives.
- ◆ The report considers the principles of place-based policy approaches as a way of improving local services that are better able to respond to local need. Economic democracy is one of the key principles for place-based procurement, "supporting the growth of alternative models of economic governance which gives citizens great investment in and control over their economic future". Although you cannot favour local suppliers in an open procurement process, you can "identify objective contract award criteria under which third sector bodies, co-operatives and local SMEs may offer additional value".

#### Pros

- ◆ Makes a strong case for the benefit of considering social value delivery models as a way of finding a 'middle way' for public services.
- ◆ Talks about stewardship at a national, local and organisational level and how the three levels need to work in tandem to maximise social return on procurement spend in Wales.
- ◆ Makes clear the need for policy to drive behavioural change within the commissioning and procurement function.
- ◆ Provides useful case study examples of application of policy change from across the UK.

#### Cons

- ◆ It is more of a thought piece rather than a practical guide to support the implementation of policy change.

### 6.6 Home Care Toolkit 2017 (National Commissioning Board for Wales) <sup>13</sup>

- The purpose of the toolkit is to facilitate the development of an outcomes focused approach to the commissioning of home care services.
- There are 22 self-contained tool guides within the overall guide. This report reviewed the following:
  - a) Tool 3 – An Introduction to Commissioning for Outcomes in Social Care.
  - b) Tool 4 – Market Analysis
  - c) Tool 5 – A Guide to Step Change Commissioning of outcomes for social care.
  - d) Tool 7 – A Checklist of Different procurement Approaches.
  - e) Tool 8 – Outcomes-based Home Care Specifications.
  - f) Tool 11 – Outcomes-based Procurement Template
  - g) Tool 16 – Risk Management.

#### Pros

- The toolkit is designed to assist in-home care commissioners and providers to move towards a more outcomes-based approach.
- Provides case study examples of third sector organisations using consortia delivery models to deliver services and use co-production to transform the delivery model.
- Provides example clauses to include in tender documentation and tools to use in the strategic planning process.

#### Cons

- There is no reference to S16 of the Act and no direct reference to activity which can be undertaken to help engaging social value delivery models in the delivery of services.
- The example clauses provided support the principles of co-production but don't push for further evidence of social value within the service delivery.
- In the procurement tools, there is no reference to the opportunities afforded under Regulations 20 and 77 for engaging social value delivery models.



13. <https://www.wlga.wales/introduction-to-the-home-care-toolkit>



## 6.7 Adult Social Care Social Enterprises and the Foundational Economy in Wales 2017 (WISERD)<sup>14</sup>

- ◆ This report provides an overview of the scope for innovative delivery of adult social care by means of social licensing, social enterprises, co-operatives and not-for-profit organisations.
- ◆ The report highlights in some detail the 'beneficial distinctiveness' social enterprises and third sector organisations can offer to the provision of social care services.
- ◆ The primary research conducted as part of this study, specifically in relation to implementing Section 16, found that:
  - a) Social enterprises are often poorly understood, even amongst those who are involved in delivering on the obligations in section 16 of the Act. There needs to be a series of definitions produced that local authorities can refer to in order to avoid confusion and provide distinction between social enterprises, third sector organisations and charities.
  - b) The requirement to implement Section 16 now necessitates a more co-ordinated and collaborative strategy from individuals with different areas of responsibility, such as those in areas of business development and social services.
  - c) In the absence of clear operational guidance in the Act there needed to be an associated publication that provided explicit guidelines that could be used to help public bodies demonstrate compliance with the Act. However a 'one-size-fits-all' approach to implementation may be problematic given the variation of defining characteristics of each of the 22 local authorities.
- ◆ Procurement and tendering was identified as key theme in the research. Specific issues that were identified in the primary research were:
  - a) Social enterprises were lacking the necessary skills to demonstrate their social value as part of the procurement process. This is a major issue when they need to demonstrate sufficient social value to make the social enterprise a more appealing candidate for long-term community investment, especially when they are not able to compete on cost.
  - b) The relatively small size of social enterprises and the prohibitive challenges for local authorities in managing lots of small contracts for locally provided services over a single large contract from a larger company.
  - c) Social value in the tender not being a scored element of the quality assessment.
  - d) A disconnect between the aspirations of Welsh Government towards stronger service-user voice, localism, co-production, and integrating services across a wide range of providers, and the perceived lack of any visible mechanism for enacting these aspirations within local authorities.
  - e) Issues relating to the use of community and multi-stakeholder ownership models and the lack of guidance and clarity on their application to the procurement process.

### Pros

- ◆ Useful document which sets out the opportunities and challenges of engaging social enterprises in the delivery of adult social care.

### Cons

- ◆ An academic paper which presents feedback from research rather than offering guidance to procurement professionals on ways to overcome the challenges cited in the paper.
- ◆ Doesn't discuss the opportunities embedded within the Public Contracts Regulations 2015 which can provide levers for social enterprise engagement in the supply chain.

14. <https://www.solvacare.co.uk/wp-content/uploads/2019/09/WISERD-Adult-Social-Care-Social-Enterprises-and-the-Foundational-Economy-in-Wales.pdf>

## 6.8 The Art of the Possible in Public Procurement 2016 (Bates Wells Braithwaite)<sup>15</sup>

- ◆ Provides an overview of how the Public Contracts Regulations (PCR) 2015 can support Commissioners 'to shape a procurement process that can actually deliver on strategy' and outcomes. The guide has been written to be 'part of the Commissioner's toolkit' rather than a substantive guide to procurement regulation.
- ◆ The guide provides an overview of the Light Touch Regime within the PCRs 2015 and how this relates to the procurement of social, health and education services.
- ◆ The guide provides an overview on the role of the social sector in the delivery of public services, and makes the point that strategic commissioning should 'involve creating processes that allow the good social sector organisations to demonstrate what they can offer....not to commit Commissioners to use organisations that aren't equipped to deliver'.
- ◆ The principle of co-production is covered in the guide and reference is made to the Light Touch Regime, under regulation 76 (8), where 'Commissioners are explicitly permitted to consider the involvement and empowerment of users'.
- ◆ The guide helpfully makes the point that the focus should be on procuring 'the extra outcomes that social value delivery models are in a position to deliver' not the social business model itself. The focus should be on creating clear specifications that place value on these extra outcomes, yet adhering to an open procurement process.
- ◆ The guide does introduce the use of reserved contracts, mainly making reference to Regulation 77, but only at a very high level. There is no real detail provided on the use of regulation 20 in this section.

### Pros

- ◆ Written in easy to digest language.
- ◆ Can help to open a discussion on embedding social value outcomes within the commissioning and procurement process.
- ◆ Provides a positive overview on how the PCRs 2015 can enable outcomes commissioning.
- ◆ Provides a number of succinct case studies which show the value in new approaches.

### Cons

- ◆ Provides an introduction to the opportunities but no substantive detail.
- ◆ Introduces the use of reserved contracts but doesn't provide guidance on the development of specifications to respond to the regulations or doesn't reference any case study examples on the use of regulation 20 or 77.
- ◆ No reference to developing evaluation frameworks and scoring methodologies

15. <https://bateswells.co.uk/wp-content/uploads/2019/06/the-art-of-the-possible-in-public-procurement-pdf.pdf>

### 6.9 The Public Contracts Regulations 2015 – Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts<sup>16</sup>

- ◆ Detailed FAQ approach to better understanding the application of Regulations 74 – 77 of the PCRs 2015.
- ◆ The guide includes a section on the use of reserved contracts, under Regulation 77, for certain services in the Light-Touch Regime. It explains the value in the provision, providing extra flexibility for the public sector to encourage mutuals and social enterprises to complete for and gain experience of delivering government contracts before being exposed to full EU-wide competition.

#### Pros

- ◆ Offers clarity on the application of the provisions within Regulations 74 – 77.
- ◆ Provides an overview of the CPV codes relevant to the Light Touch Regime.
- ◆ Provides a dedicated section on reserved contracts as an enabling tool for engagement with social value delivery models within the supply chain.

#### Cons

- ◆ The document is an introductory guide, and so doesn't contain examples of specifications or evaluation criteria to support the use of Regulations, particularly for reserved contracts.
- ◆ The document doesn't contain case studies to refer to.

### 6.10 Joint Bidding Guide 2013 (Welsh Government, Wales Co-operative Centre, WCVA)<sup>17</sup>

- ◆ A guide on joint bidding prepared for both buyers and suppliers. The guide is structured as a practical toolkit, in 18 short chapters. Each chapter is designed to be relatively self-contained covering a particular stage in the planning, preparation and bidding cycle.
- ◆ The guide is specifically useful for Commissioners and Procurement teams in assessing which supply opportunities are more appropriate for consortia delivery. It is well acknowledged that many social value delivery models may not have the scale or breadth of service offer to respond to public sector tender opportunities, but could address this by working in a consortia with other social value organisations and private sector bodies.
- ◆ There are a number of chapters which have been specifically prepared for the buyer:
  - a) Joint bidding policy development – helps you to establish if there is a business case for supporting joint bidding and assesses the impact of joint bidding on your procurement processes.
  - b) Buy side preparation – outlines how the buyer can prepare tender documents and processes to enable joint bidding.
  - c) Preparing to advertise – helps to consider how to create future visibility of tender opportunities.
  - d) Risk planning – considers risk identification, analysis, mitigation, planning, monitoring and reporting.
  - e) Tender analysis – considers evaluation criteria that you would apply to a joint bidding procurement process.
- ◆ The guide also presents a range of tools to aid buying teams in the adoption of a pro-consortia policy. Some of these tools have been designed specifically for this guide. Others have been drawn from the BS 1100-1. The following tools are noted for their use to buyers:
  - a) Initial Awareness Steps for Creating Collaborative Business Relationships.
  - b) Procurement Assessment Model (PAM) – a simple tool to help the buyer consider whether to encourage joint bidding for a particular procurement.
  - c) Consortia Financial Modelling – to test the financial risk associated with a joint bid.

16. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/560272/Guidance\\_on\\_Light\\_Touch\\_Regime\\_-\\_Oct\\_16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560272/Guidance_on_Light_Touch_Regime_-_Oct_16.pdf)

17. <https://gov.wales/sites/default/files/publications/2019-09/joint-bidding-guide.pdf>

## Pros

- ◆ Detailed technical guidance document to support joint bidding approaches within the procurement process.
- ◆ Practical tools which can be used by buyers to influence process.
- ◆ Does consider the benefit of joint bidding to support engagement with the social business sector.

## Cons

- ◆ Not social care specific.
- ◆ Does not consider co-production principles, although it does consider the principle of the collaborative business relationship.
- ◆ Feedback received on the guide indicates that it is too academic in certain sections and difficult to absorb.
- ◆ The current published version of the guide is out of date in that it refers to the SQUID framework which has since been replaced by the ESPD and does not contain reference to the Public Contracts Regulations 2015. A revised version of the guide has been written and was due for publication in April 2020.

### 6.11 Can do Toolkit 2009 (I2I, CHC)<sup>18</sup>

- ◆ Although written initially for the Housing Association sector, the guide provides information on how organisations can ensure that their procurement is SME friendly and how opportunities for SMEs can be maximised. The scope of the guide is not limited to social value delivery models but to the wider SME market.
- ◆ Although much of the legal and policy basis for the toolkit is now out of date, the relevance of this toolkit to this piece of work is its focus on engaging foundational economy businesses into the supply chain, many of whom can be classified as being social value delivery models under the Section 16 definition.
- ◆ The guide provides a range of model text extracts that can be used in specifications to achieve a more SME friendly procurement process.

## Pros

- ◆ Provision of useful text examples to use in specification design.
- ◆ Useful guide to target thinking towards the foundational economy and its use in the supply chain.

## Cons

- ◆ Written in 2008 so does not reference the Public Contracts Regulations 2015.
- ◆ Not specifically written for the public sector or social care sector and hence its relevance could be questioned.
- ◆ No specific reference to social value organisations in accordance with the Section 16 definition.

18. <http://www.cih.org/i2i/publications>

# RECOMMENDATIONS

## Recommendation 1:

**Develop a set of 'how to' guidance documents on specific areas to support Section 16 aspirations.**

This report supports the production of a series of 'how to' guidance, that could either be produced in written format or as webinars or vlogs that could be just as easily circulated. This guidance should not spend too much time focusing on the 'why', but the 'how'. The following subject matters should be addressed:

- **What is a social value delivery model under S16**, providing clarity on what this definition means and how to identify these organisations in the marketplace.
- **Using reserved contracts under Regs. 20 and 77** to support better engagement with social value delivery models. Development of specification examples and clauses that can be used for reserved contracts under Reg 20 and 77. Findings from this report indicate that people are not comfortable in using provisions for reserved contracts within the procurement process. There is guidance in circulation relating to the use of Light Touch provisions, but the information provided on reserved contracts is somewhat minimal. A specific 'how to' learning document on the use of reserved contract provisions, containing clause examples, scoring frameworks and evidence assessment guidance would be valuable to upskilling people on the use of these provisions.
- **How to use grants to support the development of social value delivery models.** There is a lack of clear guidance on how to manage grants being used to fund social value delivery models to deliver care services. The relationship between grant funding and contracting within the procurement process needs clarification.
- **How to apply co-production.** The principle of co-production was well accepted by both workshops, but participants felt they needed more support on different ways to apply co-production within the procurement process. People felt they didn't know how to apply co-production well in very short turnaround pieces of procurement, feeling that co-production could only be done well over a significant period of time.
- **Template specifications, evaluation frameworks and scoring metrics and performance measure to support people fulfil their aspirations under Section 16.**  
The best way for commissioners to promote Section 16 objectives, particularly in relation to contracted care services, is to embrace the requirements of fair and transparent procurement (so that no organisation type is explicitly favoured) and to improve the ability of commissioners and procurers to specify, score and monitor the outcomes aspired to in Section 16 and related Acts and policies. This could be taking forward in liaison with the National Procurement Network's exploration of the TOMS system of social-value-scoring adapted for Wales by using the Future Generations framework. The development of template evaluation frameworks and scoring methodology for new approaches to service delivery needs to be considered. Such templates were cited as being real practical tools that could enable the procurement process.
- **Case studies and stories.** Capturing learning through case studies and stories has been identified by stakeholders as being more effective than producing a static toolkit or guidance document. A live knowledge bank of stories should be kept on the National Commissioning website.

# RECOMMENDATIONS



## **Recommendation 2:**

Develop a Community of Practice for Social Care Commissioning

A Community of Practice (CoP) is defined as an organised group of professional people who share the same interests in resolving an issue, improving skills, and learning from each other's experiences. WG could build on existing networks and facilitate and co-ordinate a Community of Practice for Social Care Commissioners, encouraging those who are leading on developing and implementing innovative commissioning practice to share learning and provide peer-to-peer support and mentoring to achieve successful outcomes. This Community could work together to co-develop 'how to' guidance that could be circulated to all local authorities to help spread the learning.

## **Recommendation 3:**

Structured Programme of Social Value Reporting Training for the Social Business Sector

Social businesses need to ensure they have the skills to be able to demonstrate their social value as part of the tender process, particularly when they might struggle to compete on cost. Welsh Government should consider rolling out a structured programme of training for the social business care sector to help improve their skills in this area. Engaging the Social Enterprise Academy as a delivery partner could be an effective investment mechanism of delivering this training whilst encouraging the formation of a Community of Practice of social care based social businesses to support the achievement of outcomes based delivery.

A tender is a snapshot –  
the goal should be long-  
term trust.



# BIBLIOGRAPHY

1. Future Generations Commissioner for Wales. (2019) A Prosperous Wales: Fair and Local Procurement – A Journey Checker.
2. Welsh Government. (2019) Social Services: The national outcomes framework for people who need care and support and carer who need support.
3. Leonie Cowen & Associates. (2019) Modern, Outcome Based Collaborative Procurement: A Practical Legal Guide for Commissioners and Procurement Officers.
4. Mair Bell (Wales Centre for Public Policy). (2019) Sustainable Public Procurement.
5. John Tizard and Megan Mathias (Wales Centre for Public Policy). (2019) Beyond Contracting: Public service Stewardship to Maximise Public Value.
6. Carnegie UK Trust. (2019) Supporting Better Work Through Procurement.
7. National Commissioning Board (Wales) & the National Provider Forum. (2018) Outcomes Based Home Care Commissioning Toolkit.
8. Locality (TBC) Powerful Communities, Strong Economies.
9. Bates Wells Braithwaite. (2016) The Art of the Possible in Public Procurement.
10. Institute of Public Care (2016) Outcomes based commissioning in domiciliary care – a discussion paper.
11. Crown Commercial Service. (2015) The Public Contracts Regulations 2015 - Guidance on the New Light Touch Regime for Health, Social, Education and Certain other Service Contracts.
12. WG, Wales Co-operative Centre, and WCVA. (2013) Joint Bidding Guide.
13. I2I and CHC (2009) Can do Toolkit.

# APPENDIX 1: APPLICABLE CPV CODES FOR RESERVED CONTRACTS UNDER REGULATION 77

Under Regulation 77, a contract is a reservable public contract only if it is exclusively for one or more of the services which are covered by the following CPV codes:

- 75121000-0 Administrative educational services.
- 75122000-7 Administrative healthcare services.
- 75123000-4 Administrative housing services.
- 79622000-0 Supply services of domestic help personnel.
- 79624000-4 Supply services of nursing personnel.
- 79625000-1 Supply services of medical personnel.
- 80110000-8 Pre-school education services.
- 80300000-7 Higher education services.
- 80420000-4 E-learning services.
- 80430000-7 Adult-education services at university level.
- 80511000-9 Staff training services.
- 80520000-5 Training facilities.
- 80590000-6 Tutorial services.
- 85000000-9 Health and social work services.
- 85323000-9 Community health services.
- 92500000-6 Library, archives, museums and other cultural services.
- 92600000-7 Sporting services.
- 98133000-4 Services furnished by social membership organisations.
- 98133110-8 Services provided by youth associations.

# ANNEX A

## HOW THE FIVE PRINCIPLES OF THE ACT ALIGN WITH OTHER KEY WELSH LAWS AND POLICIES



<b>Social Services and Well-being Act</b>	<b>Healthier Wales drivers</b>	<b>Well-being of Future Generations Act</b>	<b>Foundational Economy</b>
Well-being outcomes	Well-being outcomes	Well-being outcomes	Decent lives and communities
Voice and control / Co-production	Co-production	Citizen / User involvement	Bottom up solutions
Partnership and integration	Partnership	Collaboration	Cross-sector place making
Early intervention / prevention	Prevention	Prevention	Community development
Added Value	Added or increased value	Long-term	Trusted suppliers - recycling funds
Co-production / Valuing everyone	Valued workforce	A prosperous Wales	Grounded employment and local career paths

# ANNEX B

## INFORMATION ON THE FURZY PARK PILOT PROJECT WITH PEMBROKESHIRE COUNTY COUNCIL MAY 2020

### 1. Rationale and overview of the Furzy Park pilot project

Wales Co-operative Centre with the Association of Directors of Social Services Cymru (ADSS) identified two pioneer authorities to test new commissioning and procurement approaches, to increase investment in “social value models of delivery”. During the identification process with project partners and wider collaborators, it was agreed that social value is better understood by linking it to Part 2, Section 16 of the Social Services and Well-being (Wales) Act.

In late 2019, the Furzy Park pilot emerged from discussions with Pembrokeshire County Council’s Social Services team. The proposed pilot would explore different ways of working with an existing care and support contract to generate social value. The focus was not on creating something new, but through applying the principles of the Social Services and Well-being (Wales) Act, it would test if the service could release greater social value if it was more flexible and integrated into a community. The pilot would focus on a ‘supported living’ service provided to two adult men with learning disabilities and also to their hyperlocal residential community of Furzy Park.

Section 16 of the Act and the Codes of Practice that direct its implementation describe five principles inherent in social value models and Section 16 models. These are the same principles that underpin the statutory legislation of the Act; well-being outcomes; co-production; co-operation; prevention; added value. The Furzy Park pilot would apply the principles to an existing service to test if new ‘arrangements’ could lead to different outcomes, specifically applying co-production and collaboration.

Furzy Park, is an area of Haverfordwest, where the two men receive a supported living service at their rented accommodation. Typically the service is a focused contract in which the assets are the funds of the commissioner and the workforce of the care provider. By applying the principles of co-production, well-being and collaboration and allowing more flexibility in the delivery of the contract, new assets could emerge. This could include the contribution of the men as ‘good neighbours’, safe mutually beneficial relationships in the community, integration of agencies previously unaware of each other, though active in the local area, to share resources and combine energies for better investment in the community. The additional test was the very short time available for a pilot, a maximum of three months.

One initial idea to bring the community together and strengthen relationships was a Library of Things<sup>1</sup>, which in time would link with existing assets in the community, belonging to people, groups<sup>1</sup> or organisations. On reflection this was too ambitious and a more organic approach was sort. The early ideas flexed and adapted to meet the personal interests of the people involved in project, critically the two adult men. The pilot shaped itself around their preferences and requirements to ensure their full participation. Bigger ambitions could build from small beginnings.

1. <https://www.libraryofthings.co.uk/>

Building on weekly help for a neighbour to place rubbish and recycling bins on the street for collection, an idea flowed for a neighbourhood-wide crisp and snack packets recycling scheme co-ordinated by the two men, with the support of the paid workforce. This would help them establish regular contact with their neighbours via recycling collections and drop-offs. The two men were emerging as assets for their community.

Activity was underway and a community meeting was held on 5th March, connected to the initial start of the recycling scheme. The objective was to further engage with the Furzy Park community. 'Community Connectors' from the Pembrokeshire Association of Voluntary Services (PAVS) facilitated the meeting encouraging discussions on recycling and other shared issues to uncover people assets and interests that could benefit the community.

It was the outbreak of the Covid-19 virus that brought the pilot to an abrupt end in mid-March, less than three months after its start. It was hoped to extend the time available for the pilot, time required to build beneficial supportive relationships, not only in the community, but across agencies and organisations active in the area.

## **2. Organisations involved in the pilot project**

Pembrokeshire County Council worked with Cartrefi Cymru Co-operative, in the Furzy Park pilot, as it is the only domiciliary care co-operative active in Haverfordwest. It presented an opportunity for shared learning around co-operative approaches to service development and how to use the values and principles of co-operation to think about future design and planning of services.

Cartrefi Cymru Co-operative works to a Service Level Agreement contract commissioned by Pembrokeshire County Council and is a provider on its Supported Living Framework.

## **The roles of people involved**

Cartrefi Cymru Co-operative

- ♦ Assistant Director and Area Manager, Carmarthenshire and Pembrokeshire

Pembrokeshire County Council

- ♦ Head of Strategic Joint Commissioning, Development Officer, and Commissioning & Contract Management Officer for Adult Social Services and Project Manager, Day Opportunities (Workways+) for adults with disabilities

Wales Co-operative Centre

- ♦ Project Manager, Care to Co-operate and Local Co-ordinator of the pilot project (seconded to the Wales Co-operative Centre)

### 3. Implementing the Furzy Park pilot – Three elements

At the heart of the pilot is the supported living service for two men with learning disabilities and their small staff team. Cartrefi Cymru Co-operative delivers approximately 130 hours of support per week. The men follow weekly planners that provide structure and consistency to their weeks participating in organised activities and settings including day centres and People First groups. Their lives can be summarised as living in the community, but travelling out to activities, as opposed to accessing options and building relationships in their neighbourhood.

Could the assets of the two adults, the supported living service, the public funds and the workforce be mobilised in ways which help far more people, add value to the current contract?

#### First element

Through genuine co-production with the two adults, the pilot was to test whether a supported living service can provide added social value across the hyperlocal communities supporting 'good neighbours' activities. A mapping exercise will make connections to other assets in the community to increase co-operation and partnerships.

#### Second element

Again, by embracing co-production, could a greater understanding of the unmet needs of the local community be acquired through local relationships? Could the supported living team increased its preventative capacity and respond, reflecting Pembrokeshire County Council's priorities to reduce social isolation, building community resourcefulness and community self-help?

#### Third element

The pilot to explore the extent in which the local community can maximise its own assets to meet its own needs, to achieve broader well-being outcomes. Draw on activities that harness the voice of people, including the adults with learning disabilities, to develop community resources to bring people together and strengthen relationships.

**Could the assets of the two adults, the supported living service, the public funds and the workforce be mobilised in ways which help far more people, adding value to the current contract?**

## 4. Potential outcomes for the Furzy Park pilot – people, agencies and commissioners

### Outcomes for people

1. Richer lives for the two adults with learning disabilities
  - ◆ Improved social well-being
  - ◆ Making more community contributions in addition to current activities as helping a neighbour put out their bins for weekly collection
2. Reduced paid for dependency
  - ◆ More natural support
  - ◆ More inclusion in safe settings
3. Improved lives for people in Furzy Park
  - ◆ Vulnerable members
  - ◆ General population
4. Increased voice and control - conversations and decision making
  - ◆ For adults with learning disabilities
  - ◆ For community beneficiaries
5. Increased prevention of acute needs
  - ◆ Proactively identifying and addressing issues such as loneliness and depression
  - ◆ Utilising the community as the first line of prevention activity.

### Outcomes for agencies

6. Improved local agency collaboration
  - ◆ Local authority, health board, social landlords, disability support services, commissioned service providers, agencies and local associations and groups
7. Learning disability supported living service seen in a different light
  - ◆ Not just a service for two adults, but a flexible service that can adapt to changing needs and valued asset for the local community
8. Section 16 organisations/co-operatives demonstrate their potential for added social value
  - ◆ Community focussed
  - ◆ Co-productive
  - ◆ Flexible / adaptable to need
9. Increased co-operation, collaboration and flexibility between commissioners, providers and other providers
10. Increased job satisfaction and a more valued workforce
  - ◆ More delegation of authority to frontline workforce who can best do what matters including social workers and support workers.



## Outcomes for commissioners



11. Learning from a co-operative organisation about adding social value and how to organise partnerships at a hyperlocal level
12. Information to influence and support innovative commissioning arrangements for supported living services
  - ◆ Potential to inform different types of contract arrangements such as alliance contracting and block contracting based on outcomes
  - ◆ Exploration of option of purchasing both an individual and a community care service
13. Increased capacity for care and support
  - ◆ Team of registered care workers who can respond flexibly to local need
  - ◆ Respond to new care arrangements earlier than is often the case
14. Improved commissioning processes for care and support services
  - ◆ Embed and develop an outcomes based commissioning culture, with more arrangements in place for person-centred outcomes and a mix of fixed and on-demand services
15. Recast the relationship between social worker (as commissioner) and care provider
  - ◆ Regular liaison
  - ◆ Joint problem solving.
16. Public money creating a greater social value for recipients of the service as well as their local community.

## 5. How does the pilot influence and support future commissioning and procurement?

Can commissioners secure flexible integrated hyperlocal care and support services? Can commissioning be driven by co-production and partnerships and vice versa? What are the options? These are the questions that were considered with the commissioner.

Future commissioning strategies include:

- ◆ Alliance Contracting to be explored with the New Economics Foundation
- ◆ Utilising an 'Approved Provider' list of agencies and organisations to provide flexible responsive services
- ◆ Developing 'Frameworks' as ways to pay and exchange support for people by bring the providers together
- ◆ Commissioning at a local level through the iterative cycle of 'the idea', the 'what' and 'here's the offer' drawing on existing assets and flowering new ones
- ◆ Sharing expertise to empower communities to support themselves so services are not always commissioned (or likely a smaller percentage of services are commissioned)
- ◆ Social value and added value in service specifications, a multi-layered challenge. How does this link with the Pembrokeshire County Council's Learning Disability Charter and how does commissioning support the Learning Disability strategy?
- ◆ Could social value be built into commissioned services by working with providers on a set of principles and an overarching ethos (could be co-operative values and principles)?
- ◆ Operating a procurement portal for broad well-being activities but mostly undefined. Successful contract criteria based on the values of the agencies, level of inclusion of the voice and control of people in co-operative arrangements and its ability to deliver added value for the wider community
  - This raised a question on how commissioning can be so inclusive through co-production that it negates the requirement for procurement and a competitive bidding process?

**Can commissioners secure flexible integrated hyperlocal care and support services? Can commissioning be driven by co-production and partnerships and vice versa? What are the options?**

Cwmpas  
c/o Sbarc/Spark  
Maindy Road  
Cardiff  
CF24 4HQ  
Tel: 0300 111 5050  
Email: [info@cwmpas.coop](mailto:info@cwmpas.coop)  
Web: [www.Cwmpas.coop](http://www.Cwmpas.coop)

Cwmpas (formally know as The Wales Co-operative Centre) is a registered society under the Co-operative and Community Benefit Societies Act 2014, number 24287 R. We welcome correspondence in English or Welsh and aim to provide an equal standard of service in both languages.