

# **PROCUREMENT FOR SOCIAL IMPACT BONDS WEBINAR**

## **Summary Notes**

**Tuesday, 06 March, 10.00 – 11.30am**

### **Overview**

Social Impact Bonds (SIBs) present a number of challenges to traditional contracting processes. SIBs often focus on complex social issues, involve multiple stakeholders, and involve a high degree of innovation. This has prompted many in commissioning authorities to raise questions about how to procure within a SIB structure without falling foul of the law.

This webinar session looked at the different approaches that are available to help SIB commissioners and their procurement teams run a process that achieves best values, without undermining the ingredients that make SIBs successful.

### **About the guest speakers**

#### **Jo Blundell**

Jo Blundell is the former Deputy Director of the GO Lab and the Director of the Future Public. Jo has worked in and around public services in the UK and overseas for over 30 years. She has been extensively involved in developing and delivering services paid for by results in the welfare to work sector, and has also been involved in the management and development of Social Impact Bonds for Children's Services and for People with a Learning Disability.

As Deputy Director of the GO Lab, Jo led on the development of many of GO Lab's technical guides for commissioners, including the How to Guide on Procurement. A recently revised version of the How to Guide on Procurement is now available on the GO Lab [website](#).

#### **Julian Blake**

Julian Blake is a Partner at BWB LLP. Julian's areas of legal expertise include: commercial and charity law advice to charities, social enterprises, mission-led businesses and commercial organisations; private, public and third sector contracts and funding arrangements; public procurement and state aid; education law; financial services; and competition law. He is

especially interested in the new "innovation partnership" procedure, with its unique feature of permitting the combined procurement of the design and delivery of an innovative service. Julian has, since 2012, supported E3M - a group of pioneering chief executives running large public services delivering social enterprises and an associated group of pioneering, progressive 'bold commissioner'.

Julian is the co-author of the 'Art of the possible in public procurement', an extremely helpful document for those seeking to get a better understanding of how they might apply the innovative and more flexible approaches introduced by the Public Contracts Regulations in 2015.

## Summary notes

### **How does procurement fit within the broader process of developing a SIB?**

- SIB has three parties
- It's a process rather than a moment in time like a contract. Might have multiple procurement moments. Needs to be conceived at the outset as a partnership.

### **Why is procurement more challenging in a SIB context?**

- SIBs don't present the opportunity for competition in the usual way. But there is still pressure on public bodies to demonstrate value.
- There is a need to consult at the very start, to get the data around need that will inform the existing costs of a problem / service.
- Design work – either contextualising existing work others have done, or designing something new. There will be some market engagement at this point – existing or new providers.
- Three broad ways that SIBs happen. Commissioner, provider and investor led. When they are commissioner led, there will be a pre-procurement engagement. When they are provider-led, it may or may not be suitable to have an open competition. You may prefer to work on a partnership basis, rather than develop a market. In the third example, it is an intermediary or investor.
- When to engage investors? Engage them early. Provision of finance does not sit within the public contract regulations. But investors can be project managers in a SIB, and the initiators – so need to work out how the relationship.
- Three ways to structure contracts. The 'classic' – procure a provider and they find the investor. Or, work with the investor – but need to decide on what terms. The advisor/intermediary can also play the part of the investor.

### **Provider-led SIBs**

- The problem is that supplier-led projects go a long way with an interested commissioner and then procurement becomes a barrier – needs to be considered early.
- There isn't a clear process – public law and procurement law need to be adapted to the purpose of putting together a partnership.
- Three ways to think about it: 1 – it's co-investment and co-design (though you still need to look out for procurement moments. 2 – routes for recognising unique suppliers. 3 – innovation partnership procedure, which is the only way to combine design and delivery into a single contract.
- What about when a service provider wants to work with multiple commissioners? MHEP – set up for this purpose. The FDAC model is also set up this way. But they do need to be adapted for the local context.
- What if there isn't a market of providers – how do you ensure you are getting value for money, then? It is a partnership – you need to decide early who you might work with.

### **Value for money**

- Balancing quality, price and social value is now law. Getting value depends on the quality of the analysis that sits behind a proposition.

### **How can local commissioners best create a level playing field of providers?**

- To create a level playing field – engage your market early. Or find the organisations you want to bring into a supply chain.

### **What are the different procurement options available for those developing SIBs?**

#### **What are some example of procurement routes used for SIBs?**

- EU was very clear during the 2014 review that procurement procedures can be used for the common public good.
- Procurement regulations will arise in different ways depending on the lead party. When the commissioner is in the lead, it might be quite an orthodox process. But when the supplier comes up with a proposition and takes it to the commissioner, there isn't a clear route. When the supplier comes to the idea – first question is it co-investment? Secondly, the conversation starts – if that supplier is the only one with a proposition, then you can use various procurement routes.
- Often procurement is raised too early, before we know what the best route is – and other times it's too late, when things have gone too far.
- The question is not the rules, but how you are going to get best value. Value is king – will you achieve what you want to financially? Don't do it too early, don't do it too late. E.g. Ways to Wellness had a unique proposition. Eventually decided to do it as a

SIB. Monitor in the NHS were the procuring party and took a lot of convincing to procure WtW in a non-competitive process. In retrospect, WtW felt they should have had the conversation about procurement sooner.

- WtW was a unique proposition. Shouldn't start too early. Judging something to be a co-investment feels risky, as does judging something to be unique. That leads us to the Innovation partnership procedure. This gives you the procedure to deal with it. Though they haven't been used to date.
- What has been used, then? PIN and VEAT processes when open competition is not the right approach. PIN is prior – VEAT is afterwards.

### **A restricted competitive process**

- Travel training developed by HCT group (a commercially competitive entity). The concept is you provide not just the travel service, but also the training service for the users. Improves the service, quality and saves money. HCT a social enterprise who can do both. HCT viewed that no-one else could do it. Took the procurement to authorities who were interested, but saw procurement as a problem.
- Three different LAs dealt with it in three ways. One said it was illegal and that was the end of that. The other went through a competitive procurement, but there was no other competition anyway – so the process was not proportionate. In the third one, they convinced the lawyer that the VEAT process would market test the judgment that it is unique.

### **An open competitive process**

- So when use competition? People familiar with this. This is where you know you have a market so you can be more arms length.
- Reconnections SIB on loneliness. Developed by Age UK. Took 10 months to run a competitive procurement, and the only bidder was Age UK. So was this really the right way to procure it?
- There is a question of bravery – need to take a judgment – is the decision to run a competition just giving you air cover or is it really the best way? If you have done your business case well, you will already have some sense of value. The competition is only a part player in enabling you to get value.
- Third option of competing against a rate card, used in national procurements. This is where the commissioner can set a procurement rate. Can also be used in the Edge of Care SIBs for MST.

### **Innovation Partnership**

- Innovation Partnership is the only procedure that puts design and delivery into the same contract. The supplier doesn't want their innovation being taken by a commissioner and put out to competition. The innovation partnership gets around this.

- Why aren't Authorities using Innovation Partnerships? Because they are new, and/or because there was a misconception they were only for IT.

### **How do you make sure investors don't make excessive profits?**

- You need to make sure there is a meaningful negotiation with an investor partner. There needs to be some competitive pressure.

### **Is a private for-profit company the right vehicle for a SIB?**

- In principle yes, but probably not if it is Life-Chances Fund funded.

### **Challenges of procuring for a SIB**

- It's a detailed and complex process to put these partnerships together, particularly around the design of the outcomes and how they will be financed.
- The commissioner is not the only one who is looking at value. Mature social enterprises want this too – for example, they can profit-share with the commissioner if things go really well.
- But there is a market-shifting point – in procurement we have some egregious examples of private sector failure because it isn't really a market. They don't always provide MEAT. Social organisations provide a level of trust and relational contracting.
- The management of information is the most complicated procurement point throughout the whole process. It's sometimes dealt with too late. Suppliers involved early will have preferential information – need to avoid this and make sure all parties have access to the same information.

### **Intellectual property & transparency**

- You probably need to form an agreement early on, on the terms of engagement so that everyone knows how knowledge will be used.
- Two angles to intellectual property – protecting the provider's info, but also ensuring that you get the knowledge that is going to be useful to you as a commissioner.
- The supplier perspective is that they put their effort into developing a service and then the commissioner puts it to market, which is unfair. So commissioner can spec the idea, but not the IP behind it.

### **Other key considerations**

- Business case is what tells you if you've got value, rather than competition.
- Recognise the SIB is a three-party partnership.
- Get the project plan sorted out early and anticipate procurement questions