

Introduction

The role of the state in ensuring regulatory governance for equality at work is a continuing topic of debate (Dickens, 2007; Hepple, 2011). Public procurement has been advanced as a mechanism whereby the state can extend the usually higher standards of equality expected of public employers to the private sector to address employment inequality (McCrudden, 2007a; 2012). However, attempts to do this have been a politically and legally contested area in recent decades, with fitful progress as political priorities change. This article seeks to add to the debates by examining the use of public procurement to advance gender equality in the persistently male-dominated construction sector, drawing on a seemingly successful, small-scale example in the UK. It situates public procurement policy within debates about forms of responsive regulation (Ayres and Braithwaite, 1992; Nonet and Selznick, 1978, 2001) and regulatory new governance (Vosko et al., 2016). While there has been considerable discussion about the use of social procurement to promote employment standards and to enforce standards throughout supply chains (e.g. Howe, 2011; Koukiadaki, 2014; Reinecke and Donaghey, 2015), there has been less academic attention to procurement and equality linkages, with very little empirical investigation (McCrudden, 2012). This article therefore contributes both to the conceptualisation of social procurement as a form of responsive regulation, but also as an empirical examination of a UK case, the Women into Construction project, initially established on the London Olympic Park site, but continuing to operate since.

The article initially outlines the scale of women's underrepresentation in the construction sector, and briefly examines the reasons for this, as well as some approaches to increasing their recruitment. It then considers the existing literature on using procurement to advance equality, showing its historical antecedents in addressing race inequality in the UK, and

religious discrimination in Northern Ireland. Evidence of the US experience of affirmative action through the federal contracting programme to increase women's work in the construction trades is discussed, showing that achievement of the goals set has been undermined by lack of enforcement. The use of public procurement to achieve social objectives is then set within the context of shifts towards forms of responsive or reflexive regulation and regulatory new governance, where the arguments of Vosko et al (2016) and Estlund (2005) are examined to consider the risks of regulatory degradation. The UK legal framework for including social and equality obligations within public procurement is outlined, with the public sector equality duty identified as a form of responsive legislation that can be a driver for action.

The case of the Women into Construction project is then presented, describing its creation to support the achievements of the gender equality targets of the Olympic Delivery Authority. The discussion of the empirical material is structured using McCrudden's (2012) framework for the successful adoption of procurement, under the headings of: motivations for engagement; strategic planning; political context and leadership; and monitoring implementation. In addition we extend McCrudden's categorisation to add a fifth significant element, that of training and support.

Women in the UK construction industry

The low level of female representation in the UK construction workforce has been of industry concern for some time, yet still women account for only 1.3% of those in the manual trades and around 16% of professional construction roles (Lowe and Woodcroft, 2014). Many features of the industry explain why it remains unattractive to women entrants or fails to retain them, including a poor image with harsh and uncomfortable working

conditions requiring physical strength (Gurjao, 2006) and long, inflexible working hours (Fielden et al., 2000; Watts, 2009). There remains a male-dominated workplace culture characterized by 'laddish' behaviour, 'banter' and sexual harassment, particularly for women in the manual trades (i.e. Greed, 2006; Watts, 2007). Additionally, some employers believe women to be unsuitable for construction work, and engage in informal and discriminatory recruitment practices that exclude women (Bagilhole, 2014; GLA, 2007a; Author 2013b, 2016).

Since the 1990s the industry has recognised the need for change in its underrepresentation of women and BME workers and has recommended equal opportunities measures to address the masculine, adversarial culture (Ness, 2012; Rhys Jones, 2006). Efforts to recruit and train women (Bagilhole, 2002; Greed, 2006; Gurjao, 2006) have seen some increase in the numbers of women in professional construction roles (Dainty and Bagilhole, 2006: 99; Dainty et al., 2001: 297). Furthermore, accounts from women in construction roles, from the manual trades to professional occupations such as engineering, highlight the enormous sense of pride and satisfaction derived from the completion of construction projects, with a particular pleasure from being able to do a 'man's job' (Clarke et al., 2004; Author a 2016; Smith, 2013; Watts, 2007).

There is a growing acceptance of the 'business case' for improving diversity within the industry, arguing that benefits include solving skills shortages, recruitment and retention of the best talent, improved employee performance and positive employer branding (Clarke et al., 2015; Peters and Allison, 2011). Despite a slow pace of change to date, there is evidence of political and industry commitment to improving women's position in construction (Clarke et al., 2015 ; Author a 2016; Munn, 2014). Public procurement has been advocated by

business leaders as a way of advancing equality and diversity, through partnership between the public and private sectors (CBI, 2009) and by a government inquiry as a means of overcoming occupational gender segregation (Business Innovation and Skills Committee, 2013: 67). Effecting change in the construction workforce is challenging, however, due to the extensive practice of subcontracting, often with lengthy supply chains and high levels of precarious self-employment, which is often effectively bogus or false self-employment (Behling and Harvey, 2015). Therefore any efforts by public sector purchasers to influence the employment practices of private sector contractors need to take account of subcontractors.

Using public procurement to promote equality

There is historical precedent for using the power of public procurement to advance equality objectives in the UK and the United States. Public procurement can be defined as purchasing by government from private sector contractors, typically on the basis of competitive bidding, of goods and services need by government (McCrudden, 2007a: 3). The related term contract compliance refers to the use of public sector procurement to achieve wider social and economic goals (Orton and Ratcliffe, 2005: 259) and was adopted during the 1980s by some UK local authorities to require contractors to undertake equality measures, particularly in relation to race equality (Dickens, 2007). Under the leadership of Labour's Ken Livingstone, the former Greater London Council (GLC), was a prominent advocate of contract compliance, which had the effect that almost half of contracted companies improved their equality procedures as a result (Djan Tackey et al., 2009: 13-14). However, reforms introduced by the Conservative government in 1988 ended the practice by preventing local authorities from taking into account 'non-commercial' factors in the awarding of contracts (Dickens, 2007: 485). Under the Labour governments from 1997 there

was a renewed interest in using procurement to achieve equality outcomes (McCrudden, 2009). The legal framework on what constituted non-commercial matters was changed in 1999 (Dickens, 2007: 485) and the introduction of the first equality duty for the public sector in relation to race (see below) gave a spur to action by public authorities. For example, the National Health Service established the Mosaic project in 2004 to consider how procurement could achieve better race equality outcomes (Department of Health, 2007), while an evaluation of three pilot projects in central government departments concluded that equality requirements included in contracts with suppliers did not cause them any significant difficulties, but showed varied levels of expertise in equality issues among contract managers, and little routine monitoring of compliance (Djan Tackey et al., 2009).

A survey of equalities and procurement departments in English local authorities found that the equality duties had been instrumental in incorporating equality considerations into procurement, with the majority believing that progress had been made in the previous three years. However, lack of understanding and joint working between equalities and procurement staff was felt to be a frequent difficulty, which hindered the incorporation of equality considerations into procurement (EHRC, 2009).

Following the creation of the office of Mayor of London, the election of Ken Livingstone as Mayor, and the establishment of the Greater London Authority (GLA) in 2000, the use of public procurement was again adopted as a strategy to promote equality. A 'responsible procurement' policy was introduced in 2007 (McCrudden, 2012), and one of the constituent parts of the GLA, Transport for London, has applied this to a number of large projects, including the East London Line extension and highways maintenance contracts. One

outcome has been an increase in equality and diversity training, recruitment practices, and monitoring among contractors and their supply chain (Lulham, 2011).

Northern Ireland is more advanced than the rest of the UK in terms of using government contracts to apply its legal equality framework. In order to implement the equality obligations of the Northern Ireland Act 1998, the employment inequality experienced by Catholics was addressed indirectly through the introduction of the Unemployment Pilot Project (McCrudden, 2011). The government used its procurement powers to require contractors for construction works and some services to include plans in their bids for employing those registered as unemployed for at least three months (Erridge, 2007). Prior to implementation, the policy was subject to consultation under equality-proofing provisions, which highlighted concerns from businesses such as the need for training and the short-term nature of construction contracts. Erridge (2007) found good results in achieving sustainable employment among the unemployed target group, and observed that contractors were supportive of using public procurement to achieve social objectives.

Based on the Northern Ireland experience, McCrudden (2012) proposed a framework of the key elements required for procurement to be an effective tool. First, he argues that sufficient reason is required for public bodies to include equality objectives in procurement, observing that the PSED has been a driver for this in recent years. Second, political logjams must be overcome in order for such policies to be pursued, including concerns about compliance with EU law. In Northern Ireland a review of procurement policy and law was undertaken, involving extensive consultation, before guidance was issued, together with clear directions from the Treasury. Third, high-level political commitment and leadership is essential, which in this instance came from the Northern Ireland Assembly which saw

procurement as a tool for achieving its economic, social and equality agenda. Fourth, procurement linkages should be included in strategic planning, thus sustainable procurement plans setting out methodologies and priorities are needed. Fifth, monitoring and controlling effective implementation is essential. Reporting mechanisms need to be devised, which could, for example, include the means for the public to report on performance of particular services.

The United States has been particularly proactive in addressing minority under-representation in construction employment using federal contracting provisions, described as a form of affirmative action (Muttarak et al., 2013). Women's numbers in the US construction trades are similar to the UK, accounting for only 2.6% of workers in construction and extraction occupations, unchanged in three decades (National Women's Law Center, 2014).

Initially introduced to address race discrimination in employment as a result of civil rights campaigns, and subsequently extended to include women following feminist campaigning, presidential Executive Orders set goals for hiring ethnic minorities and women in the trades. In April 1978 an Order issued by President Carter set initial goals for women's employment in construction of 3.1%, rising to 6.9% by 1981, applying to construction contractors and subcontractors with federal contracts in excess of \$10,000 (Eisenberg, 2004: 193; Moccio, 2009: 62). However in 1981 President Reagan cut the funding to the federal training programme, which had been crucial to supporting the achievement of the goals (Eisenberg, 2004; Moccio, 2009), thus lack of enforcement meant that the goals existed in name only from this time (MacLean, 2006: 313).

While these affirmative action measures produced advances in employment for ethnic minorities and women during the 1970s (MacLean, 2006), it is argued that the gains made by women in construction were limited to particular schemes where funding for support programmes was maintained. Women failed to achieve the critical mass of 10% to 12% that could have exerted pressure for change to the gendered culture and practices within the industry {Eisenberg, 2004 #712}.

Scholars examining these programmes conclude that to substantially reduce gendered labour market segregation, a joint commitment by government, employers, trade unions and tradeswomen and their advocates is required (Eisenberg, 2004; Moccio, 2009; Price, 2002). Although the goals for women's participation on federal projects remain in place, there is still no monitoring or enforcement of compliance. The National Women's Law Center (2014) has called for federal agencies to step up their enforcement of non-discrimination laws affecting federal contractors and to increase its monitoring of contractors.

This review of the existing evidence of the use of procurement to promote employment equality in the UK and the US highlights a number of factors that can facilitate outcomes. McCrudden (2012) identified five key elements: sufficient reason or legal impetus; overcoming political logjams; high-level political leadership; inclusion in strategic planning; and monitoring of implementation. Additionally, the evidence reveals the importance of pressure from civil society in stimulating political action; consultation and engagement of stakeholders at all stages, including before implementation and during the operation of contracts; and training and support for under-represented groups targeted by procurement

policies. These elements are considered in relation to the empirical evidence of our case below.

Public procurement as a form of responsive regulation

Experience from the UK construction sector shows that a voluntary approach to getting employers to recruit more women has not succeeded, possibly because arguments for a 'business case' for gender activity are insufficient. Dickens (1999) argued some time ago that a 'third prong' is required alongside the first two prongs of 'hard' legislation and the voluntarist business case; in her case this was social regulation, in the form of collective bargaining between trade unions and employers. In a later article Dickens (2007) observed that the shift towards proactive equality duties in UK law can support effective self-regulation, with the duties encouraging the use of public procurement power, although she noted the "under-use" of contract compliance by the national and local state to enforce anti-discrimination legislation.

Forms of regulation that bridge the gap – or seek a 'third way' – between hard, 'command and control' regulation by the state and voluntarist or deregulatory approach have been developed using various terms, including responsive regulation, reflexive regulation and reflexive governance (McCrudden, 2007b).

Responsive regulation is an influential model put forward by Ayres and Braithwaite (1992), which has become the basis for regulatory reform across a range of policy areas and jurisdictions (Vosko et al., 2016). The context for Ayres and Braithwaite was the backlash to regulation from the private sector, and the deregulatory impetus of neoliberalism epitomised in the 1980s by the Reagan government in the US and the Thatcher government in the UK. Responsive regulation seeks to encourage behaviour change amongst private

sector firms, with the central idea that if businesses have greater control of their regulation, they will be more likely to engage with it.

Another influential model was proposed by Nonet and Selznick (1978, 2001), seeing responsive law as an evolutionary change from a model in which the state imposes legislation that is not in tune with the needs of civil society to one which is responsive to pressure from civil society groups. Affirmative action applied to federal contracts, as described above, might seem to fit the bill of responsive legislation, particularly since the role of civil society groups was evident in its adoption. However, Nonet and Selznick's model does not take account of tensions in the objectives of different civil society groups, for example between employees and employers.

The two models therefore address the problem from different perspectives. Nonet and Selznick's (1978, 2001) model places more power in the hands of civil society groups who would like more regulation of business, whilst Ayres and Braithwaite (1992) focus on getting business to accept ownership of the aims of regulation. Processes of deregulation, reduced influence of unions in collective bargaining and reduced resources for enforcement agencies have all resulted in shifts towards internal rather than external enforcement of employment legislation and standards by employers. In order to restore balance, without resorting to hard regulation that entrenches opposite positions, there has been a move towards regulatory new governance (RNG). This identifies the role of the state as 'one of steering rather than rowing', and pursuing regulatory objectives, importantly, by 'facilitating networks of actors that span public/private and state/civil society divides' (Vosko et al., 2016: 374). In Estlund's (2005) version of RNG, that she terms 'monitored self-regulation', the role of the public authority is to oversee self-enforcement mechanisms devised by firms.

However she notes that Ayres and Braithwaite's conception of responsive regulation depends on the presence of a threat of state sanctions and strong structures for worker representation, often absent from contemporary workplaces. She therefore draws on the approach known as ratcheting labour standards (RLS), which operates without regulatory agencies or enforcement mechanisms, often in countries where these do not exist. Instead it employs pressure from labour and consumer groups demanding the adoption of voluntary codes of conduct in supply chains. Central here is transparency, which enables comparison between firms and allows civil society groups, including trade unions, to act as monitors and certifiers of compliance, also publicising both good and poor practice.

Thus to avoid regulatory degradation – or a slide towards deregulation – a strong presence of civil society actors, either as part of representative structures within organisations or as well-informed external monitors, is required (Vosko et al., 2016). Furthermore, regulatory agents must maintain democratic structures of accountability, which ensure not only efficient performance by organisations, but also that they are held to account for upholding the aims of protective legislation (Vosko et al., 2016). A significant conclusion for Vosko et al is the necessity of maintaining 'hard' enforcement mechanisms, to include sanctions and penalties for non-compliance, which may complement 'soft' strategies such as naming and shaming of poor practice. This is in line with Dickens's {, 1999 #658} 'three-pronged' approach in which legal and social regulation is required, alongside the business case, with trade unions playing an important part in social regulation through equality bargaining.

Thus for the public procurement process to be an effective tool for the operation of 'socially responsible' responsive regulation, a number of elements must be present, including an appropriate legal framework and the participation of civil society groups. The following

section examines the UK legislative context framing the use of public procurement to achieve equality objectives.

The UK legal framework: using responsive law to link procurement to equality

The UK legal framework for applying equality criteria through public procurement is a complex one that has been subject to many changes at both national and EU levels (McCrudden, 2007a). McCrudden (2012) points out that from the 1980s to the mid-1990s the European Commission was not favourable to the practice of linking procurement to equality issues, although began to develop ways of reconciling the economic and social dimensions of public procurement, publishing guidance in 2010 on how incorporating social considerations into procurement could be compatible with EU law {European Commission, 2010 #579}. Nevertheless, such legal uncertainty is believed to have hindered the adoption of social procurement (Orton and Ratcliffe, 2005). Guidance issued by the Equality and Human Rights Commission (EHRC) further clarifies that EU legislation allows social issues, including equality, to be taken into consideration at different stages in the procurement process (EHRC, 2013; European Commission, 2010).

The 2014 EU Procurement Directive (Public Sector) contains provisions on social benefits, which enable public authorities to invest public finances in a way which promotes social, economic and environmental development, and good quality employment and services, contained in Article 18 (2)ⁱ. This was transposed into UK legislation through the Public Contracts Regulations 2015, which clarify that social aspects can be taken into account in certain circumstances, for example through requiring certification or labels as evidence of social or environmental compliance (Cabinet Office, 2015).

The public sector equality duty (PSED), which was not prompted by EU law, is particularly relevant here. The PSED was introduced in the Equality Act 2010 and requires public authorities in England, Wales and Scotland to have 'due regard' to eliminating unlawful discrimination and promoting equality of opportunity in the exercise of their functions. Public functions include employment, service delivery and the procurement function of public authorities (McCrudden, 2012). Therefore public authorities may need to introduce obligations relating to equality in contracts with private sector contractors, in order to comply with its responsibilities under the PSED (EHRC, 2012; 2013).

The 'protected characteristics' covered by the PSED are gender, race, disability, age, gender reassignment, pregnancy and maternity, religion and belief and sexual orientation. Whilst the Equality Act also contains traditional, 'hard' law provisions outlawing discrimination on these grounds, the PSED represents a shift towards 'soft' law obligations on public authorities to seek to prevent or overcome the effects of structural or institutional discrimination, and represents a form of responsive or reflexive regulation (Hepple, 2011; McCrudden, 2007b).

Prior to their incorporation into the Equality Act 2010, the previous public sector equality duties in relation to race, disability and gender contained a stronger requirement to engage with civil society groups. The duties did not prescribe how consultation should take place, but only that consultation was an important aspect of giving 'due regard' to equality. These duties gave service users and public service workers, or their collective organizations, a regulatory right to be consulted, although it is interesting to note that only the gender equality duty specifically mentioned trade unions as stakeholders (Author b, 2013). The Equality Act 2010 devolved aspects (specific duties) of the PSED to English, Scottish and

Welsh governments. Consultation duties for English public authorities were omittedⁱⁱ, weakening the ability of stakeholders to hold public authorities to account if they failed to consider the equality impact of their decisions (Author a and Author b, 2015). It is also important to note that, whilst there is no specific duty relating to procurement for England, both Scotland and Wales include a specific duty to include equality in procurement contracts. These specific duties could be particularly important for trade unions in relation to the procurement function, given the increased outsourcing of public services and its adverse effect on the working conditions of women and ethnic minority workers (Author a and Author b, 2015). Nevertheless, the PSED, even in its weakened form, is underpinned by an expectation that protected groups will press public bodies to enforce the legislation (Author b and Other, 2015).

The Equality Act 2010 does not cover Northern Ireland, which has had a provision in place since 1998 requiring public bodies to have 'due regard' to the need to promote equality of opportunity, including between persons of different religious belief and political opinion, under section 75 of the Northern Ireland Act 1998, which also applies to the procurement function (McCrudden, 2012).

A recent addition to the legislation affecting public procurement is the Public Services (Social Value) Act 2012, introduced in 2013, covering England and Wales. It requires public authorities to consider how the services they commission and procure can improve the economic, social and environmental well-being of the area. However its scope and reach is fairly limited (Floyd, 2013) and it does not explicitly refer to equality, although with political will it could be used to promote equality outcomes (Author a 2015).

The Women into Construction project

The Women into Construction (WiC) project was established in 2008 to support women's opportunities for work on the construction of the London Olympic Park by the Olympic Delivery Authority (ODA). It was initially funded by the industry skills body the CITB and the London Development Agency (LDA) and based on the Olympic Park site. Following the completion of the Olympic Park in 2011, the WiC project continued, with further funding from the CITB, hosted initially by Be Onsite, the charitable arm of property and construction firm Lend Lease. WiC became an independent Community Interest Company in 2015, consisting of a small staff team and a board. The project continues to operate across London and is expanding its work to other parts of the UK, starting in Birmingham.

The ODA was established to build the Olympic Park and was answerable to the Olympic Board, jointly chaired by the Mayor of London and the departmental Secretary of State, working in partnership with the GLA and the LDA.

The model adopted by the WiC project addresses both 'supply' and 'demand' sides: on the supply side it provides training and support to ensure that women are skilled and ready to take up construction opportunities, while on the demand side it engages with employers to provide work placements or jobs. While recognising the potential for exploitation of free labour in expenses-only work placements, project staff believe that the placements offer valuable work experience and provide an opportunity for women to demonstrate their abilities to employers which they may not gain through usual recruitment channels. In some cases placements result in an offer of paid employment (Author a). Between August 2008 and July 2011, 255 women were employed through the project on the Olympic Park and work placements were provided for 87 women, of whom 82% subsequently gained

employment. Additionally 28 women gained apprenticeships, accounting for 6% of apprenticeships on the Olympic Park, representing a significant improvement on the industry average of 1 to 2% female apprentices (Thrush and Martins, 2011). Between July 2011 and March 2014 the project provided work placements across London for 135 women (exceeding its target of 132) and placed 195 women into employment (exceeding its target of 110). Around half of placements and jobs were in the manual trades, and the other half in professional construction roles (Author a 2014, table 4.2). The majority of WiC participants are from ethnic minority backgrounds, with the greatest number (36%) describing themselves as black or black British, which is reflective of the number of construction schemes in inner London boroughs that have high levels of BAME unemployment.

The empirical evidence for this paper is drawn primarily from a small-scale study of the WiC project, conducted by one of the authors between October 2013 and July 2014. This involved semi-structured interviews and a focus group, in all comprising 21 women who had undertaken work placements or obtained employment through the project; seven representatives of employers of different sizes (all male, apart from one); and eight stakeholders (five female, three male), including the project steering group (made up of representatives from the bodies funding the WiC) and the two project managers (Author a 2014). As the focus of this paper is on the how far responsive legislation influenced the procurement process to effect action on equality, the following discussion draws primarily on the interviews with employers, with some evidence from the project managers and the steering group. In addition, WiC project reports were analysed, as well as documents concerning the ODA's procurement and equality strategies, and outcomes.

The following sections explore the WiC project as an example of how public procurement can be used to promote action to increase employment equality in construction, both through the London Olympic Park construction and subsequently. The analysis broadly follows the framework for procurement as an effective tool proposed by McCrudden (2012) in its first four headings: motivations for engagement; strategic planning; political context and leadership; and monitoring implementation. We develop McCrudden's categorisation to add a fifth important element, that of training and support. The empirical data discussed benefits from a fuller picture of procurement in practice by including the perspectives of contractors and civil society actors, as well as the objectives of those procuring the works.

Motivations for engagement

McCrudden (2012; 100) believes that the PSED has been effective in driving the inclusion of equality in procurement. It is evident that since 2000 the GLA and the Mayor of London actively pursued equality and diversity strategies covering all the equality strands (Author b and Other, 2015). Indeed the GLA had a statutory duty to take account of equality considerations under the Greater London Authority Act 1999, before other public authorities became subject to the PSED, producing its first gender equality scheme in 2003, and a second in 2007, which included commitments to use procurement as a means of implementing the strategy (GLA, 2007b). This political commitment to and experience of putting equality measures into practice carried over into the terms of reference of the ODA – also a public body – established under the umbrella of the Mayor of London and the GLA. Thus the PSED can be seen as one driver for the priority given to equality objectives in the ODA's terms of reference, with experience of using procurement as a tool, transferred to this mega-project.

Interviews with contractors who had engaged with the WiC project since the Olympic Park completion revealed the benefits to sub-contractors of a visible commitment to equality. A sub-contractor interviewee commented:

Since we've had the girls working for us, people like [contractor] say to us 'you've done us a big favour' [...] I never realised, but it helps the main contractor as well not just us as a subcontractor. [...] It's giving us the opportunity for more work. (Contracts Manager, painting and decorating contractor)

Evidence of co-operation with the WiC project is therefore commercially advantageous for sub-contractors as well as the main contractors in tendering for future public sector work, where clients have specified action in relation to local employment or workforce diversity. In a similar vein, the commercial benefits of demonstrating a good reputation for safety were cascaded down from the main contractor and also felt by the subcontractors in James et al's (2015) study of the Olympic park.

Strategic planning

The inclusion of procurement linkages in strategic planning was one of the necessary elements identified by McCrudden (2012). As seen above, the GLA consistently included procurement as a tool for implementing its equality strategies and its sustainable procurement policy – later renamed responsible procurement – included social and environmental objectives. This formed the background both to the bid to host the 2012 London Olympics and to the establishment of the terms of reference after the success of the bid. The legacy to be left by hosting the Games in a poor, ethnically diverse part of London was always central to the bid, with ambitious plans for regeneration of the boroughs neighbouring the Olympic site (Silk, 2011). The London Games were seen as an opportunity to advance social objectives, including paying the London living wage (Wills, 2013),

establishing exemplary health and safety practices (James et al., 2015) and advancing equality and diversity in the construction workforce. Equality and inclusion commitments were therefore central to the ODA from the start (ODA, 2007a) and were to be implemented throughout the supply chain, as specified in its procurement policy (ODA, 2007b). The ODA set targets for the employment of underrepresented groups in the contractor workforce, also aimed at reducing the high levels of unemployment in the five boroughs surrounding the Olympic Park, particularly among disabled people, those from Black, Asian and Minority Ethnic (BAME) backgrounds and women. These were supported by three separate equality schemes for race, gender and disability, drawn up in response to the ODA's public sector equality duties (Thrush and Martins, 2011).

An element of strategic planning not discussed by McCrudden (2012) are the strategic partnerships that may be necessary to deliver large-scale projects and ensure the co-operation of relevant parties. Key stakeholders were involved at the outset of the London Olympics, with the Trades Union Confederation (TUC) signing up to Principles of Co-operation with the ODA (TUC et al., 2008), which included commitments to achievement of the equality and diversity goals through procurement processes and the involvement of union equality representatives to monitor progress. Estlund (2005) noted that the role of employee representatives can extend beyond monitoring compliance to devising the rules and standards to be applied, and in this case unions were involved at the initial stages of agreeing the employment targets and principles to apply to the Olympic Park build.

Furthermore, a Memorandum of Agreement (MoA) was signed in June 2007 by the ODA and CLM (the delivery partner) with representative trade unions (the Transport and General Workers' Union, Amicus, GMB and the Union of Construction, Allied Trades and Technicians) which set out procedural arrangements (Druker and White, 2013).

Political context and leadership

The Olympic case highlights the importance of political commitment to determining what additional value can be created from a large-scale publicly-funded project. Unlike the Northern Ireland case discussed by McCrudden (2012), there were no political logjams to be overcome in order to adopt procurement as a tool for achieving social aims, and the Labour governments in power until 2010 had signaled that procurement should be used more widely to achieve social and equality objectives (OGC, 2008). The high-level political commitment of the left-wing Labourⁱⁱⁱ Mayor of London, Ken Livingstone, to advancing equality had been displayed over a long political career (Escott and Whitfield, 2002) and was crucial in this instance. Furthermore, the establishment of targets for the employment of underrepresented groups throughout the contracting supply chain was an important political commitment that went beyond the requirements of the PSED. Targets were set for the recruitment of women workers on the Olympic Park and Athlete's Village of 11%, for BAME workers the target was 15%, and 3% for disabled workers (Thrush and Martins, 2011). In the event, the BAME target was exceeded, achieving 24% of the workforce, but the 11% target for women was not met, achieving only 5%, nor was the target for disabled workers, reaching only 1.2%. The failure to meet the target for women was explained by the fact that it included manual and non-manual roles, and only workers on the Olympic site were counted, with few contractors having head office functions on site, the roles which were likely to include more women. However of the manual trades workforce, at its peak 3% were women, higher than the national average of between 1 and 2 % (Thrush and Martins, 2011).

The procurement strategy was reinforced by the targets, which all contractors knew would be monitored. Thus during the Olympic Park construction, the engagement of contractors

with the WiC project was assisted by the incentive of equality targets and monitoring frameworks established by the ODA. However, after the Olympic Park completion, the WiC project had to find other ways to persuade contractors to participate, and actively sought to develop links with contractors working on public projects covered by the PSED:

Procurement is absolutely key, so what we're doing is we're going for projects generally that use public money, where there will be targets. (WiC Project Manager)

Procurement, combined with targets, supported the activity of the WiC project, which had succeeded in placing women on several large public projects in London, including transport infrastructure, housing and school building schemes. Although some local authority or housing association contracts include targets for local labour or a proportion of apprentices, these typically do not include targets for women's employment. Nevertheless, targets for local labour could be sufficient incentive for contractors to engage with WiC, which maintains an extensive database of women with London postcodes who are eager to work in construction. Through widening their recruitment channels, some contractors then saw the benefits of demonstrating their commitment to employing women, as seen above.

Interviewees from some contractors, however, supported the inclusion of targets for women's employment. A senior site manager on a major central London regeneration scheme wanted the client to impose enforceable percentages for female workers, which would require monitoring of sub-contractors throughout the supply chain. He explained:

It will filter down, hit them where it hurts, it's the money side and then they might actually wake up and say 'right, well we haven't had 5% of ladies on site', whatever the figure is, and there's a penalty clause. And then maybe they will wake up and do something about it. And then see the benefit of actually having some ladies there. And then it becomes normal. (Senior Site Manager, building contractor)

Rather than viewing targets as a constraint on business operations, this manager believed that they would help to normalise the gender culture change that he felt was needed.

Others shared this view, believing that targets are the only way to force change in an industry making very slow progress on employing women. Signs of recovery in the industry at the time were thought to indicate a good moment to take action.

Construction is one of the biggest employers at the moment and for the next 10-15 years with regeneration [...] So, I think maybe if there was something more, that would push the numbers up, you would find more women filtering through. [...] Those contractors would be obliged then to try and fulfil that, wouldn't they? [...] And I think a lot of these contractors would see what women are capable of on building sites. (Employment and Skills Manager, Design and build contractor)

The operation of targets, in the view of these managers whose positive experience of the WiC project had influenced their desire to improve women's representation in construction, would force other contractors to broaden their recruitment practices to include female workers, and help overcome prejudicial attitudes or lack of familiarity. These beliefs are counter to the common perception that private sector employers are opposed to further regulation or 'burdens' on operating their businesses (for an example, see CBI, 2009). This is likely to be because employers here are already engaged in measures to support women's employment, and would like their 'voluntary' activities to be more formally recognised and valued in tendering procedures. These views challenge the prevailing UK government and business rhetoric that sees equality requirements as a burden, particularly on smaller employers (DCMS, 2013). Our evidence suggests a less homogenous view of 'business interests' than is often presented.

However, not all interviewees supported targets, and a coercive approach, similar to affirmative action, may have possible negative consequences for those already engaged voluntarily in supporting women's employment. Some feared that if contractors simply find ways to 'tick the box', then they may not develop the necessary commitment to the cultural and attitudinal change required to encourage and support women, currently displayed by many employers engaged with WiC. Nevertheless, the WiC project evaluation demonstrated the effectiveness of the gender targets on the Olympic project in both increasing women's presence on site and in changing attitudes through exposure to competent female workers (Author a 2014).

Monitoring implementation

Monitoring and controlling effective implementation was identified by McCrudden (2012) as an essential element for procurement to be an effective tool for advancing equality. Effective reporting mechanisms are necessary, which may include a role for the public authority, or client, to oversee the contractors' self-enforcement mechanisms, as in Estlund's (2005) model of 'monitored self-regulation' devised by firms. In this instance, the capacity of large firms is leveraged to ensure the delivery throughout the supply chain of the social objectives set during the contracting process (Estlund, 2005). The ODA opted to employ a 'delivery partner' – CLM, a joint venture made up of three project management firms – for implementation of the project (Druker and White, 2013). CLM reported to the ODA on the results of their monitoring of contractors. An example of the process is provided by construction firm Balfour Beatty which had the contract for the Aquatics Centre. All main contractors were required to identify any gaps in performance against the equality targets included in the contract and to develop an equality action plan. Additionally, Balfour Beatty as the primary contractor, was responsible for monitoring compliance by its sub-

contractors. Measures to achieve this included: supplier conferences addressing equality issues with senior management presence; the incorporation of an equality dimension into training, so that, for example, health and safety courses covered the provision of protective equipment suitable for women; and a focus on anti-harassment and bullying (Author a, 2013).

Estlund (2005) highlighted the important role of civil society actors in enforcement and monitoring to ensure that RNG does not result in effective deregulation, in particular union or employee representatives. McCrudden (2012: 111) also suggests that the process of negotiating and applying social procurement provides significant opportunities for participation by trade unions. While unions have not always historically supported women's progress in the workplace (Dean, 2015), particularly in male-dominated industries such as construction (Moccio, 2009; Paap, 2006), they have an important role in ensuring fair treatment in the workplace and in monitoring agreed targets, especially on sites such as the Olympic Park where they have a more formalised status than in most construction projects. Although the WiC project had good working relationships with construction union UCATT^{iv}, in particular through the union's training for women, there is scope for greater collaboration on large public infrastructure schemes, for example, which are more likely to be unionised. As a civil society organisation that champions women's economic advancement, WiC plays a significant part in monitoring performance against targets and the enforcement of standards in the workplace. It maintains ongoing contact with women on placements and in employment, and the following section shows that support is an essential component of retention in male-dominated sectors.

Training and support

Training and employment preparation is a key element of the WiC project's work, including acquisition of the Construction Skills Certification Scheme (CSCS) card, required to demonstrate readiness to work on site, and an important financial benefit of participation in the project. Both the findings of the Northern Ireland unemployment pilot project and the US affirmative action measures confirm the need for adequate training to ensure that participants have the capacity to produce successful results (Eisenberg, 2004; Erridge, 2007; Moccio, 2009).

The evaluation of the WiC project highlighted that one of the factors in the project's success was the ongoing provision of support for women once on placement or in employment, even some time after participating in the project (Author a, 2014). In many cases support from women who understood the male-dominated culture of the industry was instrumental in ensuring that women remained in the sector. Project workers were able to support women to deal with problems themselves, refer them to other sources of support (including trade unions) or on occasion intervene directly with employers. The importance of support was exemplified by a carpenter who had faced intolerable behaviour from a male worker on site, and spoke to a WiC project worker:

I wanted to leave, I was in tears, I was gonna go. But I didn't have a job. [...] When she spoke to me I was like, no, this person shouldn't really speak to me like this. [...] I think I would have left that day, she helped me to calm down (Carpenter, WiC participant).

Women participants in the WiC project were overwhelmingly positive about the experience that the project had offered, with many interviewees entering jobs after months or years of

unsuccessful job-seeking. The following quote reflects the views of many who believed they would not have found work without the project:

I'd been applying for about eight months for different jobs and I'd sort of given up when Women into Construction put me in contact with [company name]. [...] I don't think I would have got anything really if it hadn't been for Women into Construction (Civil engineer, WiC participant).

One of the project steering group interviewees, Judy Lowe, believed that the 'holistic' approach taken by the project was key to its success in retaining women in the industry:

If this woman is going to come and work for the first time, we've got to deal with her lack of self-belief, her belief that she would never be accepted. We've got to make sure that we don't just give her the skills, we give her the confidence. And we've got to sort out her childcare if that's an issue. We've got to sort out her transport because she won't have the money and she won't have a car. [...] and can we use [project funding] to buy them their own tools? (Judy Lowe, former Deputy Chief Executive CITB)

In addition to McCrudden's necessary elements for success, we propose that having effective and ongoing training and support is crucial to meeting employment targets or equality objectives established in the procurement process, in order to overcome the significant retention difficulties for women in an industry known for high levels of sexual harassment and hostile workplace cultures. This supports our conclusions about the necessity for engagement by civil society, for example through trade unions and gender equality advocates, in order for reflexive regulation to succeed in meeting social, and not simply business, objectives.

Conclusion

This article has considered social procurement as a form of responsive regulation (Ayres and Braithwaite, 1992; Nonet and Selznick, 1978, 2001) and regulatory new governance (Estlund, 2005; Vosko et al. 2016) by arguing that public sector procurement can, and in our view, should, be used more widely to achieve additional social benefits. It has shown that responsive equality legislation in the UK was central to the procurement of construction contracts in the London Olympic Park, which increased women's employment levels in construction, although numbers still remained low. Additionally, ongoing procurement demands from other public authorities provided a lever for the WiC project to engage with employers to address women's underrepresentation. Targets had been an important motivator on the Olympic Park site, and some progressive contractors believe that they should be used more widely to accelerate culture change in an industry that has made very little progress in gender representation in decades.

The paper heeded McCrudden's (2012) call for research to test out his framework for effective procurement, and our evidence confirmed the importance, in particular, of legislation as a driver for action by commissioners; of the inclusion of procurement at a strategic level to advance equality objectives; and high-level political leadership in setting the direction. With the benefit of empirical data offering the perspectives of multiple stakeholders – public bodies, contractors, civil society and intended beneficiaries of procurement policies – we propose a stronger role for civil society stakeholders in making procurement an effective tool to meet social objectives. The role of trade unions and organisations such as WiC is vital both in monitoring compliance with contractual obligations and targets, but also in providing the necessary training and support to ensure sustainable employment outcomes. Thus we extend McCrudden's (2012) categorisation to

include training and support, concurring with research from the US and Northern Ireland experiences that suitable training programmes are essential to ensure the success of affirmative action measures (Eisenberg, 2004; Erridge, 2007; Moccio, 2009). Furthermore, the WiC project affirms the necessity of ongoing support to enable women to endure masculine or hostile workplace cultures, and thus overcome the retention difficulties which undermine industry efforts to increase gender representation. Although the WiC project operates on a small scale (currently with five staff), it is an example of remarkable longevity in an industry characterised by short-term initiatives which have had limited success in shifting its gender balance (Author a, 2016).

By testing out and extending McCrudden's (2012) framework for effective procurement we have demonstrated that reflexive regulation can offer a means for public authorities to extend their reach and obligations into the private sector, influencing private sector employers to undertake socially beneficial actions. However, our findings reinforce Dickens's (1999), Estlund's (2005) and Vosko et al's (2016) emphasis on the need for a multi-pronged approach, combining hard and soft law strategies, including targets, that are enforced and monitored, with effective sanctions. The evidence from contractors shows that the soft mechanism of targets may reinforce the business benefits of compliance and provide evidence for success in future bids, thus confirming Dicken's (1999) view that the business case is insufficient alone, but may support other prongs. Enforcement requires stronger monitoring by civil society and the public. In the UK this could be achieved by restoring the powers provided to stakeholders under the gender equality duty, and diluted in the Equality Act 2010 (Author b and author a, 2015). Providing a statutory right to be consulted in England would strengthen the responsive element of the legislation by giving more power to civil society groups, including trade unions, to hold public authorities to

account when establishing employment equality objectives through procurement and to monitor compliance by private contractors. This could be further strengthened by the inclusion of a specific duty to include equality in procurement contracts, as in Scotland and Wales. Vosko et al (2016) argue that there must be an ultimate threat of sanctions for non-compliance with objectives or targets that are established in contracts. In our example of the construction sector, sanctions are unlikely to come from statutory agencies such as the EHRC (with its much reduced resources in any case), which lacks the status of the Health and Safety Executive, identified as an essential regulator of company behaviour and backed by powerful enforcement mechanisms (James et al., 2015). However, the ultimate sanction for non-compliance could be debarment from future government or public sector contracts, therefore hitting the company's commercial interests hard. This threat applies, at least in theory, under the US federal contracting approach (Muttarak et al., 2013). This form of sanction is applied by the Scottish government to construction firms who have engaged in 'blacklisting' (Buelen et al., 2015), referring to the systematic compilation of information on trade unionists in order to exclude and discriminate against them^v. The Welsh government has issued guidance on excluding companies that have used blacklisting from public sector contracts and is using procurement policy to support fair employment practices, including reducing false self-employment (Welsh Government, 2013; 2015). There is the potential therefore for government procurers to debar contractors for a wider range of infringements.

Finally, we must acknowledge the challenges for pursuing our suggestions for the expansion and development of public procurement to achieve equality in the current UK context. A continued policy of government spending restraint, lack of government commitment to proactive equality and diversity policy, a deregulatory approach to employment protection

and the economic and political uncertainty following the 2016 referendum vote to leave the EU all mean that equality is likely to take a back-seat in public policy. While political concern to improve health and safety was found to be an institutional factor supporting activity throughout the supply chain in James et al's (2015) case studies, political commitment to equality fluctuates, particularly in times of austerity. Furthermore, the different emphasis placed on consultation and procurement as a tool for advancing equality in England, Scotland, Wales and Northern Ireland is likely to give rise to anomalies between these countries. On the positive side, the construction industry is made up of a small number of large contractors on whom regulatory and competitive pressures may be applied and who are in a powerful position to demand 'good practice' from their supply chain (James et al., 2015). We would argue, alongside Dickens (2007) and McCrudden (2012), that there exists far greater potential for public authorities at national or local level to adopt procurement policies that seek additional employment benefits and tackle longstanding occupation gender segregation. Thus at a time when many are calling for investment in the construction and infrastructure sectors to stimulate economic growth and to fill the looming skills gap, we offer some suggestions for how increasing women's numbers in construction may be achieved.

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ⁱ European Court of Justice judgements have presented conflicting positions on procurement linkages, with possible difficulties arising from the Rüffert case. This meant that where a contract contained an employment condition that is more difficult for an employee from another member state to satisfy, then it must be possible to justify this. One justification can be that it is required under domestic law, so can be linked to requirements of the Equality Act 2010 (McCrudden, 2012b).

ⁱⁱ The specific duties in Scotland and Wales still require engagement with stakeholders

ⁱⁱⁱ A long-term left-wing Labour Party member, Livingstone was not selected as Labour's candidate for the 2000 Mayoral election so he ran as an independent and won. He was expelled from Labour but later was readmitted and ran successfully as the Labour Mayoral candidate in the 2004 election.

^{iv} UCATT merged with general union Unite in January 2017.

^v The widespread practice of blacklisting was exposed in 2009, revealing its use by many major construction firms and affecting the lives of hundreds of workers (Smith and Chamberlain, 2015; UCATT, 2015).