

THE SOCIAL VALUE ACT

QUICK GUIDE

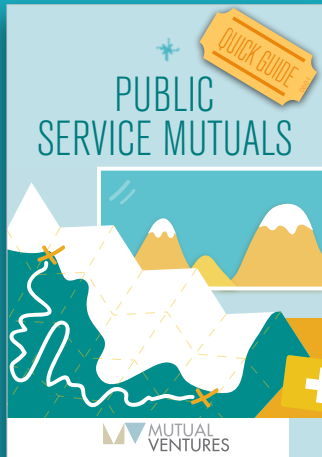
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WHAT ARE THE QUICK GUIDES?

Welcome to this Pioneers Post Quick Guide – one of an ongoing series that we are developing with expert partners across the social innovation space.

The Quick Guide has been written by leading charity and social enterprise law firm BWB and is brought to you thanks to the support of Unity Trust Bank, the specialist bank for civil society, social enterprises, CICs, councils and trade unions.

The Pioneers Post Quick Guides provide a quick and easy digest to key topics in social innovation. They are a distillation rather than a comprehensive guide – you can read them in 10-15 minutes, get a good idea of the essential issues and find signposts for where to go for more information.

The guides are written by experts in their fields, and supported by a number of partners in the social innovation marketplace. If you'd be interested in writing or supporting a Quick Guide, please get in touch with us via email or phone: **publications@pioneerspost.com, 020 8533 8892**

Other guides in the series include A Quick Guide to Public Service Mutuals and A Quick Guide to Social Value.

A QUICK GUIDE TO THE SOCIAL VALUE ACT

FOREWORD

Welcome to this **Pioneers Post Quick Guide to the Social Value Act**.

As a major provider of sustainable finance to organisations across the social economy – including charities, social enterprises and councils – Unity Trust Bank wholeheartedly supports this legislation, which is an important milestone in the development of the commissioning landscape.

We know that it can be challenging, especially in the current economic climate, for public sector commissioners to see beyond a financial bottom line. The new Act aims to help – by ensuring that local authorities, the NHS and other public bodies consider the social good offered by bidders during the procurement process, alongside price and quality.

As a social enterprise ourselves, Unity is committed to this ‘double bottom line’ approach to business – using our commercial success to enable social development in the communities we serve, and so contributing to a more sustainable society.

Job creation, economic regeneration and community cohesion are key to developing more prosperous and sustainable communities, which is a vision that we, our customers and leaders across the social and public sectors all share.

We hope this quick guide provides you with a clear overview of what the Act means and the opportunities it provides, and we look forward to seeing the positive impact for our customers and their communities as the legislation takes effect.



Peter Kelly

Business Development and Marketing Director, Unity Trust Bank



10 MINUTE
READING TIME

WHAT IS IT?



The Public Services (Social Value) Act 2012 (“the Act”) is a piece of UK legislation that was passed by Parliament in 2012 and came into force on 31 January 2013. It was the product of a private members bill introduced into Parliament by Chris White MP.

WHAT DOES IT DO?



The Act is mercifully short. Its main points are:

The primary duty arising under the Act is that an authority must consider:

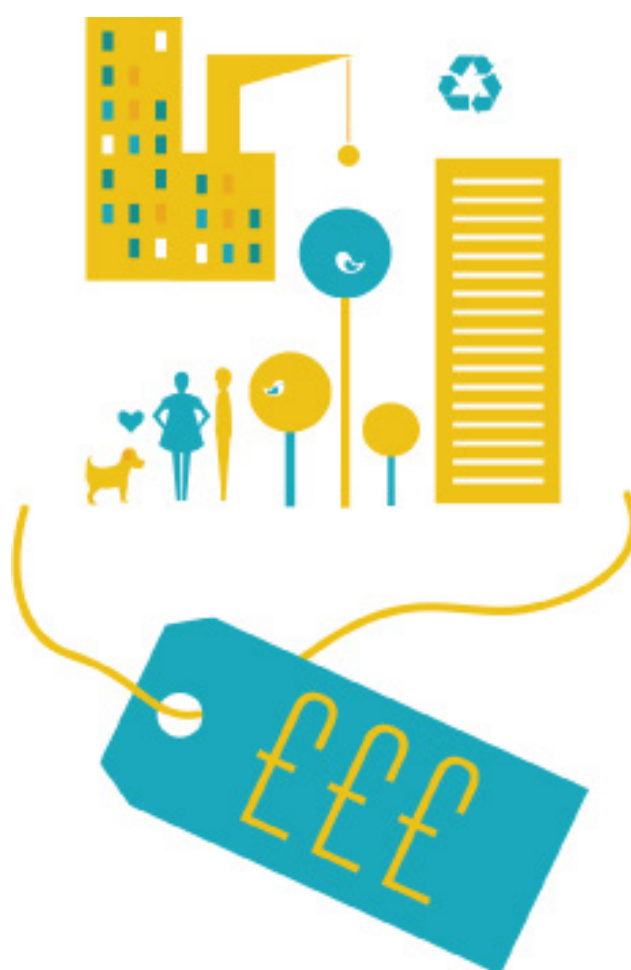
- How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area.
- How, in conducting the process of procurement, it might act with a view to securing that improvement.

The two other duties that arise under the Act are:

- To consider, in relation to the process of procurement, only matters relevant to what is proposed to be procured and, in doing so, to consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- To consider whether to undertake any consultation as to what it should consider in order to comply with its main duty under the Act.

The Act contains some clarification around the application of these duties, notably:

- It applies only to procurement processes that are subject to the procurement regulations (i.e. not to those that fall outside the regulations because of the size of the contract or the nature of the services being procured).
- It applies to those bodies that are contracting authorities for the purposes of the procurement regulations in England and Wales (other than bodies part of the Welsh Assembly).
- It applies to the procurement of services, whether alone, or with goods or works (including framework agreements where the majority by value of the contracts procured under the framework relates to services).
- The 'relevant area' is the area by reference to which the authority (or all of them, if a joint procurement) primarily exercises its functions (disregarding any areas outside the UK).
- An authority may disregard the requirements of the Act, to the extent it is not practical to comply with them, where an urgent need to arrange a procurement makes it impractical to do so. This does not apply to the extent the time available is reduced by undue delay on the part of the authority.



WHY HAS THE ACT BEEN INTRODUCED NOW?

In many ways the Act is consistent with what is happening currently, both politically and practically.

As some of the shortcomings of pursuing financial gains to the exclusion of all else have become manifest in recent years, there has been strong interest in models of investment and business that seek to combine social and/or environmental and economic returns.

The financial crisis is forcing public authorities to work with smaller budgets and to recognise that it is not sustainable to continue procuring the same services that, largely, deal with social problems and needs that exist. There is a need (though not, as yet, an understanding of how it may be budgeted for or, sometimes, delivered) to commission preventative services to reduce the amount that has to be spent in the future. The use of social impact bonds to develop new models of service provision is relevant to this, as is the Social Outcomes Fund. This is a means by which the government is proposing to reallocate public funds where the impact of one authority's commissioning (ie spending) is a revenue saving for another.

Public authorities are, less and less, the providers of services and, increasingly, the commissioners of them. As this becomes the case, public sector employees are being encouraged to consider forming their own social enterprises to deliver public services.

Social enterprises and charities have been involved increasingly in recent years in the delivery of public services, although they have often found navigating the procurement process extremely



costly and often unrewarding. Generally, when they have been successful, their delivery of the service has avoided the controversy attached to some outsourcings of public services to private enterprises.

All the above has contributed to an environment where authorities are encouraged to think more creatively about the nature of what it is that they are commissioning; to remember that it is about delivering benefit to the public through their spending in a broader sense than simply choosing the lowest price; and to consider medium term outcomes as well as immediate needs.

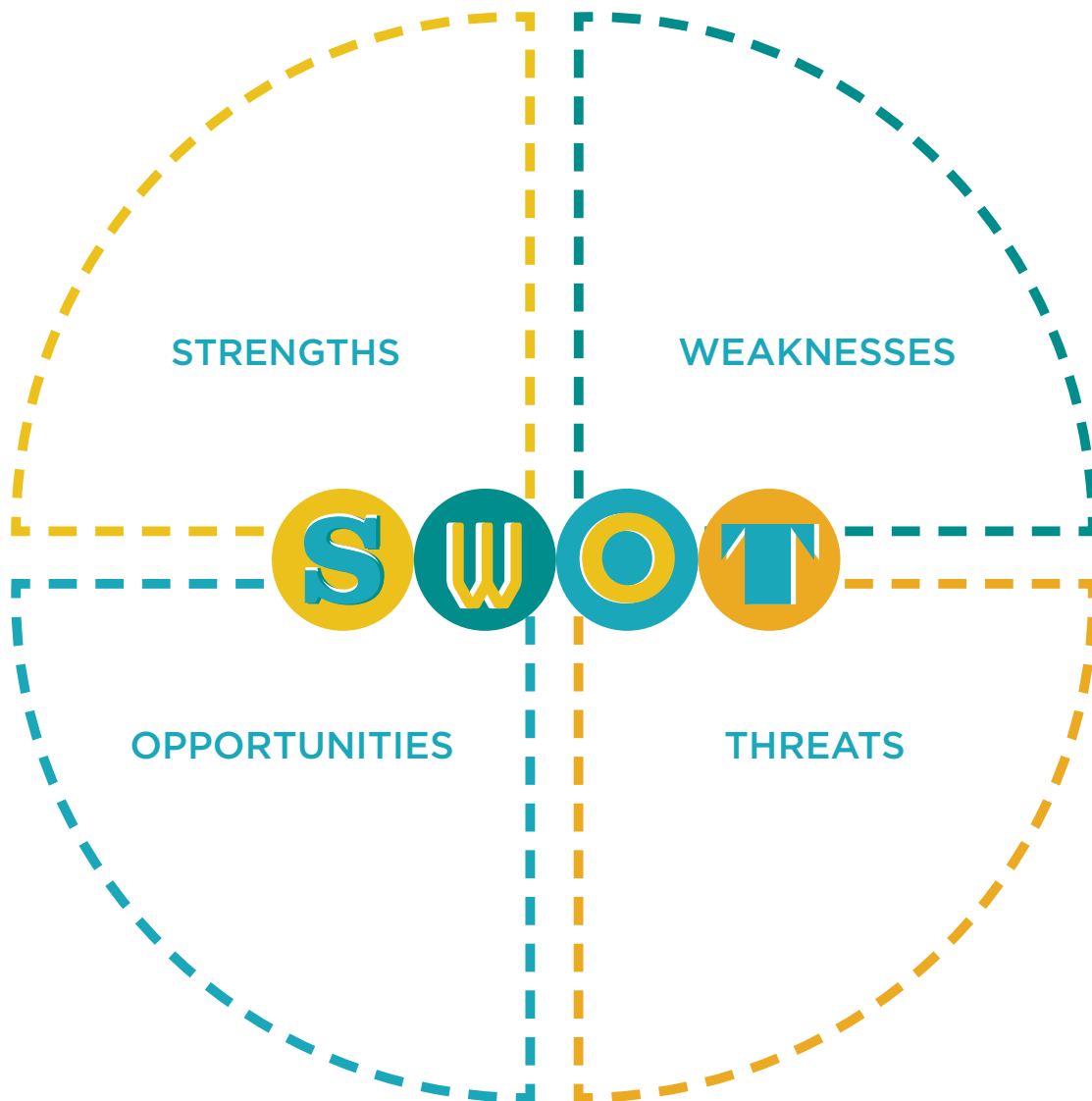
In other words, the Act is consistent with the realisation that there are a number of very large, long term challenges looming and that it is prudent not to rely on one metric alone (such as financial performance) to measure what may be an appropriate response to them.

WHAT WILL BE THE IMPACT OF THE ACT?



This is the million dollar question. To help answer it, it is worth undertaking a quick SWOT analysis. A SWOT analysis, for those who aren't familiar with the term, is a simple way of teasing out and evaluating the Strengths, Weaknesses, Opportunities and Threats of a project or business venture.

In this case, we are using the SWOT analysis to highlight the factors that will have a bearing on whether the Act achieves the original intent behind it; namely to increase the incidence of public services being delivered by organisations committed primarily to the outcomes for the wider stakeholders rather than to the interests of their own private shareholders.



STRENGTHS



Several strengths derive from the way in which the Act builds on existing practice. For example:

- It is consistent with existing legislation and guidance. The power for contracting authorities to take social and environmental, as well as economic, considerations into account already exists. Indeed, there are statutory requirements, in the form of the Best Value regime and codes of practice such as the Compact, which specifically encourage this. **Best Value** was introduced in 2000 to improve the balance of cost and quality in local services, and updated since. The **Compact** is a voluntary agreement that sets out shared principles for effective partnership working between the government and voluntary and civil society organisations in England.

The Act takes this a stage further by placing an obligation upon contracting authorities to consider these issues before they embark on the procurement of public services.

- It is consistent with the direction of travel of best practice, not least in terms of what is promoted by the European Union. In 2010, the European Commission published "**Buying Social: A Guide to Taking Account of the social Considerations in Public Procurement**". This encourages public authorities to influence the marketplace by using procurement policy to promote: "employment opportunities, decent work, social inclusion, accessibility designed for all, ethical trade and general compliance with social standards".



- The Commission is currently implementing its '**Social Business Initiative**'. Part of this involves a new public procurement directive that gives greater weight to the role of social enterprise in delivery of public services. This goes further, again, than the Act, but places the Act firmly within a distinct trajectory and means it looks less like an isolated (or potentially ignored) piece of legislation and more like a stepping stone to more strategic social policy and commissioning in the future.
- It is consistent with one type of response to the financial constraints contracting authorities are facing. Rather than simply cut resources to the point where core services can no longer be effectively delivered, some authorities are looking at entirely new models of service delivery and reassessing what outcomes they wish to see as the product of their spending. This fits closely with the practice of looking at the wider impact of what is being procured, rather than simply the service itself and the price for it.

WEAKNESSES

- The Act is not as bold as it might have been. The original Bill proposed both national and local strategies for promoting engagement in social enterprise. It also sought to apply to all public procurement contracts. The Act, clearly, does not go this far. Social Enterprise UK, the representative body for social enterprises in the UK, began canvassing to strengthen the Act even before it came into force, recommending that:
 - Creating social value should be a legal requirement of all public service contracts.
 - The Act should be extended to apply to the purchasing of goods and works as well as services.
 - The Act should be supported with Statutory Guidance so that it can be effectively implemented.
- The obligation under the Act is merely to consider the potential to improve the economic, social and environmental well-being of the relevant area. If an authority chooses to do so, it should be relatively easy to claim to have done this (and, conversely, hard for a third party to establish conclusively it did not) without engaging seriously with the issue.
- Some authorities may feel they already do as much as the Act requires them to do and work on an assumption its coming into force does not need to trigger any change of approach on their part.



OPPORTUNITIES



The Act generates different, though related, opportunities for different types of stakeholder. For example:

Contracting Authorities

- For authorities who have already begun to redefine their function as commissioners of services that deliver public benefit, the Act brings an additional legitimacy to their efforts.
- For senior officers and procurement professionals within authorities, the Act encourages a focus on social and environmental considerations that in turn creates scope for new ways of working.
- The Act makes it easier for authorities seeking more imaginative responses to the financial crisis to look at medium term value delivered through improved social or environmental outcomes, rather than merely short term cost cutting.

Social enterprises and charities

- The Act should create more opportunities for such organisations to play to their strengths in bidding for public sector contracts.
- The Act should enable social enterprises and charities to demonstrate the additional value they bring to commissioners beyond providing the core service and to know that that value will be taken into consideration in the evaluation of bids.
- The Act provides an opportunity to challenge authorities that ignore the Act. Some authorities failed to comply with a new statutory duty to carry out Equality Impact Assessments until a local group took their council to court over it. Now compliance is widespread. A similar narrative is not inconceivable with this Act.

Private sector providers

- There are some businesses, particularly some local SMEs, that (whilst being ultimately for profit organisations) are concerned with the social and environmental impact of their activities on the communities in which they operate. They may welcome the advent of the Act as an opportunity to distinguish themselves from the competition.



THREATS



s with the opportunities, different stakeholders will have different viewpoints on this. For example:

Contracting Authorities

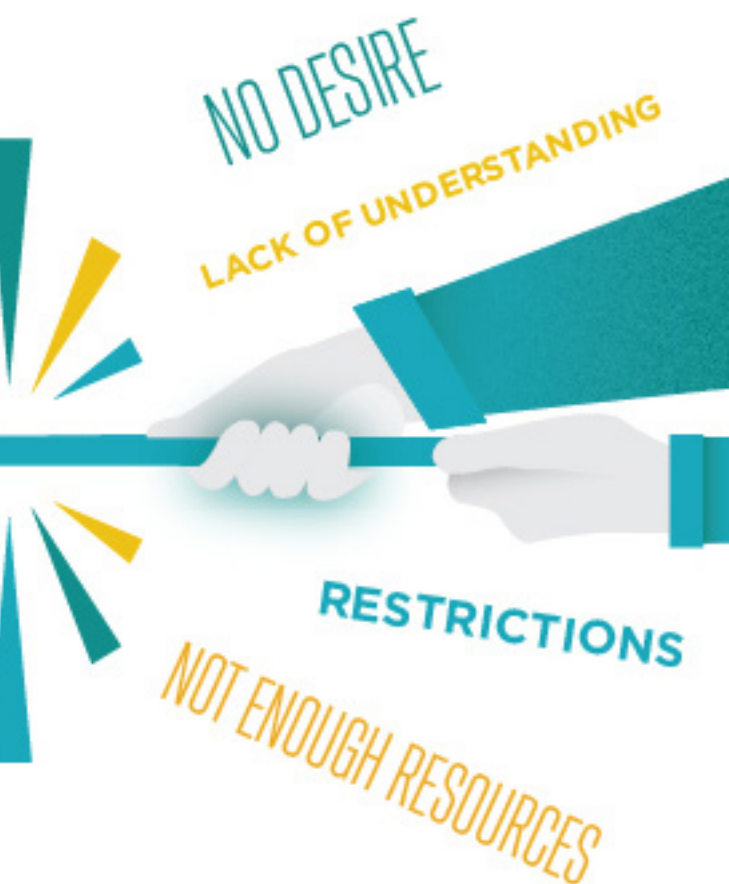
- There may be a lack of understanding of what constitutes social value, deterring engagement with the concept.
- There may be a lack of leadership within an authority, and a culture that works on the basis that without a strong steer from above, nothing changes.
- There may be a lack of either desire or confidence among officers to embrace new ways of working.
- There may be a view that there is only one way to respond to the financial constraints and that is to make immediate savings and to focus on little else.

Social enterprises and charities

- These organisations may not have the experience or resources to articulate clearly what social and environmental value they can deliver specifically in relation to the public services being procured.
- The organisations may not have the experience or resources to engage with commissioners pre-procurement, when they have the greatest opportunity both to influence the commissioner's thinking around social and environmental value and to learn what the commissioner's own perspective and priorities are.
- The organisations may not have the experience or resources to mount a challenge if the provisions of the Act are not being observed.

Private sector providers

- There will be private sector providers, who often will be experienced and well resourced, and who will engage with commissioners to encourage a restrictive interpretation of what may constitute social value in any given case.





WHAT MIGHT SOCIAL VALUE LOOK LIKE?



There are, of course, many ways to define what constitutes social value and it can cover a very broad spectrum, including, explicitly, environmental benefits. We set out below just a handful of examples, to give you a flavour of what it might look like. There are, of course, many, many more. Before we do though, some words of caution.

Social value must still properly fit within the general public procurement criteria. These require objectivity, fairness, equal treatment, transparency and proportionality. It cannot, therefore, be seen as a determining factor in itself, but one factor contributing to what is overall the best service provision for the public benefit, or in procurement language “the most economically advantageous” proposal.

The social value must also relate to the subject matter of the procurement. It is not enough that a bidder can demonstrate it adopts exemplary environmental practices across its business, if the tender is for homecare services. This is a highly technical area, however, and how an authority frames its procurement is critical to what social value may, legitimately, relate to the subject matter.

A helpful way to look at it, potentially, is to think of social and environmental benefits in terms of integrated value, rather than added value.

Bearing the above caveats in mind, ways to demonstrate social value might include:

- A not for profit organisation committing to apply any surpluses generated through the delivery of the service back into improving conditions for the service users (rather than taking them as profit).
- Offering to use equipment and resources that are required to deliver the service in other ways for the benefit of the authority / its council taxpayers, when they are not required for performance of the core service.
- Involving service users in the development and/or delivery of the service so that they become active participants rather than passive recipients.
- Demonstrating that the proposed means of service delivery will lead to a stronger local economy, greater resilience, and less dependence on external resources and vulnerability to shortages.

For advice and support on assessing social value, visit the SROI Network’s website:

www.thesroinetwork.org

FURTHER INFORMATION



he Act may look deceptively simple. However, for those authorities – and individuals within them – keen to use it as a stepping stone to new ways of working, there are plenty of challenges ahead. There are also various sources of information and support.

These include:

The Commissioning Academy is a Cabinet Office initiative to improve commissioners' skills. It involves senior civil servants taking part in peer-led learning aimed at stimulating more imaginative and less risk averse approaches to commissioning. Issues covered include outcome-based commissioning; working with charities; and new models of delivery such as mutual and joint venture companies – see <https://www.gov.uk/the-commissioning-academy-information>.

E3M is an initiative led by Social Business International and supported by Bates Wells Braithwaite, the University of Northampton and Unity Trust Bank. Its aim is knowledge sharing around successful social enterprise delivery of public services. Bates Wells Braithwaite and the University of Northampton have been leading a programme entitled "Bold Procurement" to take the public services commissioning agenda further. Please see www.socialbusinessint.com for further information.

Social Enterprise UK has produced a guide on the Act aimed at helping contracting authorities to embed social value in their commissioning and procurement practices – you can download this at: <http://www.socialenterprise.org.uk/adviceandsupport/resources/the-social-value-guide>.



ABOUT BWB

BWB has been at the heart of the charity and social enterprise sector for over 30 years and is widely considered to be the leading law firm in the sector. Its charity team advises more charities than any other law firm, it has been at the forefront of the social investment market for two decades and, as the preeminent firm for social enterprises, BWB initiated the concept of the Community Interest Company, helping the government to develop the idea and working on the legislation behind it.

www.bwblp.com

ABOUT UNITY TRUST BANK

Unity Trust Bank is a specialist bank for civil society, social enterprises, CICs, councils, and trade unions. It supports customers with socially responsible banking services. And because it is a social enterprise in its own right, the bank understands the sectors its customers work in.

www.unity.co.uk

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Matter&Co works with inspiring organisations across business and society to build success through powerful marketing and communications. In addition to its consultancy work (for clients such as Deloitte, CCLA, RBS, UnLtd and several charities, social investors and housing associations), Matter&Co is the organisation behind Good Deals, the UK's leading social investment conference (www.good-dealsuk.com); the creator of the RBS SE100 Index (www.se100.net) and runs its own online newspaper and networking platform dedicated to building and supporting the social innovation marketplace (www.pioneerspost.com).

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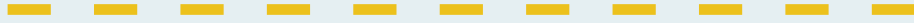
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Reaching well over 30,000 people every month through its website, e-newsletter and social media, the platform offers news, views, debates, analysis and advice from brilliant innovators, entrepreneurs, investors and thought leaders across the social innovation space – as well as a dedicated TV channel (Pioneers Post TV), a venture platform to pitch investment and business ideas, and the Pioneers Post Business School to help spread learning and good practice.

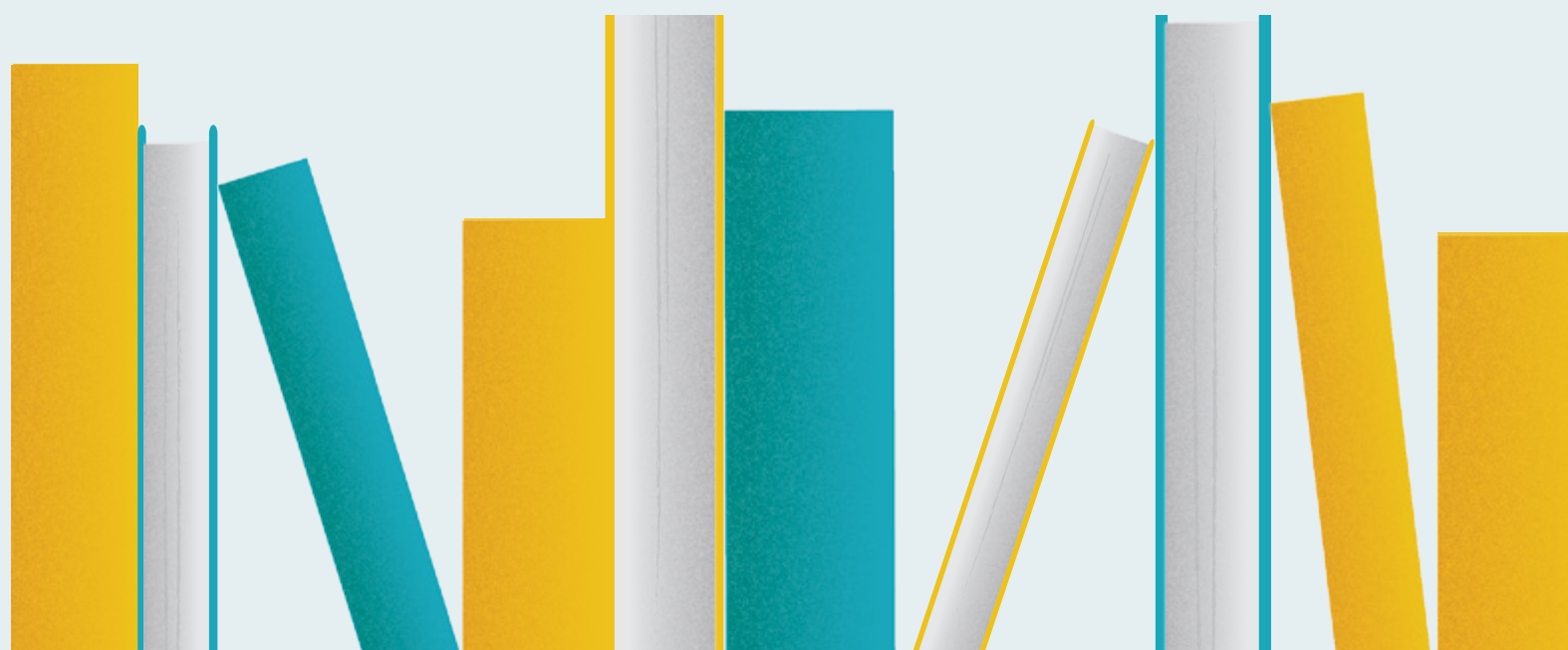
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