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DRAFT

Economy and Fair Work Committee

Wednesday 7 February 2024

Session 6

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ECONOMY AND FAIR WORK COMMITTEE

5th Meeting 2024, Session 6

CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

DEPUTY CONVENER

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

COMMITTEE MEMBERS

*Maggie Chapman (North East Scotland) (Green)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
Colin Smyth (South Scotland) (Lab)
*Kevin Stewart (Aberdeen Central) (SNP)
*Evelyn Tweed (Stirling) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Minister for Community Wealth and Public Finance
Joanne Davidson (Scottish Chambers of Commerce)
Stacey Dingwall (Federation of Small Businesses)
Neal Rafferty (Scottish Government)
Colin Smith (Scottish Wholesale Association)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 7 February 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Claire Baker): Good morning, and welcome to the fifth meeting in 2024 of the Economy and Fair Work Committee. Apologies have been received from Colin Smyth.

Our first item of business is to decide whether to take items 5, 6 and 7 in private. Are members content to do so?

Members *indicated agreement.*

Subordinate Legislation

Consumer Scotland Act 2020 (Relevant Public Authorities) Regulations 2024 [Draft]

09:30

The Convener: Under our next item of business, we will take evidence on the draft Consumer Scotland Act 2020 (Relevant Public Authorities) Regulations 2024. I welcome Tom Arthur, the Minister for Community Wealth and Public Finance, who is joined, from the Scottish Government, by Heather Galbraith, a solicitor, and Neal Rafferty, the head of the heat strategy and consumer policy unit.

I invite the minister to make a short opening statement.

The Minister for Community Wealth and Public Finance (Tom Arthur): Thank you, convener. Good morning, committee. The draft regulations are extremely straightforward, in that they list the public authorities that have to adhere to the consumer duty. As such, this Scottish statutory instrument plays an essential part in confirming to public authorities whether they must adhere to the duty.

The consumer duty and Consumer Scotland go hand in hand. When Consumer Scotland was established, stakeholder feedback identified the need for comprehensive change in how consumers are considered and integrated into policy and decision making. It was that feedback that paved the way for the idea of the consumer duty. The duty will require "relevant public authorities", as listed in the SSI, to

"have regard to the impact of strategic decisions on consumers in Scotland and the desirability of reducing harm to them."

The 2020 act states that

"Consumer Scotland may ... issue guidance about the duty".

Consumer Scotland has, helpfully, agreed to that, as it can see the opportunity that the duty provides. Consumer Scotland will be able not only to highlight good practice by local authorities in that area but to highlight to the Parliament any detriment to consumers.

My officials carried out stakeholder engagement before and during the consultation period as part of the consumer duty for public bodies consultation. Although there was broad support for the duty, concerns were raised that it would be an additional administrative burden, and about the need for clear guidance. In addition, some

stakeholders disagreed that the duty should apply to their organisation or body.

In the light of those responses, my officials undertook further engagement, emphasising that the duty was to be applied in a proportionate and targeted way and only to strategic, rather than to daily or operational, decisions. Those further engagements and reassurances have been positively received by the organisations concerned, and they have fully addressed the concerns that were raised.

My officials looked again at the authorities that were named in the consultation, and they decided that the duty should not apply to them all. As a result, some authorities have been removed from the final list.

As minister for public finance, I am well aware of the pressures that the relevant authorities already face, and I am determined to ensure that the duty is not, either in perception or in practice, an unnecessary burden.

The guidance that is being prepared by Consumer Scotland will ensure that public authorities know how to apply the consumer duty to their strategic decisions. Ensuring that the guidance captures all the information that those authorities need will, therefore, be vital. That is why I have agreed to an implementation year to allow Consumer Scotland the necessary time in which to consult and engage with stakeholders on the draft guidance before it is finalised in advance of 1 April 2025.

Consumers are the lifeblood of our economy, and the establishment of Consumer Scotland recognised that simple truth. The legislation that is before the committee today is an essential part of a process that is designed to ensure that public authorities put consumers at the heart of their strategic decision making and thinking. I hope that members will support the draft instrument.

The Convener: Thank you, minister. Members now have an opportunity to ask questions. First, I will ask about the level of support for the purpose of the consumer duty. The committee wrote to you in advance of this session, minister, and I thank you for the letter that we received. In our letter, we highlighted that

"only 49% of respondents"

had

"supported the duty being applied to the bodies outlined."

Minister, you recognise in your response the concerns that were raised with regard to workload and the guidance, but your letter does not cover how those concerns will be addressed. You have talked today about the guidance, but one of the issues relates to workload and administration. Are you confident that we can get broader support—more than 50 per cent—for introducing the duty?

Tom Arthur: I will ask Neal Rafferty to come in, because officials have engaged extensively with public authorities and, as I touched on in my opening remarks, that has gone some way towards addressing the concerns that those authorities expressed.

I reiterate and make it clear that the duty applies to strategic decision making at executive and board level, not to day-to-day operational matters. In addition, Consumer Scotland will prepare guidance. Draft guidance will be published ahead of the commencement of the duty, and Consumer Scotland will undertake a public consultation that will capture the views of the various bodies to which the duty will apply. We are working collaboratively to ensure that the guidance is appropriate.

Neal Rafferty might want to comment on the engagement that has taken place with public authorities to provide reassurance and address concerns.

The Convener: Mr Rafferty, can you also respond to another point? The minister's letter says that consultation responses will "be published ... soon". Can you give us an idea of the timescale for that? When will we have a better understanding of what the consultation responses said?

Neal Rafferty (Scottish Government): I will take the second question first. I am happy to say that we published the consultation responses at the end of last week—I apologise for our taking so long to get round to that, but it has now been done.

As the minister said, following the consultation, my team and I have had a number of direct one-to-one and bilateral conversations with many of the bodies that responded, and with some that did not. That included the vast majority of those that had expressed some concerns about what the consumer duty might mean and its relevance to their organisations.

Those conversations have, without exception, put those concerns to bed. People and organisations are now much more aware of what the duty means and does not mean for them and of their ability to use existing processes and assessments to demonstrate compliance with it, so they have a better understanding of why it applies to their organisations.

I think that, were the consultation to be rerun now, the figure that was quoted would be a lot higher, because, although people might not be overjoyed at the thought of the consumer duty, they at least understand it and how they can

respond to it in a proportionate way, as the minister described.

Brian Whittle (South Scotland) (Con): Good morning, minister. Who can argue with legislation that is aimed at "reducing harm for consumers"? I do not think that anybody would argue with that.

Nevertheless, my issue with the consumer duty relates to consideration of the benefit to consumers of "reducing harm". How would you define that in relation to a public authority? For example, I am aware of a couple of mental health organisations in the third sector that are having to close their doors because local councils have withdrawn funding. That will definitely not reduce harm. Community programmes in sport, music and art are closing—all those things are being curtailed. That is not reducing harm. Local public procurement of food for schools and hospitals is being squeezed. That is not reducing harm.

I therefore have two concerns. First, how do you define "reducing harm"? Secondly, how would you enforce that aspect of the duty. You could not go to a council and say, "You can't shut that service just because of budget constraints, because that will cause harm." How will you define what that means?

Tom Arthur: That is an important question. On the point about enforcement, competence with regard to consumer policies is split—advice and advocacy are devolved, but enforcement is reserved, so we do not have the means to legislate for enforcement around consumer issues.

The question of how individual public bodies interpret and respond to the legislation is important. That is why we have taken an approach that not only focuses on the strategic level but is not overly prescriptive. We recognise that, given the broad and diverse landscape of public bodies, the way in which they will be able to apply, take on board and have regard to the duty will vary depending on the particular functions and duties that they discharge. That is why it is important to provide flexibility for public authorities to "have regard to" the duty in a way that is consistent with their functions and responsibilities.

Reporting will be one of the requirements, but that can be incorporated into the existing reporting that local authorities do—for example, through an annual report. Alongside that, there will be the guidance that is developed by Consumer Scotland. As a non-ministerial office and statutory body, Consumer Scotland has a statutory responsibility to provide coherence and strategic leadership in the consumer landscape in Scotland. Consumer Scotland, which is directly accountable to the Parliament, has an important role to play in that regard.

In recognition of the limitations on what we can do around enforcement, we want to work constructively in a collaborative process, and Consumer Scotland has an important leadership role to play in that respect. Nevertheless, we recognise that the way in which public bodies "have regard to" the duty will vary between bodies, reflecting their specific duties and functions.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning, minister. I want to follow up on Mr Whittle's point. First, I recognise that we are looking only at an instrument that specifies a list of public authorities, rather than at the substance of the 2020 act. However, I struggle with the issue of what the practical impact of the regulations will be. Can you give us an example of something that a public authority is not currently doing but that it will do in the future once the regulations are in place?

Tom Arthur: I cannot give a direct example. Public bodies might currently be doing things that have a positive impact, but they might not necessarily recognise or identify that. The duty will introduce the requirement

"to have regard to consumer interests"

in strategic decision making—again, I note that that refers to decisions at executive and board level. That will certainly be of assistance to Consumer Scotland, given its strategic leadership role, but it will also help public bodies in considering their future work, when issues of detriment might arise. As I referred to in my response to Mr Whittle, the way in which that manifests could vary, given the diverse range of public bodies across Scotland.

The duty will provide a significant opportunity for learning. It will support Consumer Scotland's work, particularly its strategic role, and it will support the Parliament in its scrutiny of Consumer Scotland and the wider devolved consumer policy landscape.

I do not know whether Neal Rafferty wants to add to that or to reflect on the engagement with public authorities about how they might apply the duty.

Neal Rafferty: We have spoken to some authorities that have said that the duty will not result in their doing or thinking about things in which they are not already engaged, so, in that sense, it is about taking a belt-and-braces approach.

However, that will not be the case for other organisations, for which the consumer duty will inspire a bit more thought and reflection on how some of the strategic decisions that have been taken might risk consumer detriment. The duty might inspire a bit more thinking along those lines. That is one of the things that will be drawn out in

both the guidance and the practice, as the duty is implemented.

Murdo Fraser: That is helpful. It seems to me that public bodies should be doing that already, so, in effect, the regulations simply put into law something that should already be happening in practice.

I have one more specific question. I noticed that Transport Scotland is excluded from the list of bodies that are covered by the duty. What is the reason for that?

Neal Rafferty: I am slightly thrown by that.

Tom Arthur: Is that with regard to—

The Convener: Regional transport partnerships.

Tom Arthur: I think that we covered that in our letter to the committee. Local authorities, which are part of regional transport partnerships, will be covered by the duty.

The Convener: Transport Scotland is listed under the "Executive Agencies" heading, but the regional transport partnerships have been excluded.

Tom Arthur: Yes, sorry—that was the point of confusion. As Transport Scotland and local authorities will both be subject to the duty, it was felt that that was sufficient. I do not know whether Neal Rafferty wants to add any further commentary.

Neal Rafferty: No—the link to local authorities is the reason why the regional transport partnerships were excluded.

Tom Arthur: Yes.

The Convener: Are there any others? I suppose that those are the only organisations that would be in that type of arrangement. If the consumer duty is about strategic direction, how will the regional transport partnerships' strategic direction be influenced by the duty, given that they are one step removed from local authorities?

Tom Arthur: Given the role of Transport Scotland and local authorities as delivery partners, they would, in their work and strategic decision making, have to have regard to the consumer duty. In effect, it avoids duplication.

The Convener: As there are no other questions from members, we move to item 3, which is formal consideration of the motion to approve the instrument. As a reminder, I note that only members and the minister can take part in this item. I invite the minister to make any additional comments that he wishes to make and to move the motion.

Motion moved,

That the Economy and Fair Work Committee recommends that the Consumer Scotland Act 2020 (Relevant Public Authorities) Regulations 2024 [draft] be approved.—[*Tom Arthur*]

Motion agreed to.

The Convener: A short factual report of the committee's decision will be prepared and published. I thank the minister and his officials for joining us.

I suspend the meeting briefly to allow for a change of witnesses.

09:46

Meeting suspended.

09:48

On resuming—

Procurement Reform (Scotland) Act 2014 (Post-legislative Scrutiny)

The Convener: Our next item of business is the first evidence session in the committee's post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014. I welcome Joanne Davidson, from Scottish Chambers of Commerce; Stacey Dingwall, who is head of policy and external affairs for Scotland at the Federation of Small Businesses; and Colin Smith, who is the chief executive of the Scottish Wholesale Association. Lindsey Millen from Close the Gap is unable to attend and has sent apologies.

As always, it would be helpful if members and witnesses could keep questions and answers as concise as possible.

The committee decided to undertake this inquiry because procurement has come up as an issue in a number of our inquiries in this parliamentary session. That started with our inquiry into Scotland's supply chain, and the matter was also raised in our town centres and retail inquiry and in various other pieces of work that we have done. In particular, we want to look at the 2014 act to see whether it has made progress in the areas in which it was hoped it would make progress, and whether we need improvements in some areas.

I will ask a general opening question then allow other members to come in, so there will be a chance to expand on answers to me. First, I am looking for the key changes that the act has made for the businesses that you represent. What has been positive about the act?

Joanne Davidson (Scottish Chambers of Commerce): Good morning. Scottish Chambers of Commerce has seen some changes. The transparency of the procurement process is much improved. The obligations on public sector bodies to publish opportunities and to say how they evaluate opportunities, the annual reporting that is now done and publication of the procurement strategy are helpful and have certainly opened up the process.

The requirement on organisations to report how they are complying with the sustainable procurement duty is seen as positive by our members. We consider that giving public sector organisations greater powers to seek information on subcontractors and supply chains is helpful, with regard to bringing opportunities to small and medium-sized enterprises.

However, there are still a number of issues that our members have raised with us. There are still many inconsistencies among requirements across directorates and authorities. One chamber of commerce member gave the example of a bid for which they had had to write about their sustainability policy. They had to write the same information in three different ways, because it was required in three different formats by three different contracting authorities. That is not necessarily good. The information was not different, but it was requested, and had to be formatted in, different ways, which created extra administrative and cost burdens.

There are other issues around some of the accreditation requirements. There is a lot of cost involved in achieving those, and they can be onerous to achieve and maintain, especially for small businesses and microbusinesses.

The procurement thresholds were also flagged as an issue; the thresholds have not changed. For goods and services, the threshold is still £50,000, as it was in 2014, despite the fact that we are now in a very different economic situation. There are a number of other issues, which I am sure will come out as we continue the conversation.

To sum up, I point out that, in preparation for this evidence session, in one of the conversations that I had to get feedback from members, a member said that it would give the act a C+ for its performance, if that is helpful. There has been some good progress, but there is lots more progress to be made.

The Convener: Colin, do you agree that the act should get a C+ or has the experience of your members been more positive?

Colin Smith (Scottish Wholesale Association): That would depend on who you talk to. I am here from the Scottish Wholesale Association, which represents the wheels of the food and drink industry—the wholesalers that supply the public sector, including local authorities, schools, care homes, hospitals and prisons. The results of our surveying of our members was a very mixed and confusing bag that suggests—I will be honest—that the legislation is certainly not fully functioning. Some of the changes that have been made through the Procurement Reform (Scotland) Act 2014 have actually made the process more cumbersome. There is apathy among businesses, members and producers, some of whom are no longer engaging with the process because it has become too cumbersome and costly.

We support the aims of the act, as do our members: specifically, we support the local food strategy that it links to. The act is not achieving those ambitions because the structure has become too big. The tender framework works in

such a way that businesses have, just to get on to it, to be able to provide, more or less, the 32 local authorities' food requirements. That takes away the local buying opportunities and the opportunities for local wholesalers and local producers in communities.

The idea of bringing all the procurement from local authorities into one central framework was good, in theory. It is fine if you are buying computers, diggers or something that you replenish or repurchase once every five years, but it does not work for food and the food supply chain. Food is eaten every day and deliveries are made three or four times a week to schools, hospitals and so on. Therefore, a national framework does not work because of the frequency of deliveries and the amount of buying that is required.

If we drill down into local authorities' food requirements we see regional variations. For example, people in Dundee and Tayside prefer lamb in their lasagne, as opposed to beef. Using just that example, the three local authorities in Tayside have to provide 1,200 different school menus, which is horrendous. The process is supposed to be manageable, but it lies within a framework that is pretty rigid.

However, it is not just the rigidity of the framework that is an issue; the regulations that sit behind it create inflexibility. We might come on to talk about them a bit more later, but I highlight now that the nutritional requirements for food and drink in schools prevent local food producers and suppliers from getting in there. For example, it is a requirement of the nutritional framework that the bread that is provided should contain 3g of fibre. However, such bread is not available in Scotland, or even in the UK; it has to be brought in from the European Union. I was going to say that it comes from Belgium, but I am thinking of the situation with ice cream. The bread that is required by the nutritional guidelines is not available in Scotland. We must work together to give local producers and suppliers the confidence to make that bread. We have a market, but no producer here is willing to make it unless they have a guarantee of who they will supply.

The Convener: You said that the food procurement process is the same as that for procuring computer equipment—it is not targeted.

Colin Smith: I apologise for using that analogy. I am not sure what the process for procuring a computer is. I was just saying that bringing all the local authority procurement teams into one framework to reduce the burden on and the costs for local authorities does not work. We need regional procurement teams, because they know what local schools need, what the schoolchildren like and what the hospitals require. As I have just outlined, regional food requirements and people's preferences vary from up in the Highlands and Islands down to the central belt.

The Convener: I understand that. Thank you.

I will bring in Tracey Dingwall to respond to the first question.

Stacey Dingwall (Federation of Small Businesses): No problem. Thank you for having me along today.

The Convener: I meant Stacey Dingwall. I am sorry.

Stacey Dingwall: No, that is okay. It happens all the time.

In 2019, the FSB published a report that examined the period of five years following the passing of the Procurement (Scotland) Act 2014. It asked whether the act had created a level playing field for SMEs on procurement. It also examined events prior to 2014 that had helped SMEs, including the development of Public Contracts Scotland and the introduction of the supplier development programme. Those positive features were already in place before 2014. The report also highlighted aspects such as requiring each public sector organisation to have a procurement strategy, to publish an annual report on that, and to use community benefit clauses. The act brought in a range of measures that have been beneficial for SMEs.

Since the passing of the legislation, our interaction with public sector organisations suggests that there is a greater desire to open up more opportunities to SMEs. However, statistical evidence has shown that that intent has not yet resulted in increased spending with local businesses. At the micro end, in particular, when we go into local enterprises we are still not seeing the proportion of spend that we would expect.

The Convener: Thank you, Stacey.

I will bring in Murdo Fraser, to be followed by Evelyn Tweed.

Murdo Fraser: Good morning. Perhaps I could follow up on Stacey Dingwall's point about access for smaller businesses.

I am a veteran of the committee, having been a member of it in its various forms in previous sessions. I remember our discussions about procurement going back many years. We would hear businesses' frustrations, in particular those of small businesses, which would always argue that they were not getting a fair slice of the cake from the public procurement process.

I am interested in your perspective on whether the following still happens. It always used to be the case that public bodies would, in effect, hide

behind EU procurement rules. Of course, we are no longer in the EU, but I am interested to know whether that issue still exists. We are still bound by World Trade Organization procurement rules. Do those still present a barrier? Are small and medium-sized businesses still struggling to get a fair slice of the cake?

10:00

Stacey Dingwall: The bureaucracy is definitely still there. That is the biggest reason our members give for why they do not engage with the procurement process—I am talking about microbusinesses and sole traders. They are trying to run their businesses, and do not have time to do that. I have filled out tenders, so I know how long it takes. People do not have enough time to take from their businesses to go for those contracts.

When we surveyed our members around this time last year, 71 per cent of respondents told us that they had never tendered in or run for a public contract, with sole traders being less likely to have been involved than limited companies. Of those that had gone for it, two thirds said that they had found the process to be too challenging for them to navigate, and most of them said that that was because the system is clearly geared towards larger businesses.

Murdo Fraser: Joanne Davidson and Colin Smith are both nodding. Joanne, do you have anything to add to that?

Joanne Davidson: I absolutely agree with everything that Stacey has said. There is a cost issue, because time is money, especially for smaller organisations.

Another challenge that our members have told us about is that bid writing is a skill, and if someone is running a business and managing accounts, managing people, servicing their clients and doing all that good stuff, there is not necessarily the skill in the business for them to take advantage of some of the opportunities. There is the actual complexity and there is the perception of complexity, which is another challenge.

Several people also flagged timing. Often, a procurement opportunity will come out or be published around about the time of a major holiday period. That means that the actual time that an organisation will have to respond to the opportunity will be impeded, because if it is a fair work employer and treats its staff fairly, it will not want them to be working during holidays in order to complete bids. The process is masking a wide range of bureaucratic issues. That is certainly the case for members that we have spoken to.

Murdo Fraser: Have you noticed a reduction in bureaucracy since the 2014 act was passed?

Joanne Davidson: There has not necessarily been a reduction in bureaucracy. There have been improvements in transparency, visibility and the publication of procurement strategies and reports, which is all very positive, but there has not been any improvement—not that we have heard about, anyway—in the bureaucracy of the bidding process.

Colin Smith: I agree with everything that Joanne Davidson said about the burden, time and so on. SMEs do not have time. In fact, the wholesalers that are dealing with all the SMEs and are encouraging them to come into wholesale—the wholesalers that distribute into the national health service, for example—do not have the time, either.

I currently have one member that is sitting with a procurement contract on its desk; it will take one person in its office three weeks to complete it and to get all the information that is required. That is the burden. There is no way that an SME has the time or capacity to do that.

There needs to be simplification of the framework and the tender process. Does it need to be so cumbersome? There is the potential for a two-stage process, but one of the fundamental reasons why, since reform of the act, fewer wholesalers are applying, is that it is cost led.

We will probably come on to this, but 75 per cent of weighting in contracts is towards the cost of goods. However, we should be looking at the benefit of cost, because weighting on the cost of goods means that the contract, basically, goes to whichever bidder is the cheapest.

However, that is not achieving the aims of the strategy on local community wealth building—on getting more local producers involved and on keeping the pound in the local economy. My goodness—the bread that I mentioned is being brought in from the EU.

If we simplify the process and look at the whole food system, we can create economies of scale that encourage more local producers to make the bread and to make the ice cream that I mentioned that currently comes from Belgium. That would create more jobs and the community wealth building that is one of the aims of the strategy.

The member mentioned EU procurement restrictions and WTO restrictions. They still exist and—I will be honest—it is partly Scotland trying to align with EU regulation and get back into Europe that is still hindering the framework and the strategies. We cannot, for example, say that Scottish produce must be the primary choice, because EU regulations do not allow that. We are

tying ourselves in knots; we want to do one thing, but legislation and restrictions are preventing everything that we are trying to do.

Murdo Fraser: I am sure that Brian Whittle, who is obsessed with the issue of local procurement, will follow up on those questions in due course.

I will go back to Stacey Dingwall with a slightly different question. Your submission talked about issues around prompt payment, particularly for second-tier or third-tier suppliers to contracts. How much is that still a problem, and what progress is being made towards resolving it, so that people are paid on time?

Stacey Dingwall: That is still a significant problem. The report that we did last year, which I mentioned, found that just over 50 per cent of Scottish small businesses had experienced late payment. We also do a quarterly confidence-index survey of our members. In the survey for quarter 3 of 2023, the percentage that had experienced late payments increased from 51 per cent to almost 57 per cent, which was an increase of 25 per cent on the previous quarter—Q2 of 2023. It is therefore a really significant issue.

Murdo Fraser: So that I am clear, are those late payments by public bodies, or by others in the supply chain?

Stacey Dingwall: There is a mix.

Evelyn Tweed (Stirling) (SNP): Good morning, panel. Some of your points so far paint quite a worrying picture. You have spoken about things not fully functioning and of regulations being inflexible. You also mentioned that the picture is confusing, that things are cumbersome and that there is lots of bureaucracy. Will each of you give us two or three points on how we could streamline the process and make things better? What could the future look like? What do we need to drill down into to make things better for the future?

Colin Smith: I can give you more than two; I am happy to provide a supplementary submission.

As I mentioned, the framework could be a two-stage process in order to reduce the burdens on those who are bidding. There is no point in everyone having to supply all the information if they are never going to get the tender. However, I do not know what that two-stage process might look like.

In relation to a lot of the food and drink tenders, the weighting is based 75 per cent on price and 25 per cent on everything else. The 25 per cent will never make a jot of difference if the evaluation is based 75 per cent on price. The weighting needs to be reviewed so that there is more measurement against local supply and local product. When I say “local”, I mean Scottish, although that can also be in the truly local sense, which would be ideal. We need to look at sustainability credentials—at food miles and journey length—as opposed to just price.

If we go back to the issue of the cost benefit analysis, buying a local product through a local supply chain or a local producer will, generally, be more expensive than a mass-produced imported product. However, if we can give confidence to those producers and have more focus in the framework on ensuring that more local product comes in, we can enjoy the benefits of that £1 staying in Scotland. I think that, for £1, you get an extra £1.38 in the local economy, although the figure will depend on which metric you use.

The other issue is training and education. As they are presented just now, the system and framework start with the end user not understanding the food supply chain that sits behind them and how the wholesalers operate. No one wholesaler services the local authority, just as no wholesaler has all its business with the local authority. Those wholesalers are also still supplying the high street, pubs, clubs, restaurants and convenience stores. Any disruption in that market impacts on the supply chain going into the local authority—as we saw during Covid and as we are seeing as we go through some troubles in the hospitality industry at the moment—but that is not being considered. When you also have the restrictions that have been put in place through the nutritional framework, there is no flexibility.

Let us therefore sit down with industry and producers and look at how food systems work and how we can get nutritious food that works for everyone. Our delivering growth through wholesale programme—which helps local producers understand wholesale as a route to market and the requirements of the local authority and all the other sectors—could be developed to help in that process, and to help educate local authorities and the Scotland Excel supplier development programme on how food gets from farm to fork.

Stacey Dingwall: We see huge potential in the community wealth-building legislation to address some of the issues. For instance, we were involved with the five community wealth-building pilots, and we have a team of development managers who work in local areas with our members.

Before I get to the on-the-ground aspects, let us consider the official figures or statistics for Clackmannanshire, which was one of the pilot areas. That council set a target in its 2019 strategy to take local spending to 21.5 per cent by 2022, and it hit almost 25 per cent by 2021. Fife Council made significant progress, going from about 22 per cent of spend in 2010-11, which is the baseline year that it uses, to over 40 per cent 10

years later. We can really see the benefit of the pilots.

My colleagues tell me that two factors have enabled that progress: ownership on the part of the local authority, and strategies with clear targets and detailed monitoring arrangements. We are calling for that to be statutory as part of the community wealth-building legislation. The level of detail that you find in Clackmannanshire Council's annual procurement report allows progress to be tracked, so all stakeholders can see what progress has been made. The report also sets out concrete actions that the council has taken to produce and sustain that progress.

When I was working on our submission, I compared Clackmannanshire Council's report with the report from Aberdeenshire Council, whose spend had increased by about 2 per cent since 2010. There was no mention of community wealth building in the latter's report at the time. However, when I was checking the position yesterday, I saw that Aberdeenshire Council has published one procurement report since then and community wealth building is mentioned throughout it. In addition, Aberdeenshire's proportion of procurement spend has increased by more than 2 per cent year on year. We can see the benefit for procurement spend of setting targets and being able to track progress.

Joanne Davidson: I agree with those points but, from our perspective, more meaningful pre-bid dialogue would be incredibly beneficial. Meet-the-buyer events are useful, and we have positive feedback on them, but they do not really go far enough. The more technical or complicated the procurement, the better the pre-bid dialogue with potential bidders should be.

An example that we were given while preparing for this morning's evidence session is that of Scotland Excel's framework contract for new-build residential construction. My understanding is that, before Scotland Excel issued the bid, it went to all local authorities that were forming part of the framework and asked them whether they intended to put in any new build over the period of the framework. The local authorities were able to respond, "Yes, we are" or "No, we're not", and Scotland Excel could therefore inform the bidders which parts of the country those opportunities would be in. That allowed people to self-select on the basis of whether they would choose to be part of the framework, depending on what was happening in their local areas. If there was an opportunity for a large-scale new-build development, they could sharpen their pencils for that. It was a win-win for the efficacy of the process that was gone through and for the public purse, as the bidders were able to consider the costs accordingly.

That is one specific example that concerned a large-scale works framework contract—that would not be relevant in all areas—but having that level of understanding and taking an intelligent approach were helpful.

Another thing that has been flagged up to us, at a much more practical level, is the Public Contracts Scotland website. It is great, but my understanding is that it has not been updated in quite some time and that it is a bit clunky. Could it be improved? Could artificial intelligence be used as part of that platform to provide a contract-matching service, so that it would not necessarily be up to smaller businesses and microbusinesses in particular to trawl through the site and understand and decide which are the best fits for them. Is there some way to match businesses with opportunities or to make opportunities visible to them? That would not be to give them any advantage; it would simply be to make them aware that the opportunities exist.

Those are two practical things that our members have suggested could be improved.

Evelyn Tweed: We also heard in evidence that a focus on cost leaves no slack in the system for innovation. What are your views on that? Do your members think that there is no slack?

10:15

Colin Smith: I should have said something about that when you asked about what can be improved. The issue is that local authorities' budgets are being squeezed. We understand that we are talking about public money but, equally, there are problems in how that is spent. It is not giving the big bang for the buck that it should.

As I said, local authority budgets are being squeezed, including those for all meals for schools and the NHS. They are not even keeping track with inflation. Over the past 18 months, because of Covid-19, the war in Ukraine and so on, the costs coming through the wholesale channel have gone up by 20 per cent, 50 per cent or double on some food items. That is not reflected in the budgets that are given to the tender process for the school meal or whatever it might be. All that we are doing is encouraging the drive to a lower-quality product.

Innovation costs money. Innovation is having a Scottish product instead of a product from outwith Scotland. However, we cannot afford that because the budgets are not there.

If local authorities were given the budgets to support what the procurement strategy is supposed to do, you would get two times that amount back into the economy. However, if we continue to do what we are doing, we will not fix anything, and the food system will be broken

because no one will bid for any of the tenders because there is no profit in them. The wholesale channel operates on a 1.2 per cent net margin. The costs that are coming down the road in April because of the wage rate are a bit of a crippler for our sector and local authorities.

Stacey Dingwall: We are certainly concerned. As I said, our call with regard to community wealth building is to set targets, but we are fully aware that that will require local authorities to provide additional resources. We are a bit concerned about the success of the legislation if additional resources are not given to local authorities to deliver and monitor those targets.

As well as local authorities, resources will need to be given to programmes such as the Supplier Development Programme, which is a really useful tool for our members. I know that they want to and could do more, but it is a question of resources. For the community wealth building legislation to be successful, resources need to be dedicated to that. Otherwise, we will not have innovation or achieve the community wealth building aims.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Before I ask about how we could improve the annual procurement reports, I want to speak with Stacey Dingwall about community wealth building.

In your written evidence, you highlighted two cases: Clackmannanshire Council and Fife Council. I looked at both their procurement reports, which were good. To update you, Fife is now at 49 per cent local spend, as opposed to 22 per cent back in 2010. Does having that level of detail in the procurement report encourage your members to bid when they see that the trend is to increase local spend?

Stacey Dingwall: Absolutely. It certainly helps me to track the situation and consider what we want to recommend. We have colleagues out in different areas of Scotland who will engage with the local authority on its local procurement work. Whether we are talking about consulting on the council's strategy development or the report, it is really useful for enabling us to participate meaningfully in those conversations, as well as encouraging our members.

Gordon MacDonald: Why do a lot of local authorities not have that level of detail in relation to trend analysis? I have had a look at the reports of two or three others, which will remain nameless at the moment, and there was nothing like the level of detail that is in the Clackmannanshire Council or the Fife Council reports.

Stacey Dingwall: I highlighted the Aberdeenshire Council report that I looked at yesterday, in which the local authority had addressed those issues. It goes back to the point that people do not have the level of resource that they need to dedicate to that.

The Convener: The difference in size between Fife and Clackmannanshire is quite interesting. Because Clackmannanshire is a small council, it is often felt that it does not have enough resources. They are one of the smallest and one of the biggest councils in Scotland and, although size and capacity are often an issue, they are obviously not in that case.

Gordon MacDonald: Absolutely.

Stacey Dingwall: I think that Clackmannanshire has chosen to prioritise that work. Obviously, the authority has made that commitment, and I do not know whether it is easier to do that in a smaller authority. In particular, it has really embraced the pilot and made it successful. That is why we are calling for that work to be done. If we look at the progress that different local authorities have made, the Improvement Service data is not consistent. Some authorities do really well one year, but they fall back another year. Progress is a bit all over the place, which suggests to us that there needs to be a requirement for that commitment and that targets need to be set, so that we can maintain or improve on the progress that is being made.

Gordon MacDonald: Is there anything specific that your members would like to see in the procurement reports? Are the reports useful? Would you like there to be changes to them in order to make them more useful to your members?

Stacey Dingwall: Yes—although I suppose that what would be useful for me, with more time to read the reports, is different from what would be useful for the average small business on the ground. Those people do not read our reports and they are not going to read local authority reports, so it must be an infographic or something that is all there on one page.

Gordon MacDonald: A one-page summary.

Stacey Dingwall: Yes.

Gordon MacDonald: Colin Smith, in your written evidence, you said that not all local authority contracts

"are being reviewed but simply renewed, preventing new bidders or suppliers from getting the opportunity to be listed".

There is no information in the annual procurement reports about companies that have unsuccessfully bid for a contract. Should that information be contained in the report?

Colin Smith: It would certainly be helpful to understand why bids have not been successful. Including that information would encourage others

to bid and would enable us to see the flaws of the system.

I will build on Stacey Dingwall's comments, which showed that the approach is working in some areas and in some councils. As I said at the start of my evidence, the results of the survey of our members was a mixed bag. We have members for whom the procurement process is working well, some say that it is okay but needs fixing and others say that it is not working at all. Therefore, we need to look at those council reports, understand them and learn from them. We always talk about the need to learn but, if something is working in one area, there is no reason why that cannot be replicated in others.

There are examples of that in our sector. In Aberdeenshire, we have a problem with wild venison, which is a healthy, nutritious and protein-rich red meat. One of the councils worked with the venison farmers to make venison burgers and sausages, which are now being distributed in schools and are going down very well. Argyll and Bute Council did that as well.

There are success stories, but there are not enough of them. We need to change that and the committee can do that through its recommendations.

Gordon MacDonald: Joanne Davidson, what changes would you like to be made to the procurement reports?

Joanne Davidson: I agree with much of what Stacey Dingwall and Colin Smith have said, but anything that increases the level of transparency will help to demystify the process for businesses and encourage those who have a perception about it that it is something that they can try to do.

We had feedback from one of our members that publishing headline figures and numbers of contracts that are awarded to businesses of various sizes is not helpful. It is about the value of those contracts. If a greater percentage of smaller organisations have been awarded those contracts, what does that mean in relation to value? If it is still very low value, it is not really progress. There is a whole host of things around that level of detail.

When I was preparing for this meeting, the other thing that was fed back to me was the time that it takes a contracting authority to award a contract. Very often, at the start of a process, timeframes are given in good faith and, obviously, people try to adhere to them, but things happen and sign-off is delayed. How long is that decision period? That information can help with planning and resourcing and people deciding, on a cost basis, whether that work is worth undertaking.

The other element of that is some case work—some actual stories—of procurement exercises could be included. Earlier, I gave an example of the residential build framework contract. Including information about such things could help to encourage bidders and organisations to engage with the process. Doing so might also help other local or commissioning authorities to learn from good examples of what is happening elsewhere.

Kevin Stewart (Aberdeen Central) (SNP): Good morning. I should begin by saying that I am a bit of procurement anorak. When I was the convener of finance for Aberdeen City Council, I used to have the PECOS software system for procurement on my computer; it annoyed a great number of people, it must be said, but it did teach me a few things.

First, on Colin Smith's points about frameworks and agreements, it is fair to say that, in my day, I would get frustrated when some of those agreements were more in the hands of the solicitors and accountants than the end users of the product. Is that a frustration for your members?

Colin Smith: Whose solicitors and accountants do you mean? The local authority's?

Kevin Stewart: Yes, I am talking about the local authority in this case.

Colin Smith: You will know more than me about that. The cost piece that I have already articulated is the big stickler here. I go back to the point that we are looking at the cost of the food rather than the benefit of the cost.

There is a lack of understanding on the part of local authorities and even Scotland Excel. Do not get me wrong—the Scotland Excel Supplier Development Programme is trying to do a good job with what it has been given. The fact that we have the Supplier Development Programme to handhold people through the process suggests that there is complexity in the system. The cost is an issue, and it is prohibiting everything that the strategy is trying to achieve.

Kevin Stewart: Let us be brutally honest: cost is always going to be an issue, particularly in these tough times. However, what you do not want is additional cost as a result of some of the bureaucracy that you have described. You also do not want additional costs arising from procuring products that, at the end of the day, might not be the best ones.

Let me give you an example of where I was coming from when I talked about things being in the hands of solicitors and accountants rather than the end users. One of the most interesting things that I found was that the folks who were the most canny and who knew what they wanted were the school cooks. You could see in the system exactly what they were going for and what they were

choosing to miss out; they knew what was best in following the guidance at that point. What you saw at points, though, was that the framework for procuring certain foodstuffs did not match the needs of the school cooks, who I think knew best, because others were involved in the procurement who should, quite frankly, have probably kept their noses out. Is that something that you and your members have found?

Colin Smith: Yes, that is absolutely the case with school cooks and chefs. They know what they want and the wholesaler is trying to give it to them, but the regulations do not allow it. I have already used the example of bread; the situation applies to naan bread, too, because there is the requirement for bread to contain 3g of fibre. The flexibility of local authorities to procure what they want is non-existent. For example, one local authority gave the kids naan bread with their korma, but it had only 2.3g of fibre in it as opposed to the required 3g.

Kevin Stewart: I think that we get the point. Basically, what you are saying is that some of the regulation does not make sense at the moment, because the product is not available and it is not what people want anyway.

Colin Smith: There is no flexibility, and that means that the kids are not getting what they want, so they are being forced down to the high street to buy unhealthier choices.

10:30

Kevin Stewart: Stacey Dingwall, what are your members' views on frameworks? Is there too much bureaucracy? Are the wrong folk putting in place the frameworks and the tenders?

Stacey Dingwall: As I have said, when we surveyed our members, we found that a small number had been involved in the process, and for those who are involved, bureaucracy is an issue. Last year, our members told us that they are spending eight hours a week on regulatory compliance, not just on procurement-related regulation. If they are already doing that and are not involved in procurement, they will not want to take on anything else.

Joanne Davidson: The additional work and costs are one thing, but even if they are part of a framework, there is absolutely no guarantee that someone will get a call-off, and therefore they will not get an opportunity. One of our members flagged a couple of examples to us. They came second in a particular framework by a quarter of a per cent, despite having been on it for four years, and they have had no work through it. Another member made a bid—I am not sure whether it was a framework contract, but they described it as a "big bid"—and lost by a seventeenth of a per cent. I understand that there has to be some mechanism by which bids are scored and decisions are made, but such examples suggest—and I am trying to find a more diplomatic phrase—an element of influence.

Kevin Stewart: Just tell us what you think.

Joanne Davidson: It suggests a level of influence in that decision making. When it comes down to seventeenths of a per cent, there is perhaps an overweighting in those quantitative metrics.

Kevin Stewart: You talked earlier about the need for more transparency. The fact that bidders are told that bids have come down to a seventeenth of a per cent is a bit more transparent than it was before, is it not?

Joanne Davidson: Yes, but it is still an issue if the reasons for such small fractions are not fully explained and made transparent.

Kevin Stewart: That brings me to the next part of my question, which is about feedback to unsuccessful bidders. Has that improved? Is there room for further improvement? What do your members think about what they are told after an unsuccessful bid?

Joanne Davidson: We had conflicting feedback on that, because of the way in which procurement is done and how it is managed across directorates and commissioning authorities. Obviously there are differences in approach, and although there are regulations, they are—certainly from my reading of them—quite light on exactly what should be communicated and when and that sort of stuff. Feedback has been an issue for a few of our members.

There is a bit of fear among people in challenging decisions, just in case it precludes them from further opportunities. That is possibly perception rather than reality, but challenging decisions during the standstill period is an issue for some people.

Kevin Stewart: We need to get rid of some of that perception, too.

Joanne Davidson: There is a perception issue and a reality issue.

Kevin Stewart: Stacey Dingwall, what feedback have you had on that from your members?

Stacey Dingwall: From having worked at a job where I had to do tenders every day, I definitely agree that there is a perception issue. When you go into it, you think, "This is going to be a nightmare" and then some are actually fine. However, some of our members might have gone for a contract 10 years ago and had a nightmare, and it has put them off to this day.

Feedback from the 32 local authorities is patchy. Some of our members have good engagement, depending on their relationships with the local authority. If it is one of the bigger ones, those relationships might not be there. I certainly agree with the point that bidders would probably want to keep in the background—again, I am trying to be diplomatic—and not bring that attention to themselves, just in case it hinders them.

Colin Smith: I do not have much more to add. It is all about rebuilding confidence and trust in what is a broken system.

Kevin Stewart: Very briefly, is it off-putting for folk that the feedback from different public bodies—say, the 32 local authorities—is different? Should we see if we can come up with a more uniform scheme of feedback to open up transparency?

Stacey Dingwall: Community wealth building offers an opportunity. There is a huge opportunity with that legislation to address such issues.

Joanne Davidson: I agree. Anything that improves the transparency of the system and increases confidence in it would be worth while.

Colin Smith: Going back to a point that Stacey Dingwall made earlier, I think that it is a matter of ensuring that the measurements are tangible and actually mean something.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Good morning. I would like to get a bit of perspective here by referring back to the work of the Economy, Energy and Fair Work Committee in session 5. That committee heard concerns that the practice of procuring through large contracts could make it harder for smaller or newer firms to access opportunities, despite the practice of dividing contracts into lots. I assume that that sort of thing still goes on. Do you have views on such practices and how they are impacting on business? What are some of the challenges that framework contracts can throw up?

Perhaps we can start with you, Colin.

Colin Smith: Thanks, Colin.

Colin Beattie: You are first on the right, you see.

Colin Smith: As a trade body, we represent everyone, from the large nationals down to the 95 per cent of the wholesale sector in Scotland that are SMEs. That practice presents a challenge for everyone—it is a challenge for the large as much as it is for the small.

Going back to an earlier point, I think that the framework reform favoured having a big contract, rather than the sorts of regional or local contracts that would be more accessible to bids from smaller producers and local wholesalers. If there is a bigger contract to supply tens of local authorities, the suppliers that are brought in to go into schools, hospitals and so on must have the capacity to fulfil it. That will not necessarily be the case for, say, the small baker who might not have the scope and capacity to service 10, 12 or 15 local authorities and who might just have the capacity to sell to a couple of facilities in their local community.

That sort of practice has hampered the ability of smaller producers and wholesalers to come in and bid for contracts. That is why we need to rebuild confidence. Prior to the changes, there were more wholesalers and even local suppliers bidding for contracts.

Colin Beattie: Is that approach pushing smaller businesses into subcontracting from a larger business that has taken the main contract?

Colin Smith: Some larger firms that are winning contracts are subcontracting to smaller ones. The Highlands and Islands are supplied by a larger wholesaler, which then subcontracts to a regional wholesaler.

Colin Beattie: Are there any other issues with framework contracts, or have we covered the one big issue?

Colin Smith: Well, there are—

The Convener: I am sorry to interrupt, but I just want to ask whether the model that you have described is a positive. You have said that, with winning contracts, big is in some ways better; for a start, it provides more economies of scale. However, larger businesses then subcontract to smaller companies. What is the problem with that model? Why is that not advantageous for smaller companies? The big one wins the contract, but it gives the supply to the smaller ones.

Colin Smith: There are 32 local authorities, but there are not 32 local wholesalers supplying to those authorities. There is some regional supply, but much of the supply happens on a national basis, and firms will subcontract where it is not financially or commercially viable otherwise.

As for the procurement framework or the overall strategy, that is all about community wealth building and getting more local supply chains working instead of having just one big one. It is also about Scotland's food security. We need to give farmers and producers confidence that there is demand for the product and that we are willing to invest in giving them the confidence to produce.

A lot of Scottish product is premiumised. People are quite happy to take a margin if a product is made in Scotland; however, that does not help with anything, because it does not make that Scottish product the primary or first choice. That will still be the cheaper, bigger brand. We also

have to look at where the product is sold. In the cafe here in the Parliament, the Scottish soft drink is £3.30, while your national brand is £2.50 or whatever. The point is that, when it comes to what we are trying to do in relation to economies, Scottish producers and so on, we are not helping ourselves by premiumising Scottish product and making it prohibitive for anyone to invest in.

The Convener: Has the Good Food Nation (Scotland) Act 2022 had any impact on the issues that you are raising?

Colin Smith: It is totally interlinked with everything that we are talking about. A good food nation is about those local suppliers and producers; again, though, it comes back to the issue of confidence. If we use the public sector as the key to unlock the investment that is required by manufacturers by saying to them, "We have a ready-made market for you. Your products can be first choice in the schools, the NHS and so on", that will grow the sort of economies of scale that will start to bring down the cost.

That is partly what our delivering growth through wholesale programme is designed to do. It is supported and funded by the Scottish Government, but we need somebody to provide some of the scale that will build confidence. I apologise for talking a lot about confidence, but the fact is that there is a lack of confidence in the system and among local producers to invest in their businesses, jobs and the local community. The big contracts that we are talking about are not willing to invest in their products, because it all comes back to cost.

Stacey Dingwall: The model that we have talked about, with larger companies getting the contract and then providing subcontracting opportunities to small businesses, can be great, because it does give small businesses that opportunity. However, the collapse of Carillion shows what issues can arise for small businesses when they become part of those really long and complex supply chains. Therefore, there is an issue around complexity.

As we touched on earlier, though, the main issue for small businesses in the supply chain is late payment. Although Scottish procurement legislation puts requirements on primary contractors in relation to their suppliers, we feel that more needs to be done in that respect, and again I highlight the on-going issue that our members are having with late payment.

The FSB has been campaigning extensively on that for years at UK level. In the autumn statement at the end of last year, the Chancellor of the Exchequer committed to ensuring that, from April next year, companies with a turnover of £5 million or more would be banned from bidding for public contracts if they had a record of paying their suppliers after 55 days or more. We are looking for such measures from Government to make it clear to larger companies that it is unacceptable for them to treat their small subcontractors like an overdraft facility.

Colin Beattie: Anecdotally, I have heard about large companies taking on contracts but then completely subcontracting everything. They are then really just managing the subcontracts rather than any of the products involved or anything else. Have you come across that?

Stacey Dingwall: Yes, I did, in a previous job in the third sector. When I worked for part of a larger organisation, I found that to be quite commonplace. However, a different approach might be taken if a large third sector employer is managing things, as it might well take a different approach from a private sector company to its smaller subcontractors.

Colin Beattie: It is hard to tell whether everything being subcontracted to local businesses is a positive thing.

Stacey Dingwall: It can be. It just depends on the behaviour of the manager, if they are not doing it themselves.

10:45

Joanne Davidson: I agree with Stacey Dingwall about the risks to small providers in the types of situations that have been described. Late payment is definitely an issue.

On the framework contract, we have not had a tremendous amount of feedback about it from our members. From a contracting authority perspective, there are positives, in the sense that the prime contractor takes on a lot of the risk and a lot of the management of the suppliers. As a result, the contracting authority does not have to do that work, so from a public purse perspective, I can see some benefits.

There are challenges for larger organisations, though, in having a localised supply chain. There must be some rigour in how that is created and it must have all the elements to enable delivery of the contract. There are roles for a lot of organisations in that respect, as well as a role for chambers of commerce and the FSB in trying to encourage those organisations to look at the supply chains and ensure that they are diverse and local, and that they embed community benefits and so on. From our perspective, that would be the only issue to flag up.

Colin Beattie: Are there any successful examples of local co-operatives getting together on a regional basis or whatever in order to bid? That would have the same effect as having a large

company bidding and then subcontracting, except that the contract would be kept in Scotland for local benefit.

Joanne Davidson: I am sure that there are, although I am not personally aware of that many. I am aware of regional initiatives such as the city region deal that we have here in Edinburgh. That is not the same thing, admittedly, but it is an example of a collaborative approach.

With regard to competitive bidding for a piece of work, I am not aware of any examples. I am sure that they exist, and are out there, but I am not personally aware of them.

Colin Beattie: I have one last question. I have been talking to a number of community groups in my constituency that have had experience of bidding for business, and they have had difficulties with navigating the website. In one case, a group gave up, because it was just too difficult. Have you had any feedback on experiences of the complexity or inefficiency of the website? I see Stacey Dingwall nodding.

Stacey Dingwall: Yes. As I have said, I used to work in procurement, so I used to go on the Public Contracts Scotland website daily; it took me ages to navigate my way around it, and that was my job. It is a helpful website—or perhaps was when it was developed, however many years ago that was—but it is very old and very difficult to navigate. As I have said, it was my job to navigate it, so at least I was getting paid to do it, but for a small business, doing that sort of thing will be in addition to its other responsibilities, so it will not spend time on navigating the website. It definitely needs to be updated.

Colin Beattie: Colin, have you had any experience with the website?

Colin Smith: I am sorry, but I have had no feedback specifically on that.

Joanne Davidson: As I mentioned earlier in response to Evelyn Tweed's question on improvements, I think that Public Contracts Scotland is a great resource—it offers a single point of access, which is always helpful—but it is clunky and outdated. Updating the website would definitely benefit small and medium-sized enterprises and encourage a bidding culture, as we have discussed. That work could include bringing in some new technologies, such as AI, and looking at contracts matching so that the site is not such a labyrinth to navigate. That might be helpful, and it should happen.

The Convener: I call Brian Whittle, to be followed by Maggie Chapman.

Brian Whittle: I will follow on from my colleague with a quick question on the subcontracting of big contracts. As Murdo Fraser alluded to, I have more than a passing interest in public procurement. I have heard that, in the construction industry, big companies win contracts and then subcontract out the work completely. All that they are really doing, therefore, is taking a margin off the top. The issue is about local authorities having one contract to deal with, rather than six or seven. Do we still have to address that?

Joanne Davidson: We have not had any feedback from that specific sector on that issue. I am not quite sure how such procurement works. I mentioned earlier the example of the new-build framework contract to be run by Scotland Excel for all of Scotland's local authorities, but I am not aware of any other arrangements for framework contracts in that specific sector.

Brian Whittle: The witnesses have highlighted very well the administrative burden of bidding for public sector contracts, especially for SMEs and newer companies. Have initiatives such as the quick quote system had any impact on reducing red tape?

Stacey Dingwall: Definitely. The quick quote system is definitely popular among FSB members. Obviously, it has limitations—for example, there are thresholds for what can be put through the system. It would definitely be of benefit to expand those thresholds to allow more contracts to be put through the quick quote system.

Brian Whittle: Colin Smith, let us talk about food procurement. We have had these conversations previously. I did some work on the issue when I first came into the Parliament. God—it was nearly eight years ago now. We looked at where food was procured from in all 32 authorities, and it was staggering to see where everything came from. You mentioned ice cream coming from Belgium. We found that there were root vegetables and potatoes coming from Ireland. The one that the press jumped on was chicken coming from Thailand, for some obscure reason.

It was not a very good picture back then, even though some local authorities, such as East Ayrshire Council, were procuring 75 per cent of their food locally. Is the picture any better now? I do not see much improvement, but, from your perspective, has it improved?

Colin Smith: No—as, I hope, I put across in my previous evidence, I do not think that it has. As I said, I think that it will get worse.

I will not labour the point about bread and ice cream, but I note that one of the biggest and most popular items for school meals—it totally complied with all the standards—was pizza. I say "was" because, at the end of 2023, McCain Foods, which was the sole provider of school-compliant pizza, pulled its pizza from the market. We now have no pizza on the school menu—not pizza that

is compliant, anyway—because we have not invested in a local procurement strategy.

Bizarrely, Pizzini, which is supplied by a Scottish producer, is available in schools. That producer could quite easily make pizza that is school compliant, but the schools require square pizza, and he makes round pizza. Making square pizza would involve buying more kit and mouldings, doing another production run and so on. If the Scottish Government were to say, "Yes—we'll give you the money to buy that kit", it would be happy days—the kids would have their pizza again. In the meantime, they are probably using their free bus pass to jump on the bus to go down to the local high street at lunch time to buy pizza from the local bakers.

We are still fixated on price. As I said, 75 per cent of the procurement in most tenders is focused on price. When we come to reviewing, asking for feedback and whatnot, let us look at what the other 25 per cent means. Let us rebalance the weighting so that it is more about local food procurement, whole food systems and whole-of-life costs as opposed to Thai chicken. In that regard, we are working with the Scottish Government on a project on how we can create demand for Scottish chicken at a price that is comparable with that of other chicken on the market.

I do not know whether that answers your question fully.

Brian Whittle: We have added in square pizzas and round plates—who can see the problem there at all? [*Laughter*.]

You mentioned that we focus so much on price. The bottom line is that the way in which we produce food in this country, given the costs that are associated with that, even down to paying the living wage or above, means that looking at price as the only, or the main, objective puts our producers at a disadvantage. The whole-of-life cost could include the impact on the environment from reducing the number of miles from field to fork and the health impact of offering highly nutritious food in our schools and hospitals. We are not looking at that, are we?

Colin Smith: No, we are not. If we are looking at cost and we want to support our local supply chain and community wealth building, there are manufactured products that are available on the high street. Part of the issue is that the nutritional guidelines that schools have to follow are too rigid and strict; there is no flexibility. In relation to the bread that was no longer available, the school cannot just go down to the high street and get something from the local Asda or get the wholesaler to provide an alternative—you cannot substitute anything, under the contracts. If you get a local delivery from your supermarket, you get an automatic sub. That might not be exactly what you want, but it is a sub, and at least you have it. That cannot be done with any of those contracts. The schools and the kids have to go without because the nutritional guidelines that were introduced in 2020 are too rigid.

We could consider those guidelines to be a starting point and flex and adjust them, or we could at least say to schools that there is flexibility if crap happens. If pizza is no longer available, something similar could be brought in. It might not have the same nutritional content, but an alternative could be brought in. That would start to unlock some of the products that are available in the market.

Even just aligning with some of the English school meal regulations would unlock some of the food that is available in Scotland or perhaps elsewhere in the United Kingdom. There is misalignment. There are UK producers that make products for schools in England but do not meet the regulatory requirements for Scotland. There are pizzas in English schools that cannot come into Scotland.

The Convener: Maggie Chapman has some questions about prices and weighting. As Brian Whittle started that theme, I will let her pick it up. I can come back to Brian Whittle once Maggie Chapman has asked some questions.

Maggie Chapman (North East Scotland) (Green): Good morning. I thank the witnesses for what they have said so far.

I want to follow up on the tension between price sustainability and the different weightings. With the sustainable procurement duty, is there a mechanism by which longer-term value or longer-term outcomes can be incorporated, or, as things stand, is it just a case of the system saying, "This is the value now and this is the weighting now"? We do not or cannot collect data, and we cannot project forward. Colin Smith talked about alternatives. If we took a longer-term look—over five years, for example—would we get those outcomes? Would that help to provide some balance?

Colin Smith: We need to consider what a five-year projection looks like. We are looking at everything in five years or 10 years. With regard to getting to where we want to be in respect of people's health and everything that we are trying to do, it will probably be a generation before we see a real difference. If we can get industry involved in what is available and what will be required, we can start to build the metrics around what you are asking about. The concern is that we will say what we need without working out how we

will get there, which will mean that we will be in the same boat again, but with further regulation.

My concern is that we will suddenly say that nothing can be brought in that has a carbon footprint above X when we start to look at carbon accounting, because that will add more costs and disincentives for small producers, who will not be able to give that data. That goes back to what has been said about the Good Food Nation (Scotland) Act 2022. Let us not be too prescriptive at the very start, because the worry is that we will put more regulation on top of regulation.

Stacey Dingwall: I expect that we will look at that when we consider the legislation on community wealth building, which I have mentioned a couple of times. I have highlighted how much regulation compliance our members have to deal with. A key part of that will be homing in. It is very easy to fall into the trap of collecting information for information's sake. We have to be very clear about why we are collecting information, and businesses need to understand why it is being collected, rather than it just becoming another thing on the checklist for them and their not seeing the benefit of that information being collected.

Maggie Chapman: I have another question about that, which will take us off on another tangent.

The Convener: You can ask your questions. I will then allow other members to come in. Go ahead.

Maggie Chapman: Okay. I will follow up on that theme. I have a question about the broader social benefits that we are supposed to get from procurement changes and improvements, with a focus on reducing inequality. Do we—the Government or whoever—collect data on what contractors and subcontractors are doing and what their supply chains are? Do we know about the environmental and social impacts or whether there is a focus on reducing inequality? Are we collecting the right data? If not, whose responsibility is it to do so? Who can bring all of that together, given what has been said about the burden of bureaucracy and all the administration?

11:00

Stacey Dingwall: I have not heard about that from members in my role at the FSB; I am speaking from my previous experience. Community benefits can sometimes be dealt with at the end, as a tick-box exercise, and there might not have been a demonstrable impact. Did we go to a school and do an hour's session with some pupils? Good. However, that might not have the impact that you are talking about. In my experience, that is because councils do not have adequate resources to manage contracts properly. The prime that is subcontracting out will have meetings—sometimes not-so-regular meetings—to consider the progress of the contract, with a focus on price, and community benefit clauses might be further down the priority list when it comes to monitoring.

Maggie Chapman: Joanne Davidson mentioned fair work earlier. Do we understand what subcontractors and secondary contractors do in a way that allows us to understand the genuine benefits of what we are trying to do?

Joanne Davidson: I agree with what Stacey Dingwall has said. When somebody is writing a bid, they might wonder what they can throw in to up their score a bit. Some of that feels a bit like a tick-box exercise.

Much of the information is being provided. In bids to which I was party in a previous life, before I joined the Scottish Chambers of Commerce, the information was always provided, but I do not know what is done with it once it gets to a contracting authority, how it is collated, how it is analysed or how it is then monitored. Information is certainly asked for—which is one of the reasons why we have the administrative burden that we have all discussed—it is certainly provided and it is used in the scoring mechanism. The question is what is then done with it.

We completely understand the points about fair work, the living wage and sustainability, which are crucial. However, we have sometimes had feedback on the proportionate nature of some of the requirements, given everything else that is asked of, in particular, smaller organisations and microbusinesses at the lower end of the scale in relation to bids just above the £50,000 threshold, which are smaller bids by their nature. The feedback is that the requests sometimes do not feel proportionate. It feels as though the request has been made of all bidders, irrespective of size and scale, and the proportionality of the request should be taken into account for smaller bids, which will be more likely to attract applications from smaller businesses. Often, it will not be commercially viable for some businesses to put community wealth-building elements into a very low-value contract. It could be argued that the fact that a contract might be awarded to a small business or microbusiness is a form of community benefit in itself. The point about proportionality has been made to us before.

Maggie Chapman: Are we missing a trick, especially given the urgency with which we all need to tackle certain issues that are no single authority's or agency's responsibility? I am thinking of issues such as reducing inequality and dealing with the climate emergency. Are there issues that we are missing not only because we are asking for the wrong information or too much

of certain types of information, but because we are not allowing for weighting flexibility? We have spoken about the 75 per cent threshold. Would you say that that is what needs to change if the environmental, climate emergency or reducing inequality targets are to be much more meaningful?

Stacey Dingwall: I am not sure if that would necessarily be the answer on the wholesale side, but it could make things more manageable case by case or commissioning authority by commissioning authority.

One thing that always gets fed back to us is that fair work tends to focus on the living wage, but a lot of employers are doing lots of other things that equate to additional money in people's pockets, albeit not directly through wage and salary. That could include childcare support, flexible working and so on. Some of the definitions within definitions—if that makes sense—need to be flexed a little to take into account many of the other things that a lot of organisations are doing that might not strictly meet the criteria as they stand at the moment. There is definitely room for more engagement there.

Maggie Chapman: When you say more engagement, with whom? What should the committee recommend?

Joanne Davidson: I mean more engagement with suppliers, I guess. If the information that we know is being provided is being collated and some analysis is being done with it, it might help to provide some insight. It is a matter of engaging with suppliers or potential suppliers, understanding what they are doing and providing by way of additional benefits and what additional work they may be engaged in, while somehow ensuring that that is taken into consideration in the selection.

Maggie Chapman: I will come back to you, Colin, as the question has moved on. Are there any other things that you wish to say in response?

Colin Smith: I absolutely agree on the point about auditing. Much of it has become a tick-box exercise. If firms are appeasing a strategy or what is being asked of them, it means nothing, so there is no auditing. If we are looking to do a review with a two-stage process, perhaps the second stage should involve auditing the paperwork and looking at whether the person who is tendering is actually able to deliver on what they say they can do.

There is some confusion within local authorities, with a lack of understanding of what is being asked, and the review of the tender not being followed up. Referring to social benefits, one of my members won a tender and, as part of the tender process, it had to give annual funding towards kids' activities or something like that. I am referring to one of the largest councils in Scotland. That was fine, and it won the tender. However, the money is still sitting in my member's bank account, two and a half years later. The council is saying, "What? I didn't know we had that." I think that says it all.

Maggie Chapman: My final question—

The Convener: Did you wish to ask another question, Mr Whittle? Colin Smith has to leave quite soon.

Brian Whittle: Yes—I would like to ask one more question if I could, thank you.

First, I have to question whether the nutritional value of food in schools has been improved under the rules and regulations.

Earlier, Colin, you alluded to the difference between procuring an information technology system, which might involve one supplier supplying a service worth tens of millions of pounds, and procuring from your members who are individual food producers, who must go through the processing of the food—sending it away or whatever. There has been lots of legislation on procurement since 2014, but I am not convinced that it has improved anything. Does the current framework allow for the difference between the big IT procurement stuff and having multiple suppliers for other things? Going back to food procurement specifically, it is just easier, from a local authority perspective, to have a single point, rather than having to procure lots of different local produce. That can be done—we have seen it being done in local authorities—but does the current framework perhaps struggle with it?

Colin Smith: Yes, I would certainly say that we do struggle with it. I do not know what you are referring to regarding the additional legislation that has come in, but the system is bureaucratic and it adds further complexity and burden. When it comes to tenders, there are just a handful of suppliers into the local authority today compared with what there was 10 years ago, or indeed with what there could or should be.

There are 75 wholesale food and drink distributors across Scotland, but only a handful of them are supplying into the public sector. That says it all: the system is too restrictive, and it does not do what we want it to do.

A computer is a computer, and food is food. You might buy just one computer, but there are 450 products sitting on the food framework and available through our members. We are talking about not just one food item, but 450 items—in fact, there are probably more than that. Of those, 300 are core, and the other 150 are there to allow for regional variations, such as the 1,200 adapted school menus in Tayside that I mentioned. That is just in Tayside, for three council contracts; another

29 councils also have to adapt their food menus to accommodate children's needs, including allergies and neurodiversity needs around food and eating.

It is complex. Having one supplier do it all might be the answer, but that is not going to achieve anything that we want to do for local community wealth building, jobs and employment or food security. That will not be achieved by putting everything in the hands of one person.

Brian Whittle: Thank you—I will leave it there.

The Convener: Does Maggie Chapman have a further question?

Maggie Chapman: We are looking at the Procurement Reform (Scotland) Act 2014 and thinking about what we want to see, given that the world is a very different place now to what it was in 2014. How could we use procurement to tackle things like the gendered nature of different employment sectors or the inaccessibility of different sectors to disabled people, whether as workers or as suppliers? Are there things that we could, and should, look at to make the legislation deliver what we want for Scotland as a whole? Joanne Davidson might want to kick off on that.

Joanne Davidson: The short answer is yes. Including requirements for sustainability, fair work and community benefits has really shone a light on those concepts. A lot of businesses are, therefore, much more aware of them now than they would have been previously, and they want to comply with the requirements for those commitments.

Again, however, I add a note of caution. We have talked a lot about adding further levels of bureaucracy. The type of approach that you describe would have to be proportionate and considered. If those things are mandated and the legislation is used as a stick, all it will do is discourage or dissuade more people, particularly smaller businesses, from becoming part of those procurement relationships. While the answer to your question is yes, it should be done very carefully and in a considered way, in consultation with the sector, and in such a way that it does not hinder people from participating in the process.

Maggie Chapman: Colin, I know that you have to leave, so I come to you next.

Colin Smith: I do not have much more to add. I would hate to see more burdens and requirements on businesses, when we are actually doing everything that we can. Certainly in our sector, we are very much looking at gender equality, neurodiversity and so on, and that runs through our training academy to ensure that our sector does all that it can to support as wide and diverse a workforce as possible.

The concern is that we make the requirements too prescriptive, and that we prejudice one in favour of another. If a business is not doing enough in one area, but the employees that we are talking about are not there—well, it is complex, and a minefield.

Stacey Dingwall: I talked quite a lot about businesses being put off, and we certainly do not want to put them off any more. I completely agree with what Joanne Davidson said. I note that the community benefit clause is becoming a tick-box exercise; we do not want to create a whole list of other ones. The community benefit example is definitely one to learn from.

The Convener: Mr Smith, you let us know in advance that you had to leave. I thank you for attending this morning.

I have a couple of questions for Stacey Dingwall and Joanne Davidson. Maggie Chapman mentioned a gender perspective on business. Do your organisations collect any information on whether procurement is supporting women-owned businesses? Do you see that as part of the procurement process?

Stacey Dingwall: I mentioned a survey that we did this time last year—our "Big Small Business Survey". All the results that we got from that survey can be broken down by gender.

The Convener: That might be an interesting thing to share with the committee, if the FSB would like to do so.

Stacey Dingwall: We have not published the breakdown, but I would be happy to share it with the committee.

11:15

The Convener: Okay.

Joanne, as I think you mentioned, there is a sub-group in Edinburgh that is focused on supporting SMEs to access contracts. At the beginning of the session, you talked about pop-up sessions to encourage your members to look at procurement. Is there anything in that work that is focused on women-owned businesses?

Joanne Davidson: There is nothing specifically in that work. We do a lot of work on encouraging women into business, and supporting women who are already in business and women entrepreneurs. There is a strand of work that looks at that, but there is nothing specifically to encourage women-owned businesses to engage with procurement. It is more about women in business more generally engaging in business, taking up entrepreneurial opportunities and using all the skills that they bring to that.

The Convener: Stacey, you talked about Fife and Clackmannanshire councils, and the increases that they delivered in local procurement.

We have had quite a long discussion this morning about food. Were the increases that those authorities delivered in particular sectors or services?

Joanne Davidson: That information is not available—the data is from the Improvement Service, which publishes only the overall figures; it does not break that data down by category.

The Convener: Okay. That brings us to the end of the evidence session. I thank the witnesses for attending. We now move into private session.

11:16

Meeting continued in private until 11:36.

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