



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Economy and Fair Work Committee

Wednesday 28 February 2024

Session 6



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ECONOMY AND FAIR WORK COMMITTEE

7th 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:

Pauline Gordon (TSI Scotland Network)
David Livey (Scottish Council for Voluntary Organisations)
Lindsey Millen (Close the Gap)
Martin Rhodes (Scottish Fair Trade Forum)
Duncan Thorp (Social Enterprise Scotland)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 28 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 seventh meeting in 2024 of the Economy and Fair Work Committee. Under our first agenda item, we must decide whether to take item 3 in private. Are members content to do so?

Members indicated agreement.

Procurement Reform (Scotland) Act 2014

(Post-legislative Scrutiny)

09:30

The Convener: Our next item of business is the committee's second evidence session as part of its post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014. The committee will hear from two panels this morning. I am pleased to be joined, first, by Pauline Gordon, who is partnership manager at the TSI Scotland Network; David Livey, who is policy and public affairs manager at the Scottish Council for Voluntary Organisations; and Duncan Thorp, who is policy and public affairs manager at Social Enterprise Scotland.

Members and witnesses should keep their questions and answers as concise as possible, so that we get through as much as possible.

I will ask the opening question. What benefits have you seen since the 2014 act was implemented, and what key challenges remain?

I thank the witnesses who submitted written submissions. David Livey, in the paper that the Scottish Council for Voluntary Organisations provided, you said:

"The ideals of community wealth building, sustainable procurement, and a wellbeing economy risk being reduced to mere rhetoric without a procurement system centred on outcomes and impact."

Is the 2014 act delivering in that regard? What are the key challenges that are making that difficult?

David Livey (Scottish Council for Voluntary Organisations): Thank you very much for having us along today to speak about this important issue.

It is fair to say that, when the bill that became the 2014 act was passed, the SCVO viewed it as promising legislation, because it introduced a number of welcome reforms. Crucially, the act requires that public bodies' procurement processes be open to third sector organisations, which we, of course, very much welcomed.

Ultimately, despite that being one of the 2014 act's stated aims and despite the significant efforts of Scottish Government officials, significant barriers still exist in practice for voluntary organisations. There has been a bit of a missed opportunity, not just for the voluntary organisations that we represent but for public services in Scotland, which are missing out on the expertise, ingenuity and resourcefulness of voluntary organisations across the country.

I think that the other witnesses would generally agree that there is a bit of an implementation gap between what is in the 2014 act and what is happening on the ground. Over many years, a lot of time and effort have gone into creating the process-led, resource-driven and research-intensive commissioning and procurement practice that we have today, but it takes time to unpick that in practice.

All too often, in our experience based on the feedback that we get from our members, the practice is process driven, with price being valued above all else. That needs to change, especially if community wealth building is to be a success. Obviously, one of the key pillars of community wealth building is spending, and procurement is a huge part of that. We need to get procurement practice right in order to get community wealth building right.

In place of the existing procurement practice and culture in Scotland, we need a person-centred and outcomes-focused approach to commissioning and procurement practice—one that values the contribution of the voluntary sector and that fosters collaboration instead of competition.

I can say a bit more about the barriers later.

The Convener: Yes, there will be opportunities for you to do that in response to other questions.

In your submission, you said that it is important to distinguish between commissioning and procurement. You spoke about both in your answer. Does the 2014 act recognise the role of commissioning enough? Is there enough co-operation between procurement and commissioning for the third sector?

David Livey: The issue mainly relates to practice. In our experience and in the experience of our members, there is a defaulting to procurement, which is perhaps not necessary. The Coalition of Care and Support Providers in Scotland has done good work on that issue. It commissioned a legal firm to produce a myth-busting document that set out the alternatives to procurement in relation to health and social care. The biggest issue is that, in practice, people default to procurement. The whole process and culture around procurement can be quite exclusionary for third sector organisations, particularly small ones.

The Convener: I will ask Pauline Gordon a similar question. What have been the key changes since 2014, and what are the biggest challenges that remain?

Pauline Gordon (TSI Scotland Network): Clearly, there are still challenges. I will touch on the question about commissioning and

procurement after I have answered the specific question that you have asked me. It is fair to say that there are challenges. At almost every event that I attend to talk about the issues affecting the third sector, the issue of procurement comes up. Clearly, we cannot be complacent but, that said, we need to acknowledge that the 2014 act has resulted in significant improvements. Prior to that, the procurement reform programme over 10 to 12 years—I was on that journey on the back of the McClelland review—transformed public procurement in Scotland. That was prior to the 2014 act coming into play, so we had a great foundation from which to build with regard to improving processes and practice.

There is greater transparency and cohesion in the whole procurement ecosystem, but the 2014 act is lacking when it comes to the important relationship between commissioners and those in procurement. We talk about the commissioning and procurement community, but it is not actually a community as it ought to be. I would also like providers to be part of that community, because we all want the same outcomes for the people of Scotland and we all want to maximise the social impact that we can make from procurement spend.

We have a brilliant legislative framework at the national level. I do not think that there is much that I would change about it, but it is lacking in relation to the importance of commissioning. Commissioning is particularly important given the third sector's role in people services—for example, health and social care services in their broadest sense. The Government has introduced good practice on commissioning that is specific to health and social care, and that should be read alongside procurement legislation and guidance. Other aspects play into the issue, but I do not think that there is enough cohesion yet.

We should be proud of our procurement legislation in Scotland. We are leading the way, but we should not rest on our laurels, because there are many other things to do. The third sector is so diverse; it is not homogeneous. It operates in lots of industries. Some third sector organisations are based in local communities and some are large. The large organisations tend to be the ones that have the skills capacity to enter into, and get a good foothold in, public procurement contracts, whereas the smaller ones tend not to have that capacity. In that sense, our sector has a responsibility to collaborate better to ensure that small community-based specialist services can access procurement spend in the same way as larger organisations can.

The Convener: I will ask Duncan Thorp the same question. What big changes did the 2014 act

introduce? What has been positive about it? What things still need to be tackled?

Duncan Thorp (Social Enterprise Scotland): I agree with and echo what has been said. The 2014 act was the culmination of a variety of pieces of work and conversations about procurement. A lot had been done before that point, but it was probably the first time that policy makers in the sector had come together to talk about social and environmental impacts with regard to legislation. That was an important tipping point in relation to procurement, and it changed the conversation.

The 2014 act is very good. It is fair to say that the legislation was well consulted on at the time, and various sector voices were well heard in that process. We will probably keep coming back to the issue of policy implementation, and the process that we are taking part in now will provide that scrutiny. How does the 2014 act translate into local communities? The main broad general barrier relates to how the legislation translates into the real world. We find that that is an issue with any form of legislation. How does good strong legislation translate into changing people's lives in local communities?

The Convener: The committee visited Dovetail Enterprises, which is a Dundee social enterprise, when we were looking at the employment gap for people with disabilities, and we had a chat about procurement. I am trying to remember what happened in 2014, but part of the legislation was about supported workplaces and ensuring that they had opportunities to enter into procurement contracts, including big ones. Has the 2014 act delivered enough in that area?

Duncan Thorp: Are you talking about the size of the contracts?

The Convener: Do social enterprises, whether they are supported workplaces or other types of social enterprises, get enough opportunities to win procurement contracts, or has the system that has been created excluded—probably not intentionally—social enterprises from those opportunities?

Duncan Thorp: It is a bit of both. To a certain extent, the 2014 act has changed things, but there has not been as much change as we would want. One of the barriers is the size of social enterprises. If a social enterprise is small, as most of them are, it will not be able to bid for big contracts. We hear a lot about that in our conversations about procurement.

To a certain extent, the 2014 act has opened up opportunities. We see from our survey results that social enterprises are winning contracts—they are sometimes quite significant contracts—but that is only at a certain level. We should consider the issue as part of the conversation about community

wealth building and economic transformation, because we need to get to that tipping point.

The Convener: Okay.

Evelyn Tweed (Stirling) (SNP): Good morning, panel, and thank you for your answers so far.

It is good to hear that the Procurement Reform (Scotland) Act 2014 has been positive in certain respects. My questions are about procurement and price. I noted David Livey's earlier comment. For the committee's benefit, to what extent does price remain the determining factor in decisions to award contracts? Pauline Gordon is smiling. I will go to her first.

Pauline Gordon: I am smiling because that issue always comes up.

There is a perception that, if a supplier does not win a contract, price has been a significant factor—or more of a significant factor than it ought to be. Awarding contracts solely on price is not permitted. That is already written into the 2015 regulations, and that should have put the issue to bed in my view, but it has not. Perhaps that is only a perception because, if we look into the awarding of contracts and scrutinise them, I am quite sure that we will see that the reasons for awarding contracts would be based on the balance of price and the qualitative questions. The situation has improved, and the fact that that is written into the regulations is really important for me because we can then challenge when we think that it looks like a contract has been awarded solely on the criterion of price. There have been definite improvements.

David Livey: I agree with Pauline Gordon. It really depends on the weighting. In September 2022, the Scottish Government did a bit of research into the experience of third sector organisations in the procurement system. A respondent said:

"If the price weighting is 40% then the quality is almost irrelevant."

I recently spoke to an employability provider who operates in the third sector. They referred to the fact that they recently lost out on price, despite the fact that what they offered was scored as 20 per cent better in terms of quality.

There is a real question about value for money not focusing on just price. Obviously, there is a lot more to consider in respect of the social, environmental and economic wellbeing imperatives that are set out in the act and the quality of the public services that are being delivered.

Duncan Thorp: As Pauline Gordon said, with the legislation, it cannot be price only that is taken into account. I suppose that is about the real world

application of the legislation and commissioners looking at it and thinking, "How do I interpret the legislation in terms of balancing price and social and environmental impacts?" There is a real issue with the real world interpretation. Those alternative considerations, not just cost, have to be taken into account. We can empathise with public bodies because of the financial restraints that they are under, and we can certainly understand where they are coming from in respect of making that balance.

09:45

There is not an easy answer. It is about cultural change in some ways, as well. There is that legal requirement, but it is also about making a mental shift and taking into consideration all those different factors.

Evelyn Tweed: Is there is any way in which we can strengthen the legislation to ensure that there is not that focus on price?

Pauline Gordon: I think that strengthening the implementation of the sustainable procurement duty would help, because its focus is very much on three components. One component is what you are buying in the area that you are buying it in. Before you buy anything, you should think about how you can maximise the social and environmental benefits or address inequalities as part of how you buy. Getting that bit right should ripple through procurement spend.

The second component is about engaging with the market. It is clear that we want more third sector engagement before things are bought.

The third component is, of course, to do with innovation.

If we get all those components of the sustainable procurement duty to play in, there will be much less focus on price and richer benefits. To be fair, the Scottish Government has done research that has looked at how well that is being implemented. We have to learn from that.

There are definite improvements to be made in the second and third components. People are not engaging with the market before going to it, and they are not using innovation as they could be.

That is how I would want to see the matter being addressed.

David Livey: I agree with Pauline Gordon. For the committee's benefit, we are talking about the Public Contracts (Scotland) Regulations 2015. To demonstrate the flexibility that exists within them, they state:

"A contracting authority ... may not use price only or cost only as the sole award criteria."

That is what the weighting really comes down to.

Duncan Thorp: I agree with what has already been said. That is a fair point.

The Convener: The submission from the SCVO that we received said that the recent Scottish Government spending review highlighted procurement as an area where efficiencies could be achieved. Do you have concerns that that puts further pressure on the cost components of bids? We passed the budget yesterday, and we know about the pressures that there are on Scottish spending. However, do you have any concerns that procurement is being seen as an area in which we could gain efficiencies? That area was highlighted in the paper.

David Livey: We generally have concerns about the fairness of funding for the sector. That applies not only to procurement contracts but to grant funding. We have talked about that for a long time. Obviously, there are significant financial challenges in Scotland at this time, but they are also being referred to the third sector level, so organisations are being put at risk because of the funding environment.

Last Friday, I spoke with someone from the third sector employability forum, who reported that they are seeing small organisations closing because they cannot make the existing funding models work. Recently, there was news that a large organisation is closing its doors after 47 years for the same reason. There is a real difficulty in organisations being able to make the funding models work in the current climate, and we have concerns about that.

The Convener: Mr Whittle can ask a quick supplementary question before I bring in Murdo Fraser.

Brian Whittle (South Scotland) (Con): Good morning, panel. I have a big interest in food procurement. On the weighting towards cost, I understand that the new legislation says that we have to take into account things such as food miles, the quality of the food and nutrition. Not doing so is a false economy.

What I find from councils is that, if there is a significant contract out there that could be split into smaller contracts, it is easier for them to outsource to one place to gather that contract together. Is that an impediment to the organisations that you represent partaking in the procurement process?

Pauline Gordon: That is a great question. Economies of scale are necessary at times. For me, it is about understanding why people are going to the market in the way that they are. I absolutely agree that we want all the whole-life costing and environmental impacts behind the scenes to be taken into consideration before they go to the market. If people are going for one large contract to get economies of scale, getting not just

one provider but trying to get some providers in is the right thing to do.

For me, any procurement needs to be underpinned by a rationale or a business case for why it is being done. There is no right or wrong to it, as long as it is underpinned by a clear rationale about why it is being done in that way.

Duncan Thorp: That is one of the conclusions of the Scottish Government's research. I commend that to the committee.

Pauline Gordon: We have talked a lot about commissioning and procurement. It is very important that we remember that commissioning and procurement need to work in tandem, but commissioning is the planning end. Good commissioning does not always lead to procurement. It does not have to lead to procurement if that is not the right decision. If you are buying a service on behalf of a public body, commissioning can be done in really innovative ways. There is a lot of good commissioning practice in Scotland, particularly through health and social care and strategic planning arrangements, in which people have really got it right. They know their population and its needs, and certain services do not have to go to procurement.

There is a cost to procurement. That takes me back to efficiencies. We can create efficiencies if we do not go to competitive tendering by default.

Kevin Stewart (Aberdeen Central) (SNP): I will play devil's advocate, given the answer that Pauline Gordon has just given us. As an MSP, I have heard on numerous occasions that a good piece of work has been done in commissioning, which has led to procurement, and then the procurement has become process driven. Folk say that the accountants and solicitors are more in the driving seat than the folks who actually know what is required on the front line. Is that still a difficulty that is encountered regularly?

Pauline Gordon: That is another great question. Would I say that it happens regularly? I would say that it is too often, perhaps. However, you are right. There can be good commissioning at the front end—I have been involved in talking to commissioners where I think, "They have got this right,"—but if it leads to procurement, the processes can then come into play. That means that we can lose sight of service quality and the people whom the services are designed for, and that we do not speak to the providers.

The third sector has a big role to play and a big contribution to make to people's services in Scotland. I will give an example where it happens too regularly that the procurement does not go right. The financial model around procurement, which is process driven, is about cost and volume

and is based on outputs, activities and interventions that are restricted. That treats everyone as if they have the same circumstances. They do not. People are unique, and have different circumstances in their lives. That approach means that we lose sight of the person-centred approach.

Another issue is that the big third sector organisations have the capacity to go for larger contracts, because they can take the risk, whereas smaller specialist providers are prohibited, because they cannot meet the volume requirements and cannot take the risk on cash flow. If we do not get that right, even if the commissioning leading up to the procurement has been really good practice, we will get the same output.

Kevin Stewart: So there is still a difficulty in some places and areas of business, in that the accountants and solicitors are probably too much in the driving seat rather than those who are on the front line.

Pauline Gordon: Yes.

Kevin Stewart: You mentioned people, which is the key thing in all this. You talked earlier about delivering for the people of Scotland. Are people—the populace at large—utilised enough in some of the commissioning work, particularly specialist commissioning work that has an impact on their day-to-day lives?

Pauline Gordon: We are seeing a lot more of that. We are embracing the fact that Scotland has a unique approach to service design, and we try to encourage use of that. That gives you the service user and lived experience voice to inform commissioning, before something goes anywhere near procurement, which I think is a great thing.

Kevin Stewart: I wonder whether David Livey or Duncan Thorp want to pick up on those questions.

David Livey: To follow on from what Pauline Gordon said, we agree that commissioning and procurement should involve people, communities and providers in the co-design of services. That is particularly true in the health and social care space, and the Coalition of Care and Support Providers in Scotland has done a lot of good work on collaborative commissioning and commissioning for outcomes, which is worthy of the committee's attention.

The point was summed up in 2021 in the report of the independent review of adult social care in Scotland, which said:

"Commissioners should focus on establishing a system where a range of people, including people with lived experience, unpaid carers, local communities, providers and other professionals, are routinely involved in the co-

design and redesign, as well as the monitoring of services and supports. This system should form the basis of a collaborative, rights based and participative approach."

It is pretty difficult to disagree with anything in there.

Kevin Stewart: I would not disagree with any of that, either. However, you have given a lot of the positives, but is there still too much interference and what is sometimes the bureaucratic nonsense of accountants and solicitors who do not have the experience of what is required on the front line for people?

David Livey: I am unable to say how these things come to pass, but certainly the experience of voluntary organisations is that, in procurement processes, they are told at the point of application to give evidence of things that are not particularly relevant to the service for which they are tendering. That is things such as having excessive insurance of £10 million or so for a £70,000 contract, or accreditation that is not particularly required. That suggests to me a risk-averse approach to procurement.

That is the experience of the voluntary sector at the other end. I am not entirely sure what the source of the issue is—you would perhaps know better than me.

Kevin Stewart: I am surprised that your members have not come up with some of them. I wonder whether Duncan Thorp has anything.

The Convener: The SCVO has provided in its written submission six suggestions for improvements, one of which involves necessary accreditations.

Kevin Stewart: Duncan, do you have anything to add?

Duncan Thorp: The starting point should be about economic and social outcomes for communities, and then the process should come after that. It is as if we start with process and talk about it a lot, without thinking about what we are trying to do with procurement. As has been mentioned, early stage involvement of communities and community groups is important, even just in designing some of the processes in the first place.

The point about bigger contracts is a perennial issue. We hear that contracts are too big, which means that organisations have to be big enough to bid for them. A lot of work has been done on that to break down contracts and to get small organisations to come together in consortiums. However, we need to do far more on that.

10:00

On the barriers, it is fair to say that you often find good procurement officers who want to do procurement well and who want to work with local organisations and understand the sector. That does not apply to all of them, I am sure, but a lot of officers understand the sector and the needs of social enterprises and charities. However, they perhaps face barriers in local authorities and public bodies from legal, audit and so on, in driving forward that agenda. They face barriers, which are often a result of risk averse officials.

Kevin Stewart: Risk aversion is one of the things that is mentioned a fair amount and you have given some good examples. Thank you.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning to the panel. I have a slightly different question, which is on the impact on local economies and local businesses. I have been on this committee and its predecessors for many years, and that issue continually comes up when we talk about procurement. There is an issue about the extent to which we use the very large pool of procurement funds that are run by national public bodies, national health service boards or local councils to support local businesses. Every time we speak to the business community, that is a key ask. To what extent does the new, or newish, legislative framework do a decent job of ensuring that money is spent more locally?

Pauline Gordon: That is an important question. Although we are here representing the voluntary sector in its broadest sense, we work closely with our colleagues from the Federation of Small Businesses, the Scottish Council for Development and Industry and so on. A lot of the concerns are similar for organisations that are of a similar size. We certainly work well with those bodies.

The issue of spending money locally comes down to better engagement within the area in which organisations operate. To go back to the sustainable procurement duty, it says that they ought to understand their local market. They ought to know what it looks like, where the providers come from and what they can provide. If you are seeking innovation, you will not get it until you know who is out there to provide it.

The local dimension has always been an issue for procurement. We would love it if procurement specifications said, "Buy locally, please." That will not happen, but there are lots of ways that that can be achieved. For example, it can be done through the way in which community benefits are constructed or the way in which local providers are engaged, or by giving references in a specification that will automatically lead to local suppliers, although they do not use the word "local".

That will become even more important if we are to enrich local economies and supply chains and make them more resilient when community wealth building comes into play. The spend pillar, in conjunction with the other pillars of community wealth building, will be pivotal to there being a greater impact. Procurement is important in that context and, if we get that right in local strategies for community wealth building, we will get better outcomes for local business.

Murdo Fraser: Before I bring in the others, I want to follow up on one point. Is everything that you have talked about possible under the current framework? Is it just a matter of practice as opposed to a matter of the rules?

Pauline Gordon: There is a lot of good practice, but there are still a lot of things that work against it, and we have to be honest about those. Sometimes, the issue is that there are no local providers. Commissioners sometimes ask me to look at third sector provision in an area of Glasgow and I cannot fulfil that requirement, because I do not have any there. That would be the same for business. However, we could definitely get better at it.

Murdo Fraser: David, do you want to come in?

David Livey: I will not repeat what Pauline Gordon said, because I agree with much of that. The issue is the same as the issue for smaller charities. Many charities that operate just within a local area will be smaller and will come up against barriers in grappling with the procurement process. Examples are ten a penny, but I was speaking to a charity the other week that said that the timescales and experience that are needed to compete in such processes marginalise those closest to the communities that they serve. That is the main point that I want to make on that. The process can be exclusionary to small charities, which will be those with solely a local focus.

Duncan Thorp: Given the shared values between mainstream small businesses, social enterprises and small charities, and the similar sizes of the organisations, we can relate to that point. We absolutely should have local by default. If a commissioner can get goods and services at a local level, they should do that, but it is fair to say that those suppliers are not always there, so it is difficult for commissioners to always have that local by default mentality.

The stats are quite good if you look at the spend with small and medium-sized enterprises—although not small businesses, because that is different. However, 80 per cent of Scottish Government spend is with SMEs in general, which is impressive. However, the stats do not report on the social enterprise element. It is not clear what element of that involves social enterprise, charities

and similar organisations, so the reporting on that needs to be improved.

On community wealth building, procurement is an important pillar in that, so we need to make sure that the procurement reform process is integrated with that wider policy agenda, which we strongly support. Community wealth building has a lot of potential, but we need to make sure that we get procurement right as part of that process.

Murdo Fraser: Thank you.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Good morning, panel. When the public contracts Scotland procurement website was launched back in 2008, it allowed public contracts to be offered to a wider range of suppliers. What is your or your members' current experience of it? Is it still accessible and how transparent is it?

Pauline Gordon: First, it is wonderful that we have a single procurement portal in Scotland. I will say a lot of negative things, but we should acknowledge the good things. We argued for that. Post the McClelland review, the situation was very haphazard—everybody had their own procurement systems and it was very difficult to navigate for suppliers, but we now have a single portal.

The portal has improved. All the organisations that are represented today have the benefit of continual dialogue with the Scottish Government in the procurement supply group, with our colleagues from the FSB and so on. We talk all the time about supplier issues, which is great, because we are not losing sight of any of that and the Public Contracts Scotland system comes up a lot. It is difficult to navigate if you are not used to it. Particularly for a small supplier in the third sector, it is daunting. You have to hold people's hands as they go through the system, and then there is the e-tender system as well.

The system is not as clunky as it first was. There have been improvements. To be fair to the Scottish Government policy team who facilitate our on-going dialogue, they listen to concerns that suppliers raise with us. It might take some time for improvements to make the system a bit less clunky, but we have seen improvements and we will probably see further improvements.

Gordon MacDonald: On that point about the system being difficult to navigate and daunting, the website carries out a customer satisfaction survey, which has found that 60 per cent of the people who took part were either micro or small employers, and that 80 per cent found the website moderately to extremely easy. You say that it is daunting and difficult to manage, but the evidence from 1,600 customers who used the website was the opposite.

Pauline Gordon: To clarify, I was talking about smaller suppliers in the third sector that are not used to procurement. Some of them are not even on public contracts Scotland—I encourage them to get on it, and I hold their hand in doing so. For example, with the quick-quote system, you are not visible to the buyer unless you are on PCS. For smaller suppliers, quick quotes are really beneficial and a great opportunity, but if you are not on PCS, you are not visible. I accept that the system works well as a single portal, albeit that it is complex. My point is about the smaller suppliers.

Duncan Thorp: To pick up on that point, many social enterprises are not even on the portal, because they are too intimidated to even get on it in the first place. That is a fair point.

I echo the point that it is good that PCS is there. It is one portal, which is a great development, and it has been improved. An improvement process is currently happening behind the scenes. One of the key points in that is to allow commissioners, rather than suppliers, to search by type of organisation in terms of social impact. That is not currently possible—I do not think that the system has been changed yet, but that is in the reform process at the moment.

That change would be powerful as it would enable commissioners to drive their social impact by finding such suppliers a bit more easily. However, it is good that the portal is there and I am glad that a reform process is happening. As organisations, we need to keep pushing to make sure that that happens.

Gordon MacDonald: David, I am keen to understand what improvements can be made. In your evidence, you highlighted that £1.8 billion—25 per cent—of the sector's income, comes from contracts. The figure has doubled since 2007 and between 2018 and 2021 it again by £0.5 billion. What changes would you like to happen to increase that share?

David Livey: There are a fair few, and I can run through them. One thing that we have talked about already is adopting a partnership approach to commissioning.

Gordon MacDonald: I am asking in particular about the Public Contracts Scotland website. My colleagues will ask about other issues.

David Livey: Got you.

Duncan Thorp touched on the work that is going on behind the scenes to improve the website. Some feedback has come through in the Scottish Government's research about it being cumbersome or difficult to use, particularly for smaller organisations, as Pauline Gordon said. However, the work that the Scottish Government

officials are doing behind the scenes is very welcome. My chief executive, Anna Fowlie, is very complimentary about the work that they do behind the scenes. They very much listen.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will direct this question to David Livey, but I am sure that it is applicable to the others, too. You have highlighted that the majority of your members who have bid for public contracts have a negative or a neutral opinion of the process. There seem to be no very positive opinions of it. Will you expand on that a little bit and detail the issues that your members encounter? How can the accessibility of the system be improved?

David Livey: Sure—no problem. I think that you are referring to the research that we did in partnership with Social Enterprise Scotland. One barrier that I have touched on a bit already and which comes through in the research, is the lack of capacity, particularly in smaller organisations. They just do not have the resource, time or staff to engage with the procurement process.

Another barrier is, as I have said, complex procurement processes that require information that is not necessarily proportionate or relevant to the scope of work or the value of the contract.

There is also a lack of consistency across public bodies. Last week, at the third sector employability forum, I was told by a person whose organisation bids for contracts across all 32 local authorities that no two authorities use the same approach.

As has already been mentioned, central procurement systems, such as Public Contracts Scotland, can be difficult to use. There is insufficient pre-bid engagement with providers, insufficient lotting of contracts, ineffective use of framework agreements and lack of feedback from public bodies to those whose bids are unsuccessful.

The big issues are insufficient funding for the value of the contract and short contracts. Contracts of a year or less mean that charities have to take on and absorb quite a big risk.

Sorry—that was a whistle-stop tour. I hope that that answers your question.

10:15

Colin Beattie: Are you saying that all contracts are for a year? Surely not.

David Livey: No—but many are. We have talked for a long time now about the importance of multi-annual funding. I was reading recently, in preparation for the committee session today, the fair funding statement that we signed in 2009 with Scottish Trade Unions Congress, CCPS, Unite

and Unison calling for five-year contracts for third sector organisations. That was then cited in the Christie commission. Longer contracts would allow voluntary organisations to plan for work and not have to go through the difficulties of, for example, considering redundancies year after year.

I will refer to contracts that are for a period of a year. Sometimes, they can be for a shorter period—if a local authority goes out to procurement late, for example. Last year in the employability space, local authorities went out to procure year-long contracts in August and awarded them in September.

There is room for improving practice and moving to multi-annual funding frameworks. That is true of grant funding as well.

Colin Beattie: I do not think that anybody argues that three or five-year contracts would be much more desirable than an annual contract. The difficulty always comes back to the problem of Scottish Government funding, which it gets annually, and it is difficult for the public sector to commit beyond that annual funding. It is a common and acknowledged issue.

You talked about the physical system being quite complex to access. Is that across the board, or are there examples of better practice that could perhaps be held up?

David Livey: I will defer to Pauline Gordon on that one.

Pauline Gordon: Are you talking about the PCS system or about the whole process around procurement?

Colin Beattie: I am talking about the whole process in general. Are there examples that could be held up as being better than others, or is complexity a general issue because of the fundamental procurement system?

Pauline Gordon: No, I do not think that the PCS system is the problem. If you look across the process of procurement from the commissioning end right through to whether something goes to procurement or not, the process is a challenge at times.

Examples of good practice that I know of or have been involved in are when you go to the market early, prior to the tender process. You talk to people about the needs in that community, the providers navigate towards that engagement and there is an understanding of one another's perspectives and constraints. That is a much healthier dynamic—you feel like partners in the process rather than just being providers of something. That is where the good practice in Scotland happens. With that approach, if something goes to procurement after that dialogue, everybody understands what they are

buying and why they are buying it in such a way. That results in it being a competitive process. That is a fact of procurement.

In that scenario, the groundwork has been much more fruitful in finding the right providers and having the right conversations. For me, the most important point of that is the understanding of perspective between the public body, the commissioners, the procurers and the providers and their staff. It is much healthier to be seen as partners in the design and delivery of public services than to simply be seen as buyers and suppliers.

Colin Beattie: Pauline, I will pick up on something else that David Livey mentioned: the lack of consistency. How widespread is that? Is it a case of one sector doing it one way and another sector doing it another way, or does that happen because individual bodies are carrying out the procurement process?

Pauline Gordon: That generally happens at public body level; it is not a particular sector in any respect.

In some senses, we want to give, for example, local authorities the flexibility to interpret the rules in a way that is good for their area. I work in Glasgow, so I would want that flexibility to be in place in Glasgow. Employability money comes from the Scottish Government and goes to local authorities or to local employability partnerships. There is a point at which you have to look at local circumstances; there must be enough flexibility in how you might go to the market to spend employability money or whole family wellbeing money, for example. The procurement processes have been administered in very different ways. Sometimes, that is frustrating, but we have to allow that flexibility. There is no right or wrong approach.

You and David Livey mentioned length of contracts. We would want eight-year to 10-year contracts. That would give continuity, embed fair work practices in the providers and their staff and give continuity of care to the people whom they are supporting. However, if there is a 10-year contract and only three large providers are delivering that, you would be locking everybody else out of the market. Sometimes, the argument can be made that you need to be careful what you wish for. Therefore, dialogue is important.

Colin Beattie: I bring in Duncan Thorp to respond to the question of consistency and the complexity of the procurement system in particular.

Duncan Thorp: The first point is the barriers that David Livey mentioned. I can certainly relate to those because they were raised in our survey.

We have heard that from social enterprises and charities directly ourselves.

There are some good case studies of where procurement is working well and we should probably promote that a lot more. We can certainly dig down into our research a bit more and come up with some examples of where it is working well and why it is working well. That is really important; we can do that.

On the point about inconsistency, that is about interpretation of the law. The interpretation of the Procurement Reform (Scotland) Act 2014 will vary depending on the officer, the local authority or the public body. The question of interpretation arises with any legislation, and that applies to the 2014 act as well.

I guess that one of the key questions is how we change that. Again, a lot of that is about culture change, and about having clearer guidance and clearer legislation. Perhaps that could be more directive. There is certainly inconsistency.

As a general point, we policy makers and commissioners need to look at those things from the perspective of the organisations if we are to really understand the challenges that smaller organisations face. They are running their businesses, so for them to take part in procurement is potentially a big deal. It is next level in terms of what they are already doing. There is a real barrier—sometimes, this is a psychological barrier, but it is a capacity barrier as well—to taking part in those processes for a small organisation that might often be struggling to survive.

The Convener: Just to be clear on the issue of multiyear funding, regardless of who gets the contract, whether it is a private sector organisation, a social enterprise or a private enterprise, the length of the contract is the same for everyone who bids for it. Is it typical to have a one-year procurement contract, given the amount of work that is involved in that?

Also, I think that that is a different issue from voluntary sector funding. When we have the FSB and other organisations in front of us, they tend not to raise the issue of multiyear funding. The issue of multiyear funding in procurement is different from the issue of funding for the sector. Is that correct?

Pauline Gordon: We would want multiyear funding in both cases. For example, fair work is seen richly in procurement contracts now and we would all find that laudable. If you have some staff working on contracts and others working on different sources of funding for different projects, it is really challenging to embed fair work across all staff in that organisation, because pieces of money are coming with a contribution to ensure

that you can pay the real living wage and all the other components of fair work, whereas other aspects of funding do not reflect that as keenly.

That is a challenge, but we would always argue that fair funding equals fair work. Irrespective of whether that income comes through a procurement opportunity or a grant funding opportunity, we would warmly welcome it.

For far too long, we have hobbled from one year to the next because of how funding arrives at local authority level or health board level. That has been very difficult for third sector organisations because they cannot plan properly. Do they take the risk? Do they think about their legal duties to their employees? How fast do they implement that? It is really challenging. That is the situation in a grant funding context or in any income context, whether that relates procurement or not.

Colin Smyth (South Scotland) (Lab): I would like to follow up on the point about fair work. To what extent have the 2014 act and the changes to the procurement process helped to embed fair work? We have talked about the fact that the main barrier is the absence of multiyear funding, but to what extent has the 2014 act embedded fair work in the practices not only of the awarding authorities but of the organisations that bid for contracts? I take on board the issue of multiyear funding, but what else can we do within the process to expand the adoption of fair work?

Pauline Gordon: It is really good to see the fair work first approach being embedded in procurement contracts and how that is translating through to grant arrangements. We wholeheartedly support that.

However, although the fair work first approach is working, for me, the issue is the timeframe. People make a commitment, but what happens if funding does not come through or they are given short-term contracts? We do not want that to happen. We want to embrace all the aspects of fair work—not just the real living wage, but the employee voice, the valuing of staff and career progression. All the aspects of fair work are laudable. I think that everybody would support that. It is the implementation of it that is challenging when people are going from one year to the next.

Colin Smyth: David Livey is nodding. Is there anything else that we can change in the process to better embed fair work?

David Livey: To echo some of what Pauline Gordon said, we are supportive of conditionality for good things such as fair work. With regard to the difficulties that voluntary organisations are presented with in making the whole thing work, they need to have fair funding. If we want to have fair work and payment of the real living wage, that needs to be built into the contract. That does not

always happen. I have already touched on the fact that some organisations find it too difficult to make the current funding environment work.

We are very supportive of the fair work agenda and conditionality within contracts, but those things need to be resourced if we are to be able to deliver on them. That takes us on to the issue of multi-annual funding. If organisations have to constantly go through a retendering process, that takes up capacity, it means that they are stuck in a doom loop and it makes things very difficult.

Colin Smyth: That is very helpful.

I have a question for Duncan Thorp. In its written submission, Social Enterprise Scotland suggests that there is a risk-averse culture in some procurement departments and, perhaps, a preconceived notion of what a social enterprise is, which limits the desire to award contracts to social enterprises. Will you expand on that point? Do you have any evidence on what the scale of the problem is?

Duncan Thorp: I will start with the positives. There are various programmes to bring together suppliers with commissioners. For example, the Supplier Development Programme brings people together through things such as “meet the buyer” events. A lot of activity to break down those barriers is happening, but it needs to happen on a bigger scale.

I cannot point to evidence to show what the current situation is, but there is a risk aversion among commissioners and a misunderstanding, whereby social enterprises or charities are not seen as being as professional as businesses. There are a lot of misunderstandings about what a social enterprise is. I am being anecdotal here, but that is the perception among some commissioners. The issue is not necessarily to do with the procurement officers; the barriers might be to do with legal and audit, for example. Although procurement officers might have an understanding of social enterprises, they might be simply unable to take forward that process.

The increasing conditionality of contracts with regard to fair work and paying the real living wage is welcome. I think that 85 per cent of social enterprises already pay the real living wage. We are very supportive of the real living wage and the increasing use of such conditionality, but, as has been mentioned, we need to be aware of the costs on small organisations, in particular, of meeting that criterion. That is an important point to make. Funding and contract values need to increase to reflect payment of the real living wage or conditions to do with, for example, the employee voice. We are certainly strongly supportive of the fair work agenda and conditionality in contracts.

Colin Smyth: You have all talked about the fact that there are many organisations that are not even involved in public procurement because of the barriers. Is fair work a barrier to some of those organisations?

Duncan Thorp: Do you mean from the point of view of getting involved in procurement?

Colin Smyth: Yes. Are they put off by the requirements? We want to embed fair work across the board, so we must break down the barriers.

Duncan Thorp: Broadly speaking, social enterprises and charities are very supportive of the fair work agenda in general. They are driving the fair work agenda, so it might be easier for them to meet those criteria than it is for private sector organisations.

Colin Smyth: That is helpful.

10:30

Maggie Chapman (North East Scotland) (Green): Good morning, and thank you for what you have contributed so far.

I want to explore conditionality a little bit further. At the beginning, in response to some of the convener's questions, you spoke about the disability employment gap and what more we can do in the procurement space, on that. There was also a conversation about outcomes and the balance between price, social good and impact. In making procurement work for people, how can we deal with other equalities issues? That ties back into the issue of community wealth building, as well as more general community resilience.

Pauline, do you want to kick off? Gender is one element of that, but it is not the only one.

Pauline Gordon: I am very passionate about the disability employment gap because, for a long time, I have worked with supported businesses and social enterprises that support people with disabilities or other barriers to the labour market into work.

In a procurement context, supported business has a legislative two-part test; the rest of the sector does not. I think that we are missing a trick, because the legislation changed the proportion of disabled people that an organisation needs to have in order to qualify as a supported business from 50 per cent to 30 per cent, so that market could be a lot bigger than we think it is. Given that we already have a supported business framework, there is an opportunity there. That has been hugely beneficial, but, in my view, the lots have been too narrow, which has meant that the number of providers on the framework has been limited.

There is an opportunity there. I am keen to work with my colleagues here to do further research on what the supported business market looks like now that the legislation has changed and whether we are reaching as many people in organisations as we could under the reserved framework.

There is another opportunity: public bodies could use a reserved contract without going through the collaborative framework. They could simply do that. That is an underutilised mechanism. Public bodies are not thinking about the disability employment gap as much as they could be under the reserved contract regime. Moreover, the sustainable procurement duty makes direct reference to addressing inequalities in the area that an organisation operates in. I think that that is getting a bit lost. Procurement people think about social impact and environmental clauses in their contracts, but what about addressing inequalities? That needs to be picked up. There is more that we could do on that.

Maggie Chapman: When it comes to the mechanism that could be used for that, do you think that the proportions that are given to certain criteria in the sustainable procurement duty would be the most effective way of enhancing the value that is given to sustainable procurement?

Pauline Gordon: Absolutely. It depends on the purpose. What is being bought? What is the purpose of the activity? People need to work back from that and think about how they could best address inequalities in whatever way is relevant to the contract in their local area. Proportionality is important. We cannot do everything at the same time and have the same impact.

Maggie Chapman: David Livey, do you want to comment?

David Livey: I do not have much to add to what Pauline Gordon has said. As I have said, we support conditionality, as long as voluntary organisations are supported and resourced to make good on that.

With regard to awarding contracts to supported businesses that have a certain proportion of disabled people working in them, I would defer to my colleagues in the organisations that represent the disabled community.

Maggie Chapman: I am thinking not only about the disability employment gap—there are other protected characteristics and other equalities issues. Are there other elements that we should be thinking about? What other mechanisms could we use in procurement to enhance gender equality in the workplace or to draw people into a sector who would not traditionally work in that environment? Are there ways in which we should use procurement to do that?

David Livey: Yes. I think that Pauline Gordon has already covered the sustainable procurement duty and the provisions on that that exist in the 2014 act.

Maggie Chapman: You talked about supporting conditionality as long as grant funders recognise that they need to provide the resources for that. What is your assessment of the extent to which grant givers and other funders understand full cost recovery? Do they understand the extent of what that means for charities and the different types of organisation that SCVO represents?

David Livey: The experience will be mixed, depending on who they are working with. I have had feedback that some organisations can make certain contracts work only at a loss, which means dipping into their reserves or their own fundraising. Obviously, that is not fair on them. Such examples exist.

Maggie Chapman: If we are doing procurement right, those examples should not exist, should they?

David Livey: No.

Maggie Chapman: There is a gap there for us to close.

David Livey: Indeed.

Maggie Chapman: What mechanism do you think could be used to close that gap?

David Livey: I have talked about that already. Fair funding is a huge issue—we must make sure that organisations are properly resourced to be able to deliver such things. Multi-annual funding is another big issue.

Duncan Thorp: You can always add to conditionality in contracts to drive equalities. It is important to do that. However, I come back to the point about making sure that organisations are able to afford to do that and are given extra resources in order to be able to implement that. It is important that we drive equalities through conditionality in contracts. Obviously, the more social enterprises and charities we award contracts to, the more we will drive the equalities agenda. That will depend on which groups organisations are working with. Often, they are working with excluded groups in society. Therefore, the more they can employ, the better.

Pauline Gordon talked about reserved contracts, which have not been used enough. There are avenues other than the traditional procurement processes. As well as reserved contracts, there are quick quotes. Through our survey, we received feedback that some authorities are going through a procurement process when they could be going through a grant process, which is a bit worrying for some people. Procurement is not the only—what

is the phrase that I am looking for?—show in town. There are alternatives to the procurement process that could be used to drive equalities or other issues.

Maggie Chapman: What is your assessment of why procurement is being used when grant funding or other mechanisms, such as service level agreements, could be used?

Duncan Thorp: I am not sure why that is happening. We got a couple of bits of feedback to that effect from our survey. Beyond that, I am not sure.

Maggie Chapman: We might need to do some digging on that.

Duncan Thorp: Yes, I think so.

Maggie Chapman: What is the reason for the lack of use of reserved contracts? Is that simply because they have not been talked about? Procurement has a lot of stuff built into it and around it, so there is some work—

Pauline Gordon: If I may say so, the organisation concerned would have to do its own due diligence. There is a two-part test when it comes to a supported business. The local authority would have to do due diligence to ensure that a business was a bona fide supported business, if you see what I mean. I think that the market is broader than that.

There are inventive ways in which we could address inequalities that chime with the sustainable procurement duty. Those might include innovative community benefit clauses or internships that would involve targeted recruitment and training of women in sectors in which they are not represented enough. There are inventive ways of doing it. The issue is whether procurement people have the time to dedicate to that. That is where you get the richness coming through in a procurement context.

Maggie Chapman: That is helpful. Thank you.

The Convener: Brian Whittle has a final supplementary.

Brian Whittle: There are organisations that could well fulfil part of a contract, which means that, in order to partake in that contract, they would have to seek partners, which is not the easiest thing in the world for a small organisation to do, or they would have to make a leap, take on more of the financial risk and expand. Is there a role for the contracting authorities to split contracts in such circumstances? Of course, that would involve more work as part of the procurement process. Would that be a way of bringing more community wellbeing into contracts? I think that there is a dilemma there.

Pauline Gordon: I would encourage the use of lotting. I have argued for lotting for a long time, and we are now seeing lotting being used. Sometimes that works really well, and sometimes it works against organisations, because providers will compete to go for the same lots—for example, the larger ones will have the capacity to go for all the lots.

My favoured approach would be that the commissioner thinks carefully at the front end about what they are buying and whether it merits a different approach to procurement, whereby collaborative bids could be sought. That would involve commissioners explicitly stating that they would like to see collaborative bids. That is much easier in a grant context because there is the flexibility to shape it, but that does not necessarily mean that it would not work in a good commissioning procurement process, in which there was a desire to get the best of all the providers in that market. I have done quite a lot on employability. That involves getting the sector together early enough to prepare for partnerships and collaborative bids. If that happens, the outcome is much better—much richer.

Rather than just lotting, we should encourage a collaborative approach. That could be done through an alliance arrangement or a public social partnership. Again, we have great examples in Scotland of not going to procurement right away but forming a PSP or an alliance, learning from that, getting the best of the outcomes and then going to procurement. We need to do more of that, which would help to shape improvements in procurement in the future.

David Livey: I have one thing to add to what Pauline Gordon said. One of the big takeaways from the research that we did with Social Enterprise Scotland was that, in response to our survey, organisations said that consortium bids are welcomed and supported within the culture and the practice. I draw the committee's attention to that.

Duncan Thorp: I agree with everybody; there has been an outbreak of consensus. A lot of work has been done through programmes to build collaborative effort for social enterprises and charities. Work has been done to break down contracts. We certainly need those different strands.

It is difficult for commissioners to break down contracts when it is easier for them to simply award one contract or to go down the traditional route. Again, we come back to the point about the outcomes. First, you need to think about what economic and social outcomes you want to achieve. The process should come after that. Rather than constantly thinking, "Should we break down this contract?", it is a case of thinking about

what outcomes you want to achieve in the first place. That is the starting point.

The Convener: In a few weeks' time, we will take evidence from Scotland Excel. I do not know whether you want to comment on whether that model is helpful for social enterprises, how difficult or otherwise it is to be part of Scotland Excel and what it means if you are not part of it.

Duncan Thorp: To be honest, I do not know enough about that to comment.

The Convener: When we spoke to Dovetail Enterprises, that was one of the issues that it raised with us. I do not know whether Pauline Gordon or David Livey wants to comment on the role of Scotland Excel.

Duncan Thorp: Pauline might have better knowledge than I do.

Pauline Gordon: The dialogue that we have at the procurement supply group involves meeting the centres of procurement expertise twice a year, and Scotland Excel is one of those. We have a really good relationship with them. We do not always agree with them, I have to say, but they are forward thinking. I see all the centres of expertise—Advanced Procurement for Universities and Colleges, Scotland Excel and national procurement for health—as being important stakeholders in driving improvements. They have their own constituencies, they listen to suppliers' issues and they are the conduits for getting better results in process and practice in the health sector, in the social care sector, in further and higher education and in local government. They have been great to work with. They listen to us. They might not always like what we say, but there is a good relationship there.

I think that we all have to play our part in driving forward improvements. It is not a case of laying blame at anybody's door. We all want the same thing. As I said at the beginning, let us focus on getting the best outcomes for the people of Scotland. Right now, in the current financial environment, we need to collaborate across and within sectors in order to get the best that we can get out of procurement spending, which is a big spend of £14.5 billion. I have a good relationship with the centres of expertise, but I think that we could do more with them. We raise the issues and they take them forward, but we do not always know what happens. It is incumbent on us and them to do better in that respect.

The Convener: David, do you have any comments to make on Scotland Excel from SCVO's perspective?

David Livey: No. I would defer to Pauline on that, as she has dealings with it.

The Convener: That is great. Thank you very much for your evidence this morning. I suspend the meeting to allow for a changeover of witnesses.

10:46

Meeting suspended.

10:54

On resuming—

The Convener: I welcome our second panel of witnesses. They are Lindsey Millen, who is the head of policy and development at Close the Gap, and Martin Rhodes, who is the chief executive of the Scottish Fair Trade Forum. Dave Moxham from the STUC is unable to attend this morning and has sent apologies. As always, I note that, if members and witnesses keep their questions and answers as concise as possible, we will get through business.

I have an initial question. We are undertaking a post-legislative inquiry on the 2014 act, and we are interested to know whether panel members feel that the act has been of benefit. What are the key changes that have happened, and what are the biggest challenges that remain? Perhaps Martin Rhodes would go first.

Martin Rhodes (Scottish Fair Trade Forum):

The key success of the legislation is the requirement in it for public bodies to set out in their procurement policy what their policy is on fairly traded and ethically traded goods. That has been useful. Public bodies now do that, and we can clearly see what their policy is. The biggest challenge is how that is monitored, measured and recorded. In relation to that, one of the biggest challenges for public bodies is the lack of a definition in the legislation for "fairly traded", so they use a range of definitions and, therefore, use different methods to record data in the system.

We carried out research for three years from 2019 to 2022, and we are currently collecting material from 2022 to 2023. From the first research period, we received data that is not really comparable, because, if one organisation or public body uses one definition and one uses another, they will record data in different ways from each other. It is very difficult to compare, for instance, one local authority to another or even to compare the data of one public body across time, because they do not necessarily use the same methods of recording each year. The biggest challenge is in how we measure success against the policies that public bodies now have, which is, as I said, the biggest success of the legislation from our point of view.

The Convener: Has the introduction of the policies that they now have been enough of a driver, notwithstanding the difficulties that exist in measuring the data? Has the expectation to produce a policy helped to drive the increase in the number of fair trade policies?

Martin Rhodes: It has certainly helped, by allowing organisations such as ours to say, “You have said this in your policy. What are you doing?”. It makes public bodies aware of their obligations. In that sense, it is a driver. Transparency and accountability without useful data is very difficult, so we do not have transparency and accountability yet. It is helpful to have the policy in place as a lever, but more is required.

The Convener: Lindsey Millen, what are the key changes since the 2014 act? What has been positive about it, and where are the bigger challenges?

Lindsey Millen (Close the Gap): National procurement policy and guidance is more progressive than it used to be, certainly in the sustainable procurement duty and requirements to take action around environmental and social considerations. One of the biggest challenges is in translation into practice and in the consideration of different types and sources of inequality. Asking organisations to consider social inequality more broadly is not the same thing as asking them to consider and take action on, for example, gender inequality.

We are particularly concerned about the absence of a clear through line in different aspects of procurement policy. The public sector equality duty, which has been in place since 2012, puts a specific duty on public bodies to integrate equality considerations into procurement practice, but there is no mention of that in the most recent procurement strategy, and the statutory guidance on the act contains only one line mentioning that the procurement duty in the PSED is a thing, but it does not contain any detail on that. Considering that there is a specific duty on public bodies to use procurement to advance equality and tackle discrimination as far as possible, we would expect that to be reflected in a broader procurement policy.

We know that, in general, public bodies struggle with action on inequality and require specific and clear direction, and they tend to see procurement and equality as two different things. They might be doing work on procurement and separate work on equality, which is really inefficient when they could bring those things together. That is one of the biggest challenges.

The Convener: Do you have an example of a local authority that has successfully brought

procurement and equality together? The committee heard about the community wealth-building pilots when we last looked at the issue.

11:00

Lindsey Millen: On examples of integrating equality into procurement, up until our last assessment—in 2021, I think—we did assessments of how public bodies were meeting the public sector equality duty, which included looking specifically at their action on procurement. Unfortunately, we were only able to find evidence of one public body that mentioned equality in its procurement strategy and that said that it would consider equality. There were no specifics about how it did so.

That is what makes it very difficult to ensure that equality is mainstreamed into public bodies’ practices. Even when they report on their work under the duty, if they do not mention specifics, that indicates that it is not happening. When public bodies report on their work on equality, they tend to be quite clear about the things that they are doing and about their successes, because they want to provide evidence of that. If they do not say what they are doing, the assumption is that, more likely than not, they are not doing it.

There is research on equality and procurement by Dr Katharina Sarter, an academic who is an expert on that. She found a small number of examples on equality action and procurement. I cannot reference any of them offhand right now, but I can certainly provide that information to the committee, if that would be helpful.

One of the things that she identified was that, to integrate equality considerations into procurement, the contracting authority has to have a clear understanding of inequality for each of the protected characteristics and of how that integrates into socioeconomic inequality. The authority needs to look at what it is contracting out and say, “What are the specific issues that might be different for women and men relating to this?”. It might also be different for racially minoritised people, for example. The authority might then be able to take steps to incorporate gender equality into the subject of the contract or foster equality in the workforce through a specific contract.

We know from our work on the public sector equality duty that there is an absence of the level of gender competence—or equality competence, more broadly—that is required to enable public bodies to do that. When you get further down the line to the people who have won the contract, it is unlikely that they will voluntarily start doing work on equality, unless it is clearly written into the contract. There needs to be a through line.

That is a much broader reflection, not only of procurement work but equalities work, because the public sector equality duty has been in place since 2012 and, prior to that, its predecessor duty, the gender equality duty, was in place from 2007. There has been a duty to consider equality in procurement since 2007, yet we have seen a decline in performance rather than what you would expect, which is that, if people do something for a long time, they get better at it.

Evelyn Tweed: Good morning, panel members. Thank you for being here. My questions are on price. Is price still a key determining factor in procurement?

Lindsey Millen: Our work on social care indicates that price is still the top concern in procurement. Procurement is a huge issue in how social care services are procured and designed, and, as we know, there is a massive crisis in social care just now. A big driver of that is the crisis in the workforce and the downward forces on the already extremely low pay of social care workers. With all the work that has been done around the development of the national care service, the independent review of adult social care was very clear that price was resulting in a race to the bottom in social care procurement and that it was a big driver of the issues in the sector. My answer to your question, in using that specific example, is yes.

Evelyn Tweed: You mentioned the sustainable procurement duty. What do you think about that? Does it need to be strengthened?

Lindsey Millen: It needs to be strengthened in that the things that flow from sustainable procurement are things that closely interconnect with inequalities, whether for women, disabled people, racially minoritised people or whoever else is covered by equalities legislation. There is a very siloed approach to action on things that are a bit to do with social progress, and that places a burden on public bodies that do not necessarily have the knowledge and understanding of how these things integrate, so they end up doing a piece of work on this aspect of the duty, a piece of work on that aspect and then something else.

We have the human rights bill around the corner, which will also include due regard duties on public bodies around human rights, although I do not know whether it will include anything on procurement.

One way in which the sustainable procurement duty could be improved is to make clear links in policy between all the different ways in which procurement can produce community benefits and to direct contracting authorities to really think about all the different aspects of it together.

Martin Rhodes: Obviously, price is key to a purchase of any sort, whether that is a purchase by an individual or a public body. Along with price, there are factors around the suitability and quality of a product, the reliability of supply and so on.

On price, if you have a system such as fair trade, which ensures that there is fairness throughout the supply chain in what people are paid at various points for their services or their products, that presents a challenge if you are competing against those who are not seeking to reach such standards.

However, with regard to most of the major commodities that are fair trade and available for public procurement, there is an economy of scale. Catering commodities such as tea, coffee and sugar, for example, are produced at such scale in the fair trade system that they can be competitive on price with non-fair-trade items.

Price is obviously a key consideration, but it is not the only one that is taken into account by people in the procurement system. They also consider other things such as, as I said, the suitability of a product, its quality and its availability.

Murdo Fraser: I have a question about the use of procurement to support local economies, which comes up time and again when we talk about procurement. There is a feeling that not enough is done within the system to ensure that the money is spent locally, particularly when it comes to things such as NHS boards and local authorities. I am interested to get your perspectives on that. Does the current legislative framework do enough to ensure that we direct funds to be spent locally? If there are barriers to that, is it an issue of legislation or simply an issue of practice?

Martin Rhodes: Quite often, when people look at fair trade products, they see them as being international and not local. A large part of that is true, given that we do not grow tea, coffee, bananas and so on locally. However, there is an impact on local economies when fair trade businesses that are based here in Scotland employ people and so on. There is a local element within fair trade, because it is about the whole supply chain from wherever the initial product is grown to where it is supplied locally.

A bigger issue is perhaps the size of businesses rather than their location. It can be difficult for SMEs to access procurement because of the size of lots and other things that have, no doubt, been discussed by others. One of the big challenges that fair trade businesses face is how they can get into the bigger procurement tender processes.

Lindsey Millen: I do not have any specific information from Close the Gap's perspective on how to retain money in local communities, but we

know that doing that has huge potential to tackle inequalities. When we think about women's access to the labour market, it is much easier for those who have childcare responsibilities if they are able to work closer to home, so an equalities consideration needs to be integrated in that work. It is important to understand that work on community wealth building and retaining money in local communities will not necessarily result in equal benefits for everyone in those communities. That is a really important consideration for us.

The Convener: Martin, is increasing the amount of fair trade products that are procured not just about the smaller fair trade distributors but also about bigger providers? Would it be appropriate for local authorities and the NHS to put conditions on their suppliers? I was not going to name particular businesses, but Sodexo is an example as it is one of the biggest suppliers. Is success in this area partly about making the bigger companies provide more fair trade products?

Martin Rhodes: Yes. Many of the bigger companies, particularly on the catering side, will have fair trade options available because public bodies have asked for them. I speak to many procurement officers, and the key thing that they say is that people need to ask for those things so that they know that they want them. There is a job to be done in getting public bodies to say that they want to have fair trade options available to them. They will then make a decision based on price, quality, suitability, reliability and all of that. However, asking for the option will at least mean that it is there when they come to those different aspects of the decision.

One of the key challenges for us and fair trade businesses lies in ensuring that they can supply others who are in a position to bid for contracts. Plenty of fair trade suppliers are capable of doing that, but the key thing is that we need to show that there is demand in the system. That is why we need public bodies to say that they want to look at those options and have them available through the bigger companies that are looking to supply.

I have talked about catering, but there are other fair trade products. There is huge potential in the market in fair trade textiles, but that has not been fully explored. Textiles are used in a range of ways in the public sector, including in uniforms, hospitals and various types of equipment. There is huge potential in areas outside catering where the market is not as developed as it could be. However, we need public bodies to ask for those options to be made available to them so they can then at least assess them as part of the process.

Gordon MacDonald: What is your members' experience of using the Public Contracts Scotland website? How easy is it to use? How transparent is it? Are any improvements required?

Martin Rhodes: I cannot tell you, as I have not had those conversations. I can certainly have conversations with members and report back to the committee. However, picking up what the convener said, I note that many of our businesses do not bid directly for contracts but instead supply other people. That is probably why I have not had those conversations, but I can check and come back to the committee on that.

Gordon MacDonald: Thank you.

Lindsey Millen: We work with contracting authorities around equality and procurement. Unfortunately, because examples of procurement by public bodies that integrates equality are few and far between, I do not have any examples of conversations that I have had with people on that either.

Gordon MacDonald: Right. I will leave it at that, convener.

11:15

Brian Whittle: It is interesting to hear you discuss fair trade and equality. The reality is that fair trade products cost money to produce. We hold our food producers to such a high standard and we have to accept that there is a cost associated with that. I get the sense that the legislation is reasonable but that we can improve on its implementation.

I am a big advocate of local food procurement, given the positive impact that it can have across much of society in terms of community wellbeing. Should we do procurement the other way round, first looking at the outcomes that we want and how we can commission things, and then putting the procurement into practice? It seems to me that, at the moment, the pressures on councils' budgets are having an impact on fair trade and equality. I am sure that everybody wants those things, but everybody is looking at the bottom line.

Lindsey Millen: Yes. Looking at it the other way round would be really effective. There is a lot of consideration of activities and outputs rather than outcomes because of the way that procurement processes are designed. There is extensive evidence that, if you are not considering equality in procurement in the design of services and how contracts work, you are unlikely to get best value for public money because so much of what is procured might have very different impacts for women and men, for example. If you are not designing a service to meet the needs of the people that it is intended to meet, you are wasting public money, in many ways. If you design it better and it is better targeted, it might be more cost effective.

That is the intention of the equality mainstreaming duty in the public sector equality duty, which says that public bodies should be considering equality in all their functions and integrating it in their policy development. The evidence tells us that equality considerations are directly linked to value for money. What outcomes do we want? Who is benefiting? Who is the service meant for? If consideration of all those things comes first, we are likely to see a more publicly beneficial procurement process overall.

Martin Rhodes: On the question about cost, as I said, price is central when people make purchasing choices, but the main fair trade products in the public procurement system are comparable on price. We also need to consider quality as part of the discussions about procurement, because quality products—particularly in the case of textiles, which I talked about—can last a lot longer. What looks like a short-term cost might produce a saving in the longer term because the product lasts longer than another product that would be cheaper to buy in the first instance. We need to look at cost over a longer period.

As I said, products for which there is already a clear fair trade market are competitive on price. If you go into many public bodies and you get a cup of coffee, you will see that they have Fairtrade certified coffee, sugar and so on. Those products are perfectly competitive on price because of the economies of scale. They are also procured because they meet the purchaser's required quality standards.

You suggested that implementation is the problem. However, the point that I am making is not so much about implementation. It is more about how we record what is being done. It is difficult to say whether there are problems in implementation when we cannot fully work out what has been implemented because of the lack of definitions and monitoring systems. There may well be quite a lot of underreporting. When we contact public bodies and ask them what fair trade products they bought in a particular financial year, there will be significant underreporting because it depends how they have recorded things in their systems. If they have recorded a procurement of fair trade coffee, tea or whatever, the amount that they have spent on those fair trade products will show up. However, they might have just recorded it as coffee, or they might have used the brand name. It might have been fair trade coffee, but it will not show up as such when they do a search for us with regard to what fair trade products they have bought.

The problem lies in implementation in a sense, but not in relation to people buying products. It is more about how they record what they buy, how

they monitor it and whether somebody from outside can look at that and say, "Here are the figures. They are transparent and I can compare what this local authority is doing with what others are doing." The main weakness lies in the way that procurements are monitored, recorded and defined. If we can find a system whereby organisations do that in the same way, we will be able to say to organisations, "If others can do this, why can't you?" We will be able to say, "You managed to do this last year. Why can't you do it this year?" There may be reasons for that. That is fine, but we need to be able to compare what bodies are doing in order to have transparency and accountability.

Brian Whittle: I have a quick follow-up on the point that purchasing goods in the longer term will save you money. Just to play devil's advocate, I say that I am not sure that councils always have the luxury of being able to do that. They do not have the front-end ability to purchase goods that would give a better service and have longevity, because of two things: first, the fact that they do not have the front-end money and, secondly, the fact that they will be questioned on it. How do we get around that?

Martin Rhodes: I totally agree with you with regard to why public authorities—not just local authorities—make such decisions. It is because of the way in which their budgets are set. They have to make those decisions in order to make sure that they are spending within the limits of their budget in a particular financial year or whatever period that they are looking at.

This is therefore not necessarily a criticism of those public bodies; it is more a criticism of the system, the emphasis on annual or even three-yearly budgets and what that means for the ability to look ahead. If you do not have the money in a particular year to buy what you need, you will go for the cheaper option, because you still need to buy whatever it is.

I will not open this up into a discussion of how public bodies or local authorities are funded, but I think that there is an issue whether the budget process for public bodies as a whole creates some of these problems, not just in terms of my particular interest with regard to fair trade but in budgeting decisions more generally.

Brian Whittle: Lindsey, do you have anything to add?

Lindsey Millen: We have not done work on that specific issue, but, on your question about the suitability of the legislation, I think that what we are looking at here is definitely a "translating policy into practice" challenge. There is room for the legislation to be clearer on how the procurement duty within the public sector equality duty relates

to, say, the sustainable procurement duty or a public body's strategy. For example, the requirement on public bodies with significant expenditure to publish a procurement strategy could also require them to state within that strategy how they will use the public sector equality duty on procurement to shape their procurement work as well as include a statement of their general policy around equality. There are small ways in which the legislation could be changed, but I would say that the bigger piece of the work is definitely translating the policy ambition into practice.

Brian Whittle: Thank you.

The Convener: As we are talking about the legislation, I note that, with contracts of a value of up to £50,000, the quick quote system can be used. Lindsey, do you have any views on that? Previous panels have told us that the threshold has not been changed and, indeed, could be increased, and the quick-quote system could take out some of the bureaucracy and perhaps some of the barriers that smaller businesses—perhaps more women-led businesses—are experiencing in getting into contracts.

Lindsey Millen: We have not done any work specifically on the impact of that financial threshold, but certainly anything that facilitates smaller businesses to participate in procurement will be a good thing, especially from an equality perspective. We know that, in general, employers do not do enough on equality. I am thinking, for example, of large private and third sector employers that are required to publish their gender pay gaps under UK-level legislation; when we looked in our assessment at half of the Scottish employers that fall under that purview, we found that less than a third were taking action to tackle their pay gap.

When you look at the support systems that smaller businesses have to facilitate work on equality, you see that it is even harder for them to do these things. On one hand, all these large employers not doing enough, while, on the other, there are these smaller employers that have great intentions but do not know how to think about equality, because they do not have a human resources department, for example, or an equalities expert. That additional layer of bureaucracy around procurement will combine with the struggles that they face in integrating equality into their own practice as an employer, or even in designing services that might have a gendered impact.

The Convener: There is also the £4 million threshold, which means that, with contracts of a value equal to or in excess of £4 million, authorities must consider including community benefit requirements. Martin, do you have any

views on that? The committee has heard previously about the community wealth building pilots—I think that there is one in Clackmannanshire, and that five regional authorities are involved overall—but do you think that that threshold is still appropriate and effective in driving community benefit policies?

Martin Rhodes: We do not have a view on that particular element, but we have had discussions with those involved in community wealth building. In response to an earlier question, I talked about understanding fair trade by looking at the whole supply chain, from producers, potentially in the global south, to those involved in transportation and production and then to people working here in Scotland on the wholesale, retail and import side of things. There is a piece of work to be done on how wealth building in one community can help to build wealth in another and how we can have that kind of virtuous circle.

For example, I am aware of a fair trade importer—True Origin in Paisley—that is importing trade goods from different parts of the global south. That has an impact not only on the communities in Malawi, Eswatini and the other places from which they import but in Paisley, too, given that people there are being employed in the business, in the warehouse and in the marketing of those products.

Another example in Paisley is of fair trade coffee being imported from Rwanda and roasted by the Gatehouse Coffee Roasters—a local coffee roaster in Paisley—and then sold in Rainbow Turtle, which is a fair trade shop in Paisley itself. As a result, you have, just within that community in Paisley, a whole supply chain going right from farmers in Rwanda to people roasting coffee and then selling it in a shop. It is an example of how community wealth building does not have to be inward looking; it can be outward looking, too, with one community's wealth building supporting wealth building in another.

The Convener: I call Kevin Stewart, to be followed by Colin Beattie.

Kevin Stewart: It is a pity that George Adam is not here, because he would without a doubt have been interested in those Paisley stories.

We have heard from others—and, indeed, from the witnesses here today—about bureaucracies and that, sometimes, the system is still process driven. The legislation itself is good, but when it comes to implementation, things can still be process driven. We have also heard that the tender documents, the putting together of the contract and the commissioning can be good but, when the lawyers and the accountants get a hold of it all, everything changes. What is your experience of some of the risk-averse situations

that come into play when, say, lawyers and accountants get a hold of all of this? That question is for Lindsey Millen.

11:30

Lindsey Millen: I am not sure that I can offer a specific view on that aspect of the process, but what you have said about bureaucracy and things being process driven could also be said about procurement strategy and practice in public bodies and about public bodies' approach to complying with the public sector equality duty. We are seeing a lot of bodies not thinking about outcomes or asking what their organisation needs in terms of equalities competence as well as competence in relation to procurement in order to do the whole process correctly. You end up in what could be called a "must complete form" cycle, which does not build capacity or the institutional knowledge that the organisation might need to do that sort of thing well.

Kevin Stewart: Let me give you an example, and it might be something that you have come across. At certain points—although not so much recently—there has been a real aversion to putting fair work into contracts, with lawyers saying to folks, "We cannot really enforce this" or "We might be challenged on this." There was also the European ruling—*Rüffert v Land Niedersachsen*. What is your feeling about aversion in that area and has it been overcome to the degree that you would like it to have been?

Lindsey Millen: There is a lot to be done to embed fair work requirements in procurement, which, again, has to do with a lack of understanding of what that means in practice and what it is possible to do. There is a narrow sense of what can be done to advance equality through procurement, and that connects back to the lack of a long-term view and building capacity based on an understanding of what can be done. Perhaps that sort of thing will require more detailed guidance from Government.

Public bodies need to be reassured that asking for action on equality is not necessarily precluded from being part of a tender. There are lots of good examples of that being done; indeed, the research that I referred to earlier has good examples of that happening in Scotland.

I think that what we are talking about is more of an understanding and capacity-building exercise, probably for lawyers, too. It is definitely underused and has huge potential to create change. We need only think of social care—funding questions aside. If you required social care providers to think about inequality in their workforce around, say, employment practice and pay levels, you might not only create a much better service for people who

require care, but tackle one of the widest causes of women's labour market inequality, which is low pay and women's concentration in those types of jobs. The knock-on effect would be massive. Therefore, that risk aversion around fair work is definitely a concern.

Kevin Stewart: Fair pay often ensures that absence rates and other things go down, as can taking account of folk's caring responsibilities. Is enough work being done on that in procurement?

Lindsey Millen: There is a strong business case for taking action on gender equality, and more businesses are becoming aware of that. However, the same issue is affecting businesses as much as it is affecting things at a larger level: we know all of this, but how do we put it into practice? Is it just something that is nice to have when times are good and we can devote time and resource to thinking about it, or is it something that falls off the side of the table when financial pressures arise or when another perhaps higher-profile policy comes along?

Employers do understand the business benefits, but that does not always translate into change—for varying reasons. There can be knowledge and capacity issues with regard to gender equality and procurement; there can be financial pressures; or it can be a case of not understanding the business benefits of long-term investment and long-term return.

It is just not happening enough, which is frustrating, because, as has been said, the knock-on effects can be huge. There is a massive recruitment and retention challenge across the labour market, and I think that employers are missing a trick here.

Kevin Stewart: Basically, people are short-term bean counting instead of necessarily looking at the whole-life costs.

Lindsey Millen: That is right.

Kevin Stewart: Grand. Martin, do you have anything to add on bureaucracy?

Martin Rhodes: Our organisation does not have a set view on lawyers and accountants, but, more generally, I come back to the question of risk. This is the case not just in the public sector, which we are talking about now, but in the private sector, but there are risks from not having knowledge of your supply chain. Indeed, we have seen private companies, third sector organisations and public sector bodies that have not known their supply chain finding themselves with a damaged reputation. Huge damage can be done to a business or an organisation if it has not done any checks on where it is getting its uniforms from and if it is then discovered that the uniforms have been

made using forced labour, child labour or whatever it might be.

There is an argument to be made about seeing risk in different ways. If you do not look at your whole supply chain and at the treatment of the different people in it—from your direct employees to the people with whom you are contracting or subcontracting—there is a real risk of your business being damaged when something becomes public. There is work to be done by organisations such as ours and others to ensure that people realise that there is a risk element to not doing proper diligence on their supply chains.

Kevin Stewart: Thank you very much.

The Convener: I call Colin Beattie, to be followed by Colin Smyth.

Colin Beattie: I turn to Martin Rhodes. I am looking at your submission, particularly the report that you produced on the freedom of information questions and so on that you asked various public bodies. I was interested in some of the results. You state that

“public bodies have vastly different ... understandings of Fair Trade”.

That is a pretty sweeping statement. How vast are those differences in understanding and how do they come about?

Martin Rhodes: Because the 2014 act does not define what it means by fair trade, when we have asked public bodies what they have bought that is fair trade, we have found that the definition that they used has been left to them. I am not saying that they have created their own definition, but that they have taken a particular definition from somewhere else.

Some of those public bodies used a very tight definition, which is essentially asking whether they have bought something that is recorded in the system as having the Fairtrade mark certification on it? It is a very tight definition in that sense. However, if you look at the very long appendix to our report, you will see that others have essentially included anything that has any ethical consideration in its purchasing. That is why I am saying that, without a definition that is taken up by everybody, it is difficult to compare one to the other. You can say, “This body has only spent £50,000 on fair trade and this one has spent hundreds of thousands of pounds”, but when you look more closely, you can see that they have included very different things. One might just use Fairtrade certified coffee and sugar, while others might put in something like a refresh of their information technology equipment in which they used some sort of ethical consideration. I am not saying that we would not want them to do that; I am saying that you are not comparing like with like

because they are using different definitions of “fairly traded”.

If there was one thing I would want from any change in the legislation or how it is implemented, it would be to give public bodies a definition of what they should regard as fair trade in their recording and in any monitoring. From our point of view, that would be most useful. I would hope that it would not need legislation and that some official guidance would give that definition so that, when organisations respond to the question, they all respond using the same definition. Then what comes out will be comparable year on year and between organisations. That is the problem that we have discovered.

When we set out to do our report, the idea was that we would set a baseline for all those organisations and we could compare them year on year and across each other. It is just not possible to do that, which is why I am saying that there is no transparency or accountability. You are looking at different things. From the example that I used earlier, how do we compare somebody who is using a very tight definition of Fairtrade certified coffee that has been recorded as such in our systems, to somebody who is using ethical considerations in purchasing?

Colin Beattie: Which is correct?

Martin Rhodes: I would suggest that it is a fairly tight definition of “fair trade”. If I want a definition to be used and I want to be able to measure its use, it would be defined as items that are certified as fairly traded through the two major international fair trade systems, Fairtrade International and the World Fair Trade Organization. That would give a measure that is comparable across each.

That is not to say that they should be asked to go with those in their procurement; they could choose whatever they want. It is just about how they record it and how we measure it. That would give a definition that uses the two major international systems that would be used in recording spending, and it would mean that we could compare like to like across years and across organisations. That is what we would prefer.

Colin Beattie: That seems to be a simpler approach. What you are describing is organisations going down into the weeds and coming up with other different definitions and so on, which are very difficult to measure against.

Martin Rhodes: Yes. There are two well-recognised international systems in place and their labels identify products as such. It is not a question of having to dig out information about whether something is Fairtrade certified; it will be there on the labelling and marketing. That would be the simplest way of allowing us to compare.

There might be other things that are equally as good as something that has been fair trade certified and organisations might choose to buy them. That is fine. That does not rule that out. I am not suggesting changing the procurement rules. It is just about having an indicator or measure that you can use.

Colin Beattie: How best can this be taken forward? Definition is really important.

Martin Rhodes: As I said, I hope that there is some way. I would put it back to the parliamentary experts in the committee to decide on the best way of doing it through the process of Parliament or Government. I presume that putting some definition in guidance would be easier than putting it in legislation. It would be great to have it in legislation but I am not suggesting a whole new piece of legislation. Some guidance needs to be issued to public bodies that defines what we mean by “fairly traded” as set out in the act, and that organisations should record it so that it can then be measured.

Colin Beattie: Lindsey Millen, do you want to add anything to that?

Lindsey Millen: We do not do work specifically around fair trade, so I probably do not have anything to add that has not already been said well.

Colin Beattie: Thank you.

Colin Smyth: My colleague has some questions on gender inequality so you are not getting off lightly, but I want to pursue the points around fair trade. Although it is not a declarable interest, I want to put on the record that I am the convener of the cross-party group on fair trade and I also chair the Dumfries and Galloway fair trade steering group.

I almost feel a wee bit under pressure to answer Martin Rhodes’s question about how we pursue that definition. Just on that point, Martin, is guidance enough or do we need to underpin that definition legally through legislation to make sure it does translate into practice across public procurement?

Martin Rhodes: I would prefer it to be in legislation, because it is stronger. However, if that would take a long time and guidance would be quicker and would just work because it would give public bodies the tools they need to do it, I can see the advantage of going for guidance.

I do not know enough about the parliamentary process and what it would take put a definition into legislation. Is there legislation that it could be added into or could something be done in the near future? Would getting a separate piece of legislation on to the parliamentary timetable be more problematic and would it be helpful to have

guidance if it could be done more quickly in the meantime?

11:45

In principle, yes, it should be in legislation. In the run up to the 2014 act, we argued that such a definition should be in legislation. Obviously, we did not win that argument. It would be great to get it into legislation if it was possible in the near future, but otherwise, if guidance is easier and it takes us forward more quickly, I would be perfectly happy with that.

Colin Smyth: That is helpful. Notwithstanding the challenges of measuring something for which we do not have a consistent definition, based on the work you have done with public sector organisations and the best practice that is out there, can you say a bit about the scale of fair trade products being bought by the public sector within its multibillion pound procurement? Does that scale match our ambition as a nation to be a fair trade nation?

Martin Rhodes: As we have already discussed and as you have indicated, it is difficult to say what the actual level is for all sorts of reasons. My guess—and it is a guess based on the evidence, which, as you know, has all the problems that we have mentioned—is that a reasonable amount of fair trade items are being procured in some areas, particularly in some catering.

Could we go a lot further? Yes, we could. I talked earlier about textiles, particularly uniforms and so on. If you think about how many times you go into a public building and somebody is wearing a branded T-shirt or polo shirt with the name of the organisation, or if you think about the amount of textiles and other products that are used in the national health service, for instance, we could do a huge amount more.

Over the years, progress has been made with regards to fair trade and procurement in the public sector. There is so much more potential and I want us to be more ambitious. The whole purpose of doing the report was to help us do that through leveraging up, setting a baseline and then being able to measure against it.

Although the point about definitions and recording seems to be a technical one, if you have that definition and recording in place it is a good way of getting leverage to say, “Well, look, you can do more”, because you can say, “Here is an example of somebody who is doing more”. Although it seems very much like we are talking technicalities around definitions and how we record it, it would be a huge lever that could be used to be more ambitious about what we can do as a fair trade nation and how we can use public money in that way.

Colin Smyth: The definition is a clear barrier to achieving that but are there any other barriers? Is there an awareness barrier, with public sector bodies not realising that the local authority or the Scottish Government supports fair trade? Is there a barrier when those who carry out the procurement work simply do not think about fair trade when they are pursuing particular contracts?

Martin Rhodes: There probably is, across different organisations. For the report that I mentioned, we collected together policies and expenditure levels through all our questions about expenditure levels and how they are measured. There is no clear correlation between those who have the strongest policies and those who have the biggest expenditure. There is some but it is not obvious, and that suggests something about how corporate policymakers or policymakers in different public bodies are connected to their procurement officers. How are people working in public bodies, across departments and across different areas of interest? It might well be that, in some cases, the procurement officers who make the decisions about procurement are not aware of policy decisions that are being taken elsewhere in the organisation.

Maggie Chapman: Good morning to you both. Thank you for joining us and for what you have said so far.

I want to explore some of the equalities issues that Lindsey Millen mentioned earlier. Lindsey, you said in response to a previous question that there is a distinction between using procurement, or the mechanisms that procurement enables, for tackling or addressing gender inequalities compared to equalities more generally. Will you unpack that a bit more? Are any of the mechanisms ever in conflict with each other in looking at different groups that we might want to be focused on?

Lindsey Millen: As a good example of a social issue that has a specific protected characteristic-related equality aspect, poverty is the first thing that comes to mind. There is a strategy on tackling poverty and tackling child poverty—that is obviously a priority right now—but poverty in Scotland is gendered. Women are much more likely to experience poverty than men. They are more likely to experience in-work poverty, more likely to experience persistent poverty and find it harder to escape. Women with caring responsibilities and single parents in particular, 90 per cent of whom are women, are trapped in poverty by a wide range of factors, many of which are directly linked to their experiences of the labour market and concentration in low-paid work.

The gender pay gap is a key factor in women's inequality and higher levels of poverty, and women's poverty is inextricably linked to child

poverty. In thinking about work on child poverty, you need to think about what you are doing to tackle gender inequality and women's poverty. To do that properly, you cannot just think about child poverty or poverty writ large.

On mechanisms that could be used to tackle that, at a policy level, an example is the Scottish child payment—gender was a factor in decision making on that. That payment is money that goes directly into mothers' pockets, which helps to address child poverty. There are other policies where the issue is perhaps not being considered very well, such as the policy on green jobs. The definition of green jobs is very male dominated. All the jobs that fall under it are heavily male dominated, which means that investment under the strategy will go into men's jobs and will disadvantage women. If you do not think about gender, you miss the fact that care jobs are low carbon and, if you invested the same amount of money in care jobs as you did in, say, construction, you could generate something like 2.8 times as many jobs and have a greater return on investment.

Those examples show that, in tackling specific inequality-related or environmental issues, we need to think about the specific groups underneath them. To think about any potential conflicts, we need to think intersectionally. Women are not a homogeneous group. You need to think about the specific experiences of racially minoritised women and disabled women. When you do that, you realise that, when you think about the groups that are most disadvantaged, it is unlikely that you will hit conflicts. For example, if you do something for a racially minoritised woman who has a disability, you are doing something for all three of those protected characteristic groups and doing something on poverty writ large.

Maggie Chapman: How can we use that analysis and understanding to improve or add to the procurement landscape? The issue links back to what you said about the failure to connect procurement and the public sector equality duty. What do you see as important in that regard? Is it about a specific conditionality or different weighting? We have talked about the price versus the social or environmental impact. Thinking specifically about procurement, what is important?

Lindsey Millen: You need to start by making clear and explicit links between the public sector equality duty, the procurement legislation and the procurement strategy, because otherwise contracting authorities will think about procurement with blinkers on and without thinking about the wider issues.

You then need a procurement system that has sufficient gender competence within it, so that the people who work in it understand the potential

gendered inequalities that are associated with the particular service that they are procuring, and how those issues can be built into conditionality or the subject of the contract. If a person does not have an understanding of the specific inequalities or how those relate to what they are working on, they will not be able to do that.

Further down the line, the evaluators of tenders need to understand all that as well, as do the people who evaluate the success of the contract. That speaks to the institutional gender competence and equalities competence that is missing across the public sector. As I said, 17 years on from the initial gender equality duty, that is disappointing.

You mentioned weighting. We would like equality to be sufficiently weighted in the procurement decision making process so that it has a meaningful influence on the outcome. The public sector equality duty is a “due regard” duty. There is a clear legal definition of what it is, and there should be enough understanding about what that means in relation to equality. You need to build all those things in and enable them to have a meaningful influence, which means an appropriate level of influence. It will not necessarily be the single most important factor in tendering, but it needs to have an influence; it cannot just be something that you tick off and say, “I’ve done an equality impact assessment on this tender and it’s fine.” That is often what we see in work to mainstream equality in various other aspects of public sector practice.

Maggie Chapman: You said that you do not often see equalities issues being talked about in procuring, and perhaps we can follow up on that in different ways.

My final question is for Martin Rhodes. This is kind of looking through the other end of the telescope from the question that Murdo Fraser asked about local economies and building and sustaining local resilience. We talk about the sustainable procurement duty, but is there enough understanding or awareness of the value of things such as fair trade? We want Scotland to be a socially and environmentally responsible nation that thinks about our impact globally, but do the guidelines and regulations allow enough of those narratives to come in? Are we thinking about those things?

Martin Rhodes: Across the public sector and more widely, there is a limited view of the environmental impact of decisions that are taken. For instance, on food and other products, people often talk about food miles or air miles as if that was the only factor to be taken into account. Clearly, how far and how a product has travelled is a factor to be taken into account in considering its carbon footprint, but that is only one factor in that

carbon footprint. How the product is produced and then consumed will have a clear impact on its carbon footprint, and carbon footprint is only one element of the overall environmental impact—other things have to be taken into account.

Generally, in that area of debate, I am sometimes frustrated by the way in which some issues are presented and the view that local is always the best option. Clearly, there is a big weight to doing things locally for all sorts of reasons—including community wealth building and reducing air miles or food miles—but that has to be put into a broader context, because it is possible to produce something locally in a very bad way. The issue is complex. For instance, you can produce something at some distance away seasonally and then transport it in a way that has much less of an environmental impact than producing something out of season locally.

All that I am saying is that there are all sorts of factors to do with environmental impact. Carbon footprint is one of them, and air miles or food miles are an element of that. There is a bigger issue. There are elements of fair trade that people perhaps do not immediately think about, such as what can be done on biodiversity in the production of plants, and issues around gender equity, power in communities and how decisions are made. All those positive impacts, which also have a positive impact environmentally, are often overlooked for what is an easier and quicker measure. I am not in any way saying that it is not an important measure, because it clearly is. How things are transported from one place to the other has a significant impact, but that is not the only impact; other things have to be looked at as well.

Maggie Chapman: It is almost as if our weighting system is far too simplistic to be manageable.

Martin Rhodes: Yes.

Maggie Chapman: Thank you.

The Convener: I thank our witnesses for their evidence—it is much appreciated.

I now close the public part of the meeting and we will move on to the private session.

12:00

Meeting continued in private until 12:10.

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