



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Economy and Fair Work Committee

Wednesday 13 March 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 13 March 2024

CONTENTS

	Col.
DECLARATION OF INTERESTS	1
PROCUREMENT REFORM (SCOTLAND) ACT 2014 (POST-LEGISLATIVE SCRUTINY)	2
SUBORDINATION LEGISLATION	38
Bankruptcy (Scotland) Amendment Regulations 2024 (SSI 2024/48)	38

ECONOMY AND FAIR WORK COMMITTEE

9th 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:

Gillian Cameron (Supplier Development Programme)
Graeme Cook (Scottish Government)
Bob Doris (Glasgow Maryhill and Springburn) (SNP) (Committee Substitute)
Peter Hunter (Unison)
Mary Mitchell (Scotland Excel)
Julie Welsh (Scotland Excel)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Economy and Fair Work
Committee

Wednesday 13 March 2024

[The Convener opened the meeting at 10:00]

Declaration of Interests

The Convener (Claire Baker): Good morning and welcome to the ninth meeting in 2024 of the Economy and Fair Work Committee. We have received apologies from Evelyn Tweed.

Our first agenda item is to ask Bob Doris, in his capacity as a newly appointed committee substitute, to declare his interests. I welcome him to the committee and invite him to declare any relevant interests.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Thank you, convener. It is good to be here. I have nothing to declare other than to say that my entry in the register of members' interests is shown on the Parliament's website. Nothing in it relates to the work of this committee.

The Convener: Thank you.

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

10:00

The Convener: Our second item of business is the fourth evidence session in the committee's post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014.

I welcome Gillian Cameron, who is programme manager at the Supplier Development Programme; Graeme Cook, who is the head of procurement services at the Scottish Government; Peter Hunter, who is regional manager at Unison Scotland, and joins us remotely; and Mary Mitchell, who is the chief procurement officer, and Julie Welsh, who is the chief executive, at Scotland Excel.

I understand that Kevin Stewart wishes to make a declaration of interests.

Kevin Stewart (Aberdeen Central) (SNP): Convener, I refer members to my entry in the register of members' interests, which states that I am a member of Unison Scotland.

The Convener: Thank you very much.

As always, I ask members and witnesses to keep their questions and answers as concise as possible. If members could direct their questions to the witnesses whom they would like to answer them, by naming them, that would be helpful for managing the meeting.

I will ask the first question. The purpose of the committee's inquiry is to undertake post-legislative scrutiny of the 2014 act. We are interested in hearing witnesses' broad reflections on the key changes in procurement in Scotland since the act was implemented. What are the greatest remaining challenges?

I ask Julie Welsh of Scotland Excel to comment first, then I will invite Peter Hunter of Unison to come in online.

Julie Welsh (Scotland Excel): We believe that the 2014 act has been a real success story for using public procurement as a driver for social and other benefits. Across the public sector, buyers have been driving improvements including increased community benefits, increasing payment of the real living wage, and working more closely with their local supply chains.

Scotland Excel has more than 1,000 suppliers on its frameworks, 75 per cent of which are small and medium-sized enterprises. That has not happened by chance; it has been achieved by design, through using dedicated processes. Some

60 per cent of our suppliers are Scottish, and they represent 60 per cent of the spend that goes through our frameworks. As a result of encouraging payment of the real living wage, we are now at a point where 89 per cent of our suppliers do so. That figure has been moving up over the past 10 years, and certainly since the 2014 act came into force.

The area that has probably been a bit more challenging for us, and, indeed, has been across the public sector, concerns climate change and embedding standardised climate improvements consistently. We have made some headway with that, but we believe that we can do much more. We also believe that transformation will be required if we are to meet our net zero objectives by 2045.

The Convener: Thank you.

Peter Hunter, I will come to you now. There will be a chance to expand on your answers when other members ask their questions. For now, I ask you to comment on the key changes that have happened since 2014 and to outline the main challenges that remain.

Peter Hunter (Unison): The ambition of the 2014 act and its associated regulations is welcome. We are aware of numerous benefits that have come from those. If we use the English equivalent as a benchmark, we see that the Scottish statute and its accompanying regulations are more ambitious and progressive in their content and, in our experience, their impact, too. I am thinking, in particular, of the contrast in regulation 19 of the Public Contracts (Scotland) Regulations 2015 and the obligations on social environmental and employment standards.

Turning to the difficulties that have been experienced, the Covid pandemic revealed that there are still big structural differences between commissioned services and statutory services in key areas such as health and safety culture, and specifically on access to personal protective equipment through supply chains. That might be partly because of political priorities and decision making in the systems that were created, and partly due to the culture that exists in firms that are commissioned within the procurement system.

There is definitely scope for improvement. We are currently dealing with very poor working conditions for migrant workers who are on skilled worker visas in firms that have been commissioned in line with the fair work standards, but are not complying with the standards, in practice. There is still a delivery gap in those locations that can be very problematic.

The Convener: We will come to Graeme Cook and Gillian Cameron next to reflect on the 2014 act. During last week's evidence session, the

witnesses suggested that there was a drive to increase use of national frameworks. Do you have any comments on that or on what the reasons might be for promoting and increasing use of national frameworks?

Graeme Cook (Scottish Government): I represent the central Government sector, which includes the national pan-public-sector contracts and frameworks that are used by the whole public sector in Scotland.

There is certainly a drive to identify further opportunities for collaboration, most of which is through collaborative contracts, both national pan-public-sector ones and those that have been put in place by organisations such as Scotland Excel. I stress that that is not in tension with the sustainable procurement duty as set out in the 2014 act. If you look at the levels of Scottish produce under the frameworks, or at the level of lotting or of geographical cover and so on, you see that not only are those significant, but they have been moving up and up over the past 10 years, since the 2014 act was put in place.

There is always a drive to improve and to collaborate further, but I do not think that that undermines any of the principles of the 2014 act. In fact, I think that it supports delivery.

The Convener: Does Scotland Excel share that view of national frameworks?

Julie Welsh: Yes. We think there has been a real drive to increase uptake of national frameworks and other arrangements. As you probably know, we are governed by a joint committee, and our committee members are very keen to increase uptake, as is our chief executive officers group. That is because they want to get the best possible value. They want to find savings, which is a huge driver for us and is also a driver—although not the only one—for local government.

Local government pays us to put those arrangements in place, so replicating that work locally means paying for it twice. The Scottish Government has suggested that one tender exercise can cost £12,500, so, if we are doing that on behalf 32 local authorities, that also reduces the opportunity cost.

There is a real scarcity of technical and procurement skills across the Scottish public sector, so we need to use skilled people really wisely. Also, some of the arrangements that we have put in place are in markets that can be quite litigious, so one appealing thing about using our arrangement is that Scotland Excel, rather than individual councils, ends up in court. There is certainly appeal in that.

There are lots of reasons for that drive to increase uptake and, as Graeme Cook said, that supports the legislation.

The Convener: I will move on to other questions, because I know that members will pick up on issues that are relevant to that.

Murdo Fraser (Mid Scotland and Fife) (Con): My question is about an issue that this committee, and its predecessor committees, have wrestled with over many years. It is about how we use procurement and public sector spending to support local economies, communities and businesses. We recognise that there is always a tension between trying to get good value for the taxpayer—which might lead to bundling of contracts into larger packages, thereby making them less accessible to local businesses, and particularly to SMEs—and trying to direct that spend to where it can support the local economy.

How have changes in the procurement legislation helped to give access to local businesses, if they have done so? I know that that is part of the work that Gillian Cameron does, so perhaps we can start with you.

Gillian Cameron (Supplier Development Programme): Working with the likes of Scotland Excel, the Scottish Government and other centres of expertise, we consider how we can help small businesses to access contracts. There is an art to tendering, as we have discussed before. As an organisation that is here to help small businesses, we ensure that they understand how to access and bid for framework contracts, which is really important.

As for how we improve local knowledge and the visibility of opportunities, time is always viewed as a difficulty for suppliers in respect of their being able to bid for things. It is great to see an active pipeline and to be able to move forward on it. As an organisation, we try to maximise the visibility of the frameworks that local authorities are using. Small suppliers want to get in at the local level, so if they know that the local authority is using the Scotland Excel framework, that is helpful for their knowing what the route to market is.

Murdo Fraser: I will come to Mary Mitchell in a minute—I notice that you were nodding away there. Gillian, how would you mark progress in this area, noting the changes that we have seen in the legislation? I presume that there is still work to be done, but do you think that you are making good progress?

Gillian Cameron: Yes. There is a lot of visibility now, which was probably not the case before the 2014 act. There has been a lot of progress there, and that comes with the good things that the Scottish Government has been doing and the good policy, although there is an extra burden on

suppliers to understand the ask around net zero and the ask around fair work first. Tendering is a learned skill, which a micro or small business will not necessarily have. We play a highly important role there, as tendering is often seen as being difficult to get into. I never shy away from telling small suppliers about the need to learn the skill. Once people have learned it once, they can hopefully replicate the process many times, which is another positive. The amount of information that is now available through annual procurement ports and published information is a big benefit to small businesses, but they need to take the time to understand where to find the information and what to look at—and knowing how to use that information is really important.

Mary Mitchell (Scotland Excel): Under the legislation, Scotland Excel has been able to lot in a way that we believe helps local supply to develop quite well. In the time period that we are considering, that has grown for us. There has been a growth in Scotland-based businesses of about 20 per cent since we started out.

We work by lotting, essentially: splitting out the disciplines that are required under a national framework and bringing in energy efficiency contracting in particular. We have broken that down into different specialisms, so that companies do not need to be all things to all people in order to bid. In almost all our frameworks, we apply an ability-to-service option for contractors, so that they can tell us which local authority areas they can serve, or sometimes sub-lots of local authority areas. There are a few of those for milk, for example, as it is not possible for one small milk provider to supply the whole of Argyll and Bute, so we split it up into various areas. We have mechanisms, and they are all available to us under the 2014 act. Referring to what Gillian Cameron said, if they are used with forethought, we can make sensible differences to what happens in local supply bases.

Murdo Fraser: Can you say a little bit about what your chain of communication is with people in the business community? Are they engaging with you on a regular basis?

Mary Mitchell: In our early communication, we always issue a prior information notice, and we invite comment from the supply base. What knowledge do we need in order to shape the requirement appropriately? It is also a matter of finding the suppliers and ensuring that we are engaging well. There are links across Scotland that allow various organisations to do that. Public Contracts Scotland plays a role there for us, too.

There is a gap between the number of small businesses in Scotland and those that are using Public Contracts Scotland, and there is an

opportunity for us all to promote that further. There is still some work to be done there on information.

Graeme Cook: I want to offer the committee a couple of figures from the Scottish Government core spend. In 2019-20, spend with SMEs by the Scottish Government core was just over £120 million. That refers to direct spend—not in the supply chain—although we push SME access into the supply chain, too.

In 2022-23, the total direct spend with SMEs was £380.5 million. The money speaks: it shows that more and more spend is being driven towards SMEs, and the 2014 act is absolutely at the heart of that.

Murdo Fraser: Thank you.

10:15

Colin Beattie (Midlothian North and Musselburgh) (SNP): At last week's evidence session, I asked questions about whole-life costing. Clearly, the initial pricing is not the only criterion that should be used, although there seemed to be evidence that in some cases it was. However, the evidence that the witnesses gave was that there were some difficulties with doing whole-life costing. The criteria under which it would be done seem to vary. To what extent do frameworks support the consideration of whole-life costing and the quantification of longer-term benefits that quality measures can provide that might offset a higher initial cost? How serious is that? Graeme, maybe I can start with you.

Graeme Cook: Whole-life costing is a professional and expensive endeavour, so it is not done in every procurement exercise. Everything in procurement is about relevance and proportionality. When it is relevant and we know that there will be significant costs within the broader lifetime of a product or a service, it is included. That is bread and butter for procurement.

Julie Welsh mentioned the constraints in terms of the number of professional public sector buyers that are out there and the fact that they are in huge demand. Again, we use resources carefully and deploy them where it makes most sense to do so. If we have a complicated product or service, whole-life costing is done. There are elements in the frameworks that support that. When individual public bodies draw down from those frameworks, they can then reassess at their mini-competition. When they draw down and do a competition, they can fold in their specific requirements.

Obviously, given the complexity of the public sector in Scotland and the range of types of organisation, geography and so on, whole-life costing must be specific to the organisation. It

would be an incredibly complicated and expensive endeavour to do it at the framework level, because trying to understand the whole-life costs for NHS Orkney would be very different from trying to do the same thing for the City of Edinburgh Council.

Colin Beattie: What criteria would determine whether whole-life costing is required? You talked about complexity and so on, but can you give us an example?

Graeme Cook: I will give you a procurement cliché: paper clips. There are not an awful lot of costs associated with buying paper clips then using them, so we would not look at whole-life costing for something as simple as that. We might consider whether the material is recyclable, but we would not build in the pound-sign costs of that lifetime.

When it comes to buying something like an expensive piece of equipment or an appliance for the Scottish Fire and Rescue Service, for example, we would take into consideration its fuel consumption, maintenance costs and whether it will have a residual value at the end of its life.

Those are two rather extreme examples, but they are the sorts of things that would be considered.

Colin Beattie: Using your example, it does not seem to be that complicated to work out the whole-life cost of a fire engine, because fuel consumption, maintenance and so on can be projected into the future using inflation factors and so on.

Graeme Cook: When we award a contract on the basis of a tender analysis that includes whole-life costing, the mechanism needs to stand up in court and be defensible. That is where it is even more important to get the costing absolutely right. There are complications about how long an appliance will last. Will it be 10, 15, or 20 years? The manufacturer might say one thing but, depending on the maintenance schedule, you might get more out of it. For a procurement officer who is not an expert in manufacture and maintenance of fire appliances, it is quite a complicated endeavour to work out the residual value of a part that might be 20 years old by the time that the appliance is scrapped—I should stress that I have made up that figure; I am not an expert on fire appliances. It is a significant piece of work to try to understand that and to get as much information as possible so that the mechanism is then defensible in court, should someone choose to challenge the decision.

Colin Beattie: Are you saying that this is an invitation for consultants to come in and draw up the whole-life costing?

Graeme Cook: At one extreme, that would be an answer for some public bodies but, as with all procurement, it is about balancing the opportunities and risks. Some organisations may choose to bring in external expertise.

Colin Beattie: Julie, can you add anything?

Julie Welsh: It is certainly a simpler exercise to do that at organisation level. Before doing my current job, I was head of procurement in a council, and we did whole-life costing for a fleet—we would look at whole-life costing for tyres, for example. At the national level, that is a bit more challenging, but we certainly give it some thought.

I will pass over to my colleague Mary Mitchell, who has some comments. We were reflecting on the issue on our way here, fortunately.

Mary Mitchell: Tyres are a good example of where a national framework can be established with a supply chain that offers a range of tyres with different performance levels, costs and lifetimes or mileage levels. Whole-life costing involves considering the acquisition, the cost of use, the cost of maintaining and the cost of getting rid of products—the end-of-life or recycling costs, or whatever the end of the product is. With tyres, those things are quite easy to work through in your head, because we all have them on our own vehicles.

At the national level, we will create that framework but, at the local level, we have recently created a small team to help councils to assess what the most cost-effective products might be for them under a framework. We call that our savings team but, in essence, it is about helping councils to identify the best value in using our frameworks. We have not limited that to our frameworks; we also work with councils when they ask for additional support.

A further point to make about whole-life costing is that we are probably now heading beyond that and into life-cycle costing, which is about the social and environmental impacts of a product. Where did it come from in the first place? What are its credentials in terms of how it got to the point of use in a public body? That is much harder for us to calculate, and it is certainly something that we are struggling with just now. For me, whole-life costing will need to evolve much more into the environmental and social side.

Colin Beattie: If I logged on to your website, would I find anything about whole-life costing? Are there any guidelines, formulas or templates?

Mary Mitchell: We have a members area that has a login. Behind that, each framework has information, and there is also information associated with the work of our savings team. Depending on what you are looking for, you might

be able to find some of that, if you were using our—

Colin Beattie: Is there enough information to enable somebody to put together a proposal?

Mary Mitchell: Do you mean a supplier, or a council in determining how it would use a framework?

Colin Beattie: I mean a council or whatever.

Mary Mitchell: With some frameworks more than others, that information will be there. We have developed some tools in frameworks that allow users to filter by products and various requirements in relation to those products. Not all frameworks have that but, as part of our continuous improvement, we are considering how we can make that easier to identify.

Colin Beattie: Peter Hunter, do you have any input on that?

Peter Hunter: I have nothing in particular to add.

Bob Doris: My question is for Mary Mitchell, who mentioned social and environmental impacts. I sit on the Parliament's Net Zero, Energy and Transport Committee and we are considering the Circular Economy (Scotland) Bill. One of the proposals to amend the bill relates to procurement, human-rights due diligence and environmental impact in global supply chains. Was your comment about trying to future proof other legislation that might emit from other committees in the Parliament?

Mary Mitchell: The 2014 act made an effort to link to climate change and, as Julie reflected in her opening remarks, that is what we still find most challenging about the development potential of the procurement community.

A relatively live example of how we measure the impact of products is the process that we are working through that will, we hope, enable us to evidence the environmental impact of products associated with the tender. However, it was very arduous for suppliers to provide the information that we got. We have gone through the process for one product group that is quite well established and has been for a decade or so, but that is less the case for the broader range of products. There is still a gap between what we would like to be able to do and what we believe is practically possible at the moment.

Bob Doris: I do not doubt the challenges.

The Convener: Do you have a follow-up question, Mr Beattie?

Colin Beattie: Does Gillian Cameron have anything to add?

Gillian Cameron: Yes. We try to touch on that when we talk to suppliers, because often small and micro SMEs think only about putting in a bid, and not about whole life costing. They do not think about the cost to them of winning a contract or the lifetime of that contract. It is useful for them to have more information about what that might look like, so that they can make informed decisions. I am not sure whether that would be in the tender documents—perhaps Mary could talk about that. There is certainly education to consider for small businesses on thinking about that and not only about how they are going to win the contract. They may put in a cheap price to win a contract, but they need to think about the bigger picture, which is about being sustainable and ensuring that putting in that price will not bankrupt them. Whole-life costing definitely plays an important part.

Colin Beattie: I have only one more question to ask and I will start with Gillian. The committee has heard evidence that some suppliers can be accepted on to a framework but then get no work over a period of years. Do you monitor the outcomes for suppliers? What support do you give them, so that they get something out of the process and you avoid a perception that getting on to a framework is a waste of time?

Gillian Cameron: I hear suppliers say that. I always advocate that it is better to be on the framework than not to be on it. There is work to do to get on it and it depends on the type of framework, whether it is ranked or not and how many opportunities there are for suppliers to be picked off that framework to be given work. There is probably an opportunity to look at supply chain opportunities in the framework. Mary can probably give a better answer about the numbers because I do not have them. We have worked on some contracts with Scotland Excel, helping to promote contracts and encouraging small businesses to bid on them. We have had good uptake from suppliers bidding on such contracts when we have been involved. I have not got any stats regarding final outcomes; those would come directly from the buyers.

Mary Mitchell: Mobilisation of the framework is critical. For us, it is about the framework and the information that is passed to those who will use the framework—the buyers in the member organisations that work with Scotland Excel. The information that we share with suppliers about the options that they have to engage with the buying community and how they can promote the products and services that they offer under the framework is critical.

Organisations such as ours have a role in running mobilisation and category-specific events. Later this year, we have an event under the category “spend”, which is planned around our

construction portfolio in general. It will bring together suppliers across all of that supply base with the buyers, to foster a kind of—

10:30

Colin Beattie: I am not getting the impression that there is a process of proactively checking which suppliers are not getting work.

Julie Welsh: Maybe I could answer that. As part of our contract and supplier management, we closely monitor which suppliers get spend across the framework. As you will know, there is no commitment to business on a framework; that is how it is designed.

On a number of occasions, we have seen that suppliers that go out and actively sell their services once they have been awarded a place on a framework are those that tend to be more successful. As we do not rank any of our frameworks, our councils are free to use whichever suppliers provide best value to them. Sometimes, that might exclude a new entrant on the framework.

We have an example of a tyre company that started with a contract in Renfrewshire and ended up covering half the country. It was actively going out and selling the fact that it was on the framework and it managed to increase its business as a result of that. We see that happening.

Colin Beattie: Is there any support for smaller suppliers on making best use of the framework once they are on it?

Julie Welsh: That question can come up as part of our on-going contract-and-supplier engagement. Our advice would be that they should be actively contacting councils to tell them about their goods and services. We cannot give one supplier more support than another. It could get a bit messy if we did that. We will give them general advice about how they might increase their share of business, but we must ensure that everybody gets the same advice and the same opportunity.

Colin Beattie: Do you know how many companies have not received any work?

Julie Welsh: I do not have that figure to hand, but we could get that for you.

Colin Beattie: Do you monitor that figure?

Julie Welsh: Yes.

Colin Beattie: What do you do with it?

Julie Welsh: As part of our contract, we have an internal governance group—our contract steering group—that looks at performance across every framework annually. We look at where the

business is going and at whether our customers and suppliers are happy with it. We do that on an on-going basis, but we would not actively go out to speak to the suppliers who have not been successful. We have more than 1,000 suppliers across almost 80 frameworks, so it would not be feasible for us to do that. However, if they approached us as part of the contract-and-supplier management, we would certainly try to advise them and signpost them to the relevant people and councils that could help them.

The Convener: I would like to make some progress. Before I let in other members, I have a quick question for Gillian Cameron. In your briefing for the committee, you commented that the financial support that you receive from the Scottish Government has fallen in real terms since 2008. Will you expand on that? Has that meant that what you can offer is constrained, or have you managed to work within the budget? We recognise that there is pressure on Scottish budgets in all areas—you are not the only organisation that is facing that financial picture.

Gillian Cameron: The truth is that funding has fallen in real terms. In addition, we have all seen that the cost of doing business has increased substantially in the past couple of years. We have looked at how we can do more online to try to keep some of our costs down.

As a national shared service, we are a unique organisation. All 32 local authorities are members, plus about 18 other public bodies, including the Scottish Parliament. We very much work with councils that come to us proactively and want to do additional work.

We have core training courses and aligned tender training courses. When councils have a particular opportunity coming up and they want to engage local businesses and suppliers, they will come to us and we will work together to promote that opportunity and deliver training on how to bid for that opportunity.

We have found that our ability to do that is constrained. I have a team of five people. There are a number of opportunities, but there is only so much that we can do at any one time. We have great aspirations to do a lot more. The service that we are offering through the aligned tender training is really important.

It is important that we have one-to-one support to allow businesses to understand what the ask is in the contract and what the requirements are with regard to fair work first or net zero so that they can bid for that opportunity. We have seen high success rates when we have managed to do that. Our challenge is about how we can do more with our funding. We are going to make a loss again this year, and that is not palatable. Because of

Covid-19, we are in the fortunate position of having some money in our reserves, but that is not a long-term future for us and we are already having that conversation with the Scottish Government.

The Convener: Is it the Scottish Government that funds you?

Gillian Cameron: No. All 32 local authorities fund us, as well as the other members.

The Convener: Is the core funding from the Scottish Government?

Gillian Cameron: Yes, that is right.

There is a national manifesto out that says that there will be a bespoke business unit that will support SMEs and third sector organisations in tendering.

The SDP was originally started in a local authority and, for once, a joined-up approach was taken, rather than reinventing the wheel and doing things separately. Part of the reason for the programme's success is that we have buy-in from the local authorities. It is in their interests to engage with their local businesses. We have that infomediary role, if you like, as Mary and Julie were saying. We are more impartial—it is not that the buyer is looking for additional information from the suppliers. We can help to support them through the mechanisms that we have.

Maggie Chapman (North East Scotland) (Green): I have a couple of questions about how we use procurement and how procurement activities can be designed for social, environmental and other goods. Julie Welsh's answers to the opening questions talked about the challenges around net zero targets and the climate change imperative. How are the sustainable procurement duties enabling or supporting the work that you are trying to do? If there are challenges and barriers, what do we need to do to unpick them?

Julie Welsh: The problem is that it is difficult to be consistent in our approach to environmental sustainability. We have done a lot of work to look at the items that we buy, and we have done things like taking plastic straws off our food consumables framework. We have also looked closely at the environmental accreditation for new-build housing and so on. We have some good examples of where we have built in good environmental criteria that achieve the outcomes that we are looking for.

Where that becomes challenging is applying it to everything that we do. For example, we have a range of national care arrangements. We recognise that a discussion might need to be had around sustainability in running a care home. We have not quite managed to do that, partly because care homes are facing such great challenges in

other ways. We have tried in those areas to target where we think we can get the best benefit.

At some point, we would like to get to some different ways of recording net zero or carbon capture through supply chains. We do not have a consistent way of doing that across the country, and part of the discussions that we will have with our colleagues in local government as they look to replace some of their procurement systems will be about how we can capture the environmental information that we need so that we can improve on that across everything that we do.

Maggie Chapman: You are doing that alongside your local government colleagues.

Julie Welsh: Yes.

Maggie Chapman: We have had a conversation about whole-life costing, and there is something about whole-life accounting and the benefits and disbenefits that are associated with that. Is there anything that you want to say on some of the social issues? There is a duty around tackling inequality and gender pay gaps and those kinds of things. Again, is that a data thing? Is it about not necessarily having the information to track that data through supply chains and products?

Julie Welsh: There is a mixture of things at play. We use equality impact assessments, but mainly for our care arrangements. We have not rolled that out across everything that we do in our portfolio, but we are looking at that, because it would help with a number of these issues.

A point was made earlier about focusing our efforts on where we can get the best outcome. Procurement and national arrangements have been seen as a way of getting everything at once, such as the real living wage, community benefits, environmental sustainability—and the list goes on. We are looking at all the goods and services that we purchase and asking what our focus should be. Is the environment an issue and should it be our number 1 focus? It is about trying to focus resources where they will get the best return and we are looking at that.

Maggie Chapman: Graeme Cook, perhaps I could bring you in on some similar questions. What are the barriers in the current system to achieving outcomes on tackling social and environmental inequalities?

Graeme Cook: I will deal with those two areas separately, if I may.

I have worked in public sector procurement for 20 years, and from day zero, environmental impact was already a consideration in Scottish public tenders. The 2014 act was ahead of its time; in my view, the UK Government's Procurement Act 2023, which is just coming into

force, is, in many ways, about playing catch-up with Scotland's 2014 act.

I mention that because, in my view, procurement, certainly when it comes to the environment, is actually ahead of the curve. Buyers out there can never be experts on absolutely everything—I will not go back over the whole-life costing point, but they cannot be experts in carbon accounting, for example, so they have to rely on agreed standards. If we are buying a contract to maintain gas central heating, it is easy to say, "Show us your gas-safe certificate", as buyers can rely on that. However, there is no internationally agreed standard for carbon accounting, so we cannot simply point to that.

In many ways, procurement is ahead of the game, but that is one of the barriers. We need those standards agreed so that we can easily build them into our tenders and contracts, and say, "You must meet this standard in order to win this contract."

Maggie Chapman: Can I interrupt you on that point? Would it be inappropriate to have those standards in Scotland alone, because we do not deal only with Scottish produce and Scottish supply chains, so we would need to look further afield and have comparability?

Graeme Cook: Yes. Internationally, the answer is yes, because the World Trade Organization government procurement agreement requires that we treat all bidders the same. In addition, the United Kingdom Internal Market Act 2020 requires that we treat every supplier in the UK in exactly the same way.

If we were to impose a Scottish standard, therefore, we would have to add "or equivalent", so we would have to somehow compare it with an English or Welsh standard, or with a French standard. An international standard has to be the gold standard, and that would be proportionate in most tender exercises. Clearly, if we are spending hundreds of millions, it might be proportionate to design something bespoke and agree with the marketplace by saying, "For these things, we're going to calculate it in this way. Do you agree? Would you like to tweak that before we put the tender out?" and so on.

On the social side, there are some agreed standards. For example, the real living wage is well understood; someone else is responsible for that and it is relevant across the whole UK. However, there is a similar issue in that there are no standard measures for those things, nor are there standard places in which to look for them. One example of a policy that is increasingly important concerns women-owned companies and gender balance on boards. There is no place that we can go to find that information. It is not

registered with Companies House—companies do not need to record the gender of the person who owns a business.

If we want that information, therefore, it has to be a question in a tender. Gender balance on a board is an important question, but it is an extra question to which many suppliers would respond, “How is that relevant to whether or not I can provide this service?” A sole trader would say, “Well, how on earth do I answer that?” We need, therefore, to balance the policy question with the bureaucracy involved. People often see a distinction between policy delivery and what many suppliers would refer to as the bureaucracy in procurement, but they are actually the same thing.

That was quite a complicated answer, but I hope that I have addressed your question.

Maggie Chapman: That is helpful—thank you.

I have some questions for Peter Hunter that are in a similar space. You mentioned the challenges that you have had in relation to a specific example of migrant workers not being paid the living wage, as the commissioning contract indicates should happen.

Will you say a little about what challenges there are for suppliers and commissioners in using the legislation to secure the social and environmental outcomes? Why are we failing in that? Why do we have an example of migrant workers not being paid appropriately? Can you point to other examples of similar issues?

10:45

Peter Hunter: On the specific issue with migrant workers, there are agencies that bring migrant workers to the UK. There is a huge demand for international recruitment—particularly, but not exclusively, in social care—because of the tight labour market that exists at the moment. Many of those companies operate on a model in which there is debt bondage, whereby workers pay back hugely inflated costs—£6,000, £7,000, £8,000 or even £10,000—for their training and travel.

Those workers experience a variety of problems. For example, deductions are made from their wages, so their wages are not wage compliant. We have had people who were evicted from their property because they were receiving residential or in-patient care for serious medical problems. They got evicted from their property so that it could be used for other migrant workers. People are being made destitute because they are dismissed for what we would describe as unfair reasons. As a result, as they have no recourse to public funds, the union uses its welfare funds to feed those workers and their children.

Such situations are clearly not compatible with sustainable procurement and fair work, so why do they arise? I will talk about one problem that we have in Scotland. Although people in Scotland might not like the UK employment law framework, it has the benefit of being mandatory. We would say that the procurement regulations in Scotland say that providers must secure contractual obligations from their providers to ensure that those UK statutory obligations are met.

The difficulty is that, when we in Scotland say that we want to go further and to promote fair work in ways that are over and above UK minima, in order to be confident about the devolved competency of such approaches, the culture around fair work is very much about encouragement and promotion of fair work. In that conversation, the foundation or platform beneath the mandatory UK obligations gets lost, to a degree, in Scotland. That foundation or platform says that you cannot have people in modern slavery, you cannot have debt bondage, you cannot systematically discriminate against people and so on, but the mandatory nature of those UK obligations gets lost in Scotland, because the culture in procurement is that we can promote and encourage fair work, but that it is not mandatory. That is one problem.

Julie Welsh mentioned earlier that cost is a big driver—don't we know it? For example, in social care, the big issue is capacity and price, and the question that providers ask is, “How many people can we look after for as little money as possible?” I am a big supporter of the ambition behind the human rights-based approach in the National Care Service (Scotland) Bill and of person-centred care planning, and then commissioning in behind those person-centred care plans.

Where I am at the moment, we have the much-vaunted Granite Care Consortium operating, which is wonderful. However, its provision is currently capped at 30 hours per week, and that step down in care provision is driven by budget. In that climate, if you have a sustainability or fair work agenda and you hit the juggernauts of capacity and price, price wins every time.

There are two issues there: the culture around price and the tendency, in our view, to occasionally overlook the hard, mandatory nature of UK law in order to get into a Scottish devolved conversation about encouraging a higher standard, in which the minimum core standards get lost.

In our view, fair work is not adequately weighted in the procurement process. Things have improved gradually in the lifetime of the legislation. However, shortly after the new regime came into play, we surveyed local authorities and found that the median weighting attached to fair work criteria

was in the region of 5 per cent. Given that very few people would get zero and very few people would get 5 per cent—most people would get 3 or 4 per cent—fair work was not a critical factor. In our view, that is problematic, given the close correlation between fair work and sustainable services, attracting and retaining workers, building the skill base and delivering quality care, as an example of one form of procurement.

Finally, the big barrier is that much of that is not monitored. You asked about equality. Regulation 9 in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires commissioning authorities to ensure that public sector equality duties that sit with the contracting authority are transposed within the procurement arrangements on the basis of which services are procured. We should be getting the equality monitoring data that would enable a local authority to look at the equality performance of procured services against that of in-house services, but, in reality, in our experience, those things do not exist, and the contract-management culture with regard to fair work and equalities is very poor.

The ambition is great and many pieces of the jigsaw are there, but in the context of the cost of living crisis and the huge cuts to public services, fair work in care, for example, is going backwards compared with where it was in 2019. We have to look at the context, in which the procurement machine is probably operating quite effectively; the issue is that the resources and the culture within which it is being required to deliver results tend to undermine the quality of the outcomes for workers and, therefore, for society.

I ducked the question about whole-life costs. If you employ people on the living wage with statutory sick pay, statutory maternity pay and statutory minimum family-friendly policies, you will not attract, keep and grow the careers of talented young workers in care, for example. One of our biggest procurement spends is on care. On the whole-life cost of that for the Scottish economy, people do not want to work in care when there is a staffing crisis, there is a growing elderly population, and we cannot meet the care needs that we currently have, far less an expanded requirement for care. The whole-life social cost of the bargain-basement purchase of social care work is more than we can afford, and it certainly exposes the bidding price as being a deception that, in our view, Scotland can no longer afford.

Maggie Chapman: There was a lot in that answer, and I could pick up on lots of things that you said. However, I have a final question. How can front-line staff influence decisions about goods and products that are part of procurement plans and agreements? Is there an effective mechanism for front-line staff to influence decisions about

goods and services? They are the people who make the services work, and they use the goods themselves. Are those decisions usually taken at higher-up levels? Is there a mismatch there? Is there a gap?

Peter Hunter: We are heading in the right direction. The fair work first approach is laden with potential. It is probably fair to say that we are all digesting its full potential, but if we link fair work first to employment by a public authority and its procurement, which the guidance does, and there is an effective voice in relation to employment and procurement, there can be just transitions and sustainable procurement, for example.

I am talking about not just the trade union work agenda, but workers having a voice in sustainable procurement. That can be about kit, such as fire engines, tyres and the other sorts of things that I have learned a lot about this morning. In our view, workers are expert in those things, and they could and should be involved in different levels of procurement decisions, including on sustainable strategies for procurement, as well as monitoring and review of what happens. That should apply to work under the contracts as well as to the products, including their sustainability and whole-life costs.

A joint approach to all those issues—goods, services and employment—is now potentially available to us under the fair work first approach, if we apply the effective voice provisions to the whole public sector supply chain and to employment and purchasing. That is a great opportunity. It will involve a huge investment of time and resource by all the partners and a degree of co-operation that possibly has not existed in the past, but it is a welcome opportunity.

Therefore, the potential is there for that to happen. However, Scotland is great on ambition—we excel at that—but, as with other areas of Scottish life, the delivery is more difficult.

Maggie Chapman: Thank you. I will leave it there.

The Convener: Yes—I would like us to make progress. I will bring in Kevin Stewart.

Kevin Stewart: Good morning, panel. I will play devil's advocate a little and maybe expand on some of the issues that Maggie Chapman has drawn out.

I apologise to the lawyers and accountants among you, but one thing that we have heard—I have heard it as a constituency MSP for years, and I heard it as a local authority elected member before that—is that, when it comes to procurement, the front-line staff know exactly what is required, but then the lawyers and accountants get their hands on it and the tender document

changes dramatically. We end up with a tender document that results in bids being accepted for something that might not be what the front-line staff want, whether that is a fire engine or the contracting of care services.

How do you respond to that? To expand on what Ms Chapman said, do front-line staff have a key role to play in procurement, or are they now shoved to one side?

Julie Welsh: That is an interesting conversation. When it comes to who leads and how much involvement there is of front-line staff, the situation varies by organisation. From my experience, when I was in Renfrewshire Council, which was 10 years ago, the technical staff had a big say in what was procured and the development of specifications. However, that is only one council and one public sector organisation.

Scotland Excel cannot possibly deliver anything without technical support from council staff. That applies to everything that we buy. For example, with new-build housing, the property teams in councils help us to develop the spec, and, with care, the social care teams help us to develop the spec for that. For every arrangement that we put in place, we set up a user intelligence group. Those groups are made up of technical specialists who can tell us the right thing to buy, because we are not experts in fire engines, tyres or any of those things. Everything that we develop is developed with the sector and not for the sector, because we recognise that the expertise lies in the organisations.

Kevin Stewart: Peter Hunter mentioned the Granite Care Consortium. Some folk would say that the contract that it has is not a typical framework contract, for the simple reason that it allows for much more flexibility and autonomy for front-line staff to step up and step down care. In my opinion, that is the right thing to do, because—to go back to the point about the whole-life costs as well as the human costs—who better than the folk on the front line to go into Mr and Mrs Smith's house and say, "Do you know what? They are not great at the moment. It's time for us to step up delivery"? Others would argue that, under other contracts that have been awarded through frameworks, front-line staff do not have that flexibility and autonomy. How would you respond to that, Julie?

11:00

Julie Welsh: Again, that is not my experience. First, let me say that one size does not fit all. If what has been developed for the Granite Care Consortium is working in Aberdeen and the care is better, then, absolutely, that needs to be how the

commissioners contract. The national arrangements for care allow front-line commissioners all the flexibility that they would want. All that we do is set a standard. There is no cost negotiation—it is about sustainable rates.

To give you an example, we have a national care and support framework under which the rates are, on average, 15 per cent higher than what councils were paying previously. The reason for that is that we insist on sustainable rates. We work on ethical commissioning and we ask for sustainable rates. I do not see the rub. It is horses for courses. There are times when a national arrangement is definitely the right thing, because we can put those higher standards in place. However, there are also local arrangements, such as the one that you mentioned, that seem to work exceptionally well. We are quite happy to work with our council members on developing what they need us to do, and that might not be everything that gets done.

Kevin Stewart: We have talked about the ambition that there is in Scotland, but something that frustrates me a lot is that we do not export best practice. We do not pick up the good practice that works for people and export it across the board. You talked about the framework standards being high for care and all the rest, but why are the lessons learned from the Granite Care Consortium and the good practice there not being built into your frameworks and tendering documents?

Julie Welsh: I suggest that they are. In the past 12 months, we have been audited on all our care arrangements against the principles of ethical commissioning in the Feeley report, and we came out on top in that audit because we work very hard to make sure that those are in place.

What you are describing with the Granite Care Consortium is a completely different commissioning model, and that is where councils and the health and social care partnerships have a choice. They might choose to put in place their own local commissioning model and not use any of the national arrangements—that is absolutely fine if that is what works for them—but they might say, "We will use the national arrangement for the national care home contract or care at home," or whatever it happens to be. That is why local commissioning is so important—because you do what is right for your local council or HSCP.

Kevin Stewart: I will probably come back to you on that. I can see that Graeme Cook is dying to come in, but I will go to Peter Hunter next.

Peter Hunter: Thank you, Kevin. It is nice to see you. I agree completely with your observations.

On the importance of the autonomy of workers, particularly in the care context, I imagine that there will be other circumstances in which the person who is closest to the ground has expertise in relation to the service, and their autonomy is crucial. I will use the care example, although there is a danger of overusing it. A care need might vary from day to day or week to week, depending on the personal circumstances of the service user. If the care is going to be truly person centred and human rights based, the worker needs the autonomy to be able to listen to what the service user wants and select the package for that person's needs that day or their changed medical or personal circumstances.

That means fair work. If you make satellite-tracked 15-minute visits and the step-up and step-down of care is budget driven exclusively, with no regard for person-centred needs, there is no autonomy, there is no person-centred care and there are no human rights. I am a very happy Granite Care Consortium customer, but I know that, from time to time, word comes down the line that the council has a budget cut, so care packages are reviewed and stepped up or stepped down in relation to funds, not need. We can trace the supply chain for that problem from Aberdeen City Council to the Scottish Government to Westminster to global financial pressures. I am not going to say who carries the greater responsibility.

On the question about local versus national, I agree that there is a technical job to balance the nature of the Granite City Consortium framework or other similar arrangements with national frameworks. I do not necessarily see them as being mutually incompatible. We need to have both national and local standards but, from a care perspective and for person-centred human rights, we need to recruit workers who are sufficiently secure and empowered in their role and skill to exercise the type of autonomy that you described, which we strongly endorse.

Graeme Cook: I am familiar with the Granite City Consortium. The distinction between how we buy and what we buy is important. The consortium was established through a standard procurement route. What was different was that the commissioners decided that they wanted to buy a different service. They worked closely with the marketplace and procurement professionals to find a way to take that to market through standard procurement routes and establish a different type of service. There are all kinds of good practices in the consortium, but the key distinction was the decision to buy something else. That decision does not sit with the procurement professionals or in procurement legislation. It sits with the commissioners.

The Convener: How does that relate to the 2014 act? Does the act make that decision easier or harder or does it not have an impact on the scenario that you outlined?

Graeme Cook: I like to visualise procurement as a bow tie. Procurement is the knot of the bow tie. On one side, you have all the organisational pressures—including budget and policy requirements—the front-line services, the people in the know and the technical people. All of that comes together and funnels down into the knot. That is the bit that faces the market.

There are all kinds of things that people view as procurement questions but which might be to do with the budget. The best procurement exercise in the world cannot fix an insufficient budget.

Front-line workers might say, "That is not quite what I wanted. I really wanted supplier A, but it churned through a procurement process and that has given me supplier C." In my experience, most front-line workers do not have the time to think about the environmental impact of the product that they want. They are familiar with product 1 and just want that. However, when we start to consider all the other policy drivers, including those under the sustainable procurement duty in the 2014 act, that starts to shift the answer. Of course, that is the intention. If it did not shift the answer, the act would not be achieving what it set out to achieve.

The professionalism of buyers is in trying to balance the competing desires—sometimes, they are in tension—that have to be delivered through the knot in the bow tie. The other side of the bow tie is the supply market. There are lots of different suppliers with different offerings. However, if the 2014 act did not change the answer of the tender, it would not be achieving its aims.

Kevin Stewart: The nub of the matter is that the 2014 act has made some good changes. We can see that. However, certain aspects of the matter are not necessarily about changes to legislation or regulation. We have a number of organisations that did not exist before. Scotland Excel is huge now, compared with what it used to be. We have other organisations in the centre of excellence. The frustrating thing for many—it comes back to my playing devil's advocate—is the question whether the process is too weighted towards the lawyers and the accountants making decisions or whether we are listening to all.

The most frustrating thing of all is when we know that there is good practice—which is good for human beings, as we have heard—but we also know that we are not exporting that good practice and ensuring that we are getting the best that we possibly can from contracts to deliver for people and give folk the flexibility and autonomy that we have talked about before. Graeme Cook said that

it is often driven by budgets, and the reality is that getting it right for people in terms of whole-life costs could save us a lot of money, because, in addition to the human cost, crisis costs us a lot of money. How do we export best practice?

Julie Welsh: We do a number of things, but there are things that we could do better. We have the Scotland Excel Academy, which provides training and support for all our members and associates. We do procurement, business analysis, project management and all sorts of accredited and non-accredited training.

What we do not currently have in our portfolio is anything around care commissioning. We are currently speaking to our colleagues in HSCPs about what we could develop to support them to commission better and more ethically. One example of that might be the work that has been done around the Granite Care Consortium, which you mentioned. That is in the pipeline. We recognise that there is a gap and that we could possibly help with that.

The Scottish Government set up our organisation in response to the John McClelland report. We have been around for 16 years, and we have not grown that dramatically. When we were first set up, we came from an organisation called ABC—the Authorities Buying Consortium. There was a staff of 100, which went down to 60 and is now back up to 100. It is still a small organisation, by most standards. Any growth that we have had has been through councils coming to us and saying, “We would like you to do this for us, because we are struggling to do it ourselves”. The growth can be seen as both a negative and a positive, depending on your perspective. I hope that that answers your question about what we can do differently.

Kevin Stewart: Graeme Cook, how can we get best practice exported?

Graeme Cook: Julie Welsh mentioned the 2006 McClelland report. At that point, there was a bit of a community of public sector procurers, but the reform programme that kicked in as a result of the report has built an incredibly well-connected community of procurement professionals. Best practice is shared routinely. The Scottish Government runs heads of procurement meetings several times a year. The community exists.

Sharing best practice as it pertains to procurement practice is standard now. We have standard tools, we have the procurement journey and we have the Supplier Development Programme to make the link between procurers and the marketplace. That does not mean that there is not more to do; there is always more that we can do—there is no question in my mind about that. However, we share best practice. There is

always room for local choice and local decisions. There will always be a variety of different ways of working within the rules and using the standard tools. We work hard at it, and we are good at it, but there is certainly room for improvement. There always is.

Kevin Stewart: Finally—this is a statement more than a question, convener; it is an appeal, really—folk should go away and think about how front-line staff can be involved in exporting best practice. We are missing a trick. Although I hear you saying that there is local autonomy and flexibility, lots of folk do not feel that that is the case any more. If they are not feeling that way, we all have a part to play in considering that.

The Convener: We will make some progress.

11:15

Brian Whittle (South Scotland) (Con): Good morning. I will take the themes that my colleague began and run with them. There is tension between outcomes and cost. You will know that I have a specific interest in public procurement of food and the impact that it can have across much of our society. We want to have the highest-quality food in our schools and hospitals that we can—for example, food that was grown just down the road. That would improve our kids’ outcomes at school and tackle many of our poor health issues, including hunger, malnutrition and the relationship between health and attainment. It would help with recovery in our hospitals, the rural economy would benefit and we would reduce our carbon output. However, budgets come along and have an impact on that aim.

Julie, I have been looking at Scotland Excel’s work for quite a while—not from a critical perspective, but to inform my thinking about how we could improve outcomes. In 2016, I looked at the area in a lot of depth and was surprised at how little of the food that our public sector procures actually comes from Scotland. Given where we want to be, and the outcomes that we want to have, how far should we look at the issue in the long term? How much of the pressure that is put on you comes from local councils’ budgets and their ability to pay for the service?

Julie Welsh: I know that you are passionate about food procurement and that you have had some dialogue with our organisation. We are one of the biggest public sector food buyers in Scotland. The food contracts that we put in place are worth about £83 million per year. Over the past 10 years, we have been working hard to increase the amount of Scottish produce that is bought—not just to help in all the areas that you have mentioned, but to help with our environmental footprint and so on.

There are great examples of areas in which we have made improvements. Those include our being able to massively increase the amount of Scottish meat that is purchased, which now represents 77 per cent of the total. Previously, that percentage was a lot lower. Only one chicken product is bought from outwith the UK now; that figure used to be a lot higher. Everyone has probably heard that we regularly used to receive freedom of information requests about buying Thai chicken, but we buy in only one chicken product now. Some 96 per cent of our chicken is farm assured and covered by the red tractor scheme.

We have been on a journey to increase the footprint of Scottish produce within our frameworks. That approach has worked well, but we are trying to marry that up with an environment in which costs are challenging and local government budgets are being pressed, as you mentioned. Up to this point, we have not been asked to consider changing any of our good practice—we are delighted about that—but we are being asked to consider whether, for example, we are buying the best-value Scottish cheese across the country. We are constantly examining the food market. We do not want to lose any of the best practice that we have established. We want to increase the areas in which we buy Scottish produce, and that will continue to be our aim as we move forward.

Brian Whittle: Who would have thought that, out of everything in that report, people would jump on the reference to buying chicken from Thailand?

Julie Welsh: Exactly.

Brian Whittle: From the other perspective, our food producers are perhaps not the best at dealing with the contracts that are required. Every single time I go to farms and meet representatives of NFU Scotland, they talk about struggling to get access to Excel contracts because, in the scheme of things, they are small operators. How do we use the public procurement framework to make it easier for them to come into the fold?

Graeme, I will come to you in a minute on that question, so please be prepared.

Julie Welsh: We work closely with many of the organisations in the food market, including the one that you mentioned, the Soil Association and others. We are really up for being more open to engagement with any organisation that might approach you and say, “Look, we feel this process isn’t working for us”, because we want it to work for them.

I should have mentioned that, in the past, when we went out to the market, it tended to be the big suppliers that had the distribution networks in place. More recently, many of our lots have been supply only, which means that small suppliers

have the opportunity to bid and use someone else’s distribution network. We would never have done that in the past. That is purely about trying to open it up to smaller Scottish suppliers and get their food in the supply chain.

In answer to your question, we do quite a lot. Food is a big part of what we procure, and it is a closely managed part, but we are up for doing more. If we should have more engagement with NFU Scotland and other organisations, please point them in my direction and we will make sure that we have those conversations and make the changes that we can make.

Graeme Cook: A number of considerations that we take into account when buying food and drink have an influence on Scottish local produce. I am sure that all members of the committee know that we cannot specify that we want Scottish produce and we cannot actively discriminate against suppliers who are not Scottish, but we can and do look at protected geographical indications. That is where we can go very local. If we want Arbroath smokies, we can specify that. We can look at standard assurance systems such as red tractor and the Royal Society for the Prevention of Cruelty to Animals scheme and so on. We can look at organic, fresh and seasonal produce. We can break frameworks into geographical lots. We can have secondary price lists in frameworks and allow products that might be more expensive in there so that anyone who wants to buy a more expensive product can choose to do so.

The consideration that I would particularly like to unpack involves the Scottish Government catering contract. I will pick on Victoria Quay in Leith as an example. When I was involved in retendering that contract some years ago, we looked at the best way to involve SMEs, but there are multiple constraints on both sides of the bow tie that I described earlier. Many SMEs do not want to do small drops, because the logistics do not work. They often want to drop off a whole pallet of goods. Victoria Quay cannot take pallets of, for example, yoghurts. It does not have the storage space to take an entire pallet. That is where wholesalers come in. There is huge success in getting Scottish produce into wholesalers’ supply chains. In the Scottish Government contract, 50 per cent of the beef is Scottish and 50 per cent is Red Tractor certified beef from the rest of the UK. Fifty-eight per cent of the fresh pork and 82 per cent of the lamb is Scottish. All the chicken and turkey is from the UK. Sixty-eight per cent of the eggs are Scottish. I will not give you the full list, but the contract is hugely successful because it allows SMEs to get that business. It furthers their businesses because, once those SMEs are in the big sheds, the lorries deliver on a full route that might include hotels, schools and hospitals as well as Victoria Quay.

Once we get those products on to the shelves of the big sheds, the wholesaler's customer base opens up to those SMEs. In the right circumstances, it is a real win-win to get into the supply chain, particularly when an SME does not want to do small drops. It can be very successful.

Brian Whittle: I was just going through the regulations. One thing that you could do around environmental impact—I am sure that you do this—is to procure based on air miles. I totally understand that there are not many tuna off the west coast of Scotland yet and that we may want to have tuna on the menu, but that is brilliant.

We can hold up East Ayrshire Council as an example, because around 75 per cent of the food that it procures for schools is local, as in from Scotland. I think that the furthest afield that it gets produce from is Edinburgh, for the fish. It can tell us which farms the eggs come from. I love that kind of stuff. There are instances out there in which that is happening, so it can be done. However, I know that the council is under financial pressure in relation to maintaining that, which, as we discussed earlier, could lead to a huge negative impact on the outcomes.

How can the Government, through contracts such as those of Scotland Excel, weight procurement more towards those outcomes? That is presumably what we want.

Graeme Cook: The specific issue of air miles is complicated. The rules come from the World Trade Organization government procurement agreement and, for a while, they were coming through the European directives into Scottish law.

Across Europe, there are examples of where public bodies have tried to use air miles—or, let us say, logistics miles—as a proxy to try to achieve procurement of local produce. That is where you can go too far. If you are doing something purely to get the local answer, it can be a step too far, and you start to trip over trade deals and things like the UK Internal Market Act 2020. We cannot go quite that far, but we are achieving huge numbers in terms of the proportion of Scottish and local produce through the existing policies. Does everybody do that? Probably not. The Scottish Government certainly does it, and it is in all the Scotland Excel food and drink contracts. That is true for the NHS in Scotland, too, and for the rest of the sector. On the side of the bow tie that relates to the policies and the budget, those things are always going to have an impact as well.

I have one more point to make with regard to the carbon footprint. That approach can sometimes give the wrong answer. We looked at that in some depth and we found that, for some produce categories, if we look only at the carbon footprint, it would be better to source things from

Spain than to get them locally. If lettuces are grown here under lights in heated conditions, for example, it can be less carbon intensive to bring them from Spain than to buy them locally. That is why we look at policies on fresh and seasonal produce in order that we avoid not favouring something that might come from far away.

Brian Whittle: Can I ask a final, very small question, convener?

The Convener: You can if it is very brief. We are getting short of time.

Brian Whittle: I note that the French always manage to do what we are discussing really well.

My last question relates to our schools and hospitals, where there is a distinct lack of ability to prepare food on site. How much does that impact on what you deliver, in terms of orders for pre-prepared food as opposed to food that could be prepared on site? Perhaps Julie Welsh can answer that.

Julie Welsh: I do not know the answer to that question, but I can go away and have a look at it. It has not come up as an issue, but you should not forget that we deal with hundreds of schools, so some will have that challenge while others will not, depending on their size. If the question is whether we have increased the amount of pre-prepared food as opposed to food that can be made on site, I can go away and look at that to see whether orders of those particular items have increased in volume. That may well be linked to the challenge that you mention, but I will go away and look at it, and come back to you.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I want to ask about the Public Contracts Scotland website, which, I believe, falls within Graeme Cook's remit.

Graeme Cook: It is within the remit of colleagues of mine in Government rather than my team, but I will be happy to answer and say what I can.

Gordon MacDonald: The evidence that we have heard over the past few weeks from suppliers and buyers is that, when the website was introduced back in 2008, it was very welcome as it provided one point where people could find all the contracts. Sixteen years later, however, it is looking a bit dated in comparison with other e-tendering systems. Can you highlight what the plans are to replace or upgrade that system in the future? In addition, for my benefit, can you tell us why there are two systems? There is Public Contracts Scotland and a separate tendering system.

11:30

Graeme Cook: The system has been updated in the past 16 years. It is not static—it is constantly being updated. To illustrate, I went to a school that had what I think was the first purpose-built educational chemistry lab in the world—it was certainly the first in Scotland. As a result, I learned in a Victorian chemistry lab.

In some ways, we are a victim of our leading-edge approach. We were among the first to mandate a single advertising portal for the whole of the public sector—that was in the 2014 act. It needs to be updated, and colleagues are currently scoping that with input from across the public sector and the supplier market in Scotland. I know that the multiple systems are within the scope of the analysis, which will ask whether that is still the right answer or whether there is a better way of doing things. We are at the stage of gathering the desires of everybody who uses the systems in order to try to figure out the best way forward. As I said, we are a victim of being at the leading edge, which means that we can end up with old technology.

Gordon MacDonald: What changes would you like to see?

Graeme Cook: This is not just about the advertising portal: I am going to talk about the whole suite of e-commerce systems. People are now so familiar with online shopping and they understand those portals, how to use them and so on. In what I hear from the central Government sector, there is certainly a desire to simplify the process of placing an order. That is at the far end of the procurement contract, but it goes back to the tender system. From that end right back to the early stages of the process, I would like to see information being drawn from one system to the other. That would not only benefit the buyers in my sector and all the other sectors, but be far more efficient for the market, which could put its information into the system once and have it pulled straight through.

Gordon MacDonald: That would reduce the administrative burden that a lot of suppliers feel they have.

Graeme Cook: Exactly. It would make it much simpler for everybody concerned. I know that colleagues are looking at interoperability between all the different systems.

Gordon MacDonald: I put my question to everybody else. Julie, do you have views on how to improve the system?

Julie Welsh: Yes. We think that PCS has been a force for good, and people generally like it. It takes only 10 minutes to set up a supplier profile—it is that simple. Where it gets a bit more

complicated is PCS-Tender and the functionality between the two systems. We would like them to be merged, and I think that that is what the team in the Government is looking at.

We have been hoping for a national repository of bidder information for a long time, not only for us but for our suppliers. The guys on Mary Mitchell's team spend a lot of their time checking on whether insurance and lots of other documentation is up to date. It would be hugely beneficial for us as buyers to have all that stuff in one place, but it would also help suppliers, who would need to do it only once instead of numerous times.

Gordon MacDonald: I have one further question. I will finish with that because of the time constraints. One improvement that has been made is the introduction of the quick quote system, but it has a threshold of £50,000. Should that be reviewed? If so, what level should it be set at?

Graeme Cook: The £50,000 threshold is stipulated in the 2014 act, and it can be changed by ministers. It has not been changed since 2014, but I understand that colleagues are considering whether it is time to look at changing it.

The Convener: I invite Gillian Cameron to comment on the website. The paper that you gave us talks about it being “confusing” for businesses to have two systems—PCS and PCST. You also comment on the need

“to mandate the use of PCS to advertise,”

which would benefit small businesses. Will you comment on that?

Gillian Cameron: Yes, certainly. We have already highlighted that there are two different systems, but there are also different processes within each system. It is not just a matter of registering and putting up a profile; businesses have to go through certain steps to make sure that their profile is published. We often hear from small businesses that they think that they are registered, but, if they have not published their profile, buyers cannot see them to invite them for a quick quote, which is a barrier. The time has come to address that, and we have been asked to be involved in doing that.

You are right about online shopping. People shop on Google, where they do a simple search, but it is not easy to use PCS for a simple search, which means that it is difficult for a small business to find something equivalent to what it offers. A lot of work could be done easily to address some of the concerns. Having a single sign-on and a single place of accreditation could be considered. That “Do it once” approach would be welcomed by the supplier community. There are bits of it where you can do that, but there is more that we could do.

The Convener: Are you supportive of making changes to the thresholds?

Gillian Cameron: That would be a good idea, because the cost of living crisis means that everything has moved, but we have to think about how that would work. With very small tenders, the councils set their own standing orders, so they might still go out and get three quotes or make telephone inquiries, but, when the contract starts to step up to the £10,000 mark, they will start to use the system for quick quotes. Changes to the thresholds would be welcome.

Bob Doris: I listened keenly to the discussion about the success in increasing the number of Scottish suppliers in recent years. However, businesses and third sector representatives have noted that unsuccessful bidders—those that are not among the 60 per cent of Scotland Excel's suppliers that are Scottish—do not always get meaningful feedback. That can discourage small firms, in particular, from engaging in future procurement processes. How effective are current feedback procedures, and what barriers exist to providing more useful feedback more often? I am not sure which of the witnesses would like to address that question.

Graeme Cook: There is a straightforward and binding requirement to give feedback, and there are thresholds that apply when feedback is given. For procurements that are regulated by the Procurement Reform (Scotland) Act 2014, the buying authority has to inform every unsuccessful bidder of who won and of what the bidder's own score was. The authority then has to respond to a request for further detail. I wonder whether that is the part that might leave some bidders thinking that they have not received enough information. Perhaps they do not realise that, within that slice of regulated procurements, there is a step at which they should seek further feedback. Feedback on procurements that are regulated by the regulations, rather than by the 2014 act, has to be in the standstill letter and it has to be up front. There is no need to request very detailed feedback. I wonder whether those distinctions are why some bidders think that they are not getting what they are entitled to.

I must say that I do not recognise a lack of detailed feedback. We perform a comparison of procurement exercises every year, as part of which we look at members of the central Government sector to see how well they are adhering to procurement practice and so on, and I do not recognise a lack of feedback. However, clearly, it is happening, so I would like to understand more about where that view is coming from.

Bob Doris: I am sure that some committee members—perhaps along with the Scottish

Parliament information centre—can get that information to you, given the analysis that has been done.

I have a couple of follow-up questions, but Gillian Cameron wants to come in.

Gillian Cameron: You are probably hearing that from a lot of the smaller businesses and from microbusinesses, which are bidding for contracts that are below the regulated thresholds. The feedback that is offered in relation to those bids is perhaps not consistent, and they might just be told that they have not won a contract.

Graeme Cook is absolutely right—it is a question of learning and education. Suppliers often do not know that they can go back and ask why they were unsuccessful. Currently, the pressures on procurement staff and on the resources in councils and other public bodies might mean that feedback is not provided particularly quickly, so businesses might feel that they have not had an answer. Alternatively, it could simply be that they have been told that their bid was not cheap enough. When it comes to lower-level contracts, price is a huge factor, so they could have been told that their bid was not as cheap as some of the other organisations'.

Bob Doris: That is a human resource issue, potentially.

Gillian Cameron: Yes.

Bob Doris: Will you clarify what the thresholds are that you are referring to, Ms Cameron?

Gillian Cameron: Contracts of £50,000 or more for goods and services and contracts of £2 million or more for works must be advertised on Public Contract Scotland.

Bob Doris: That is helpful. Of course, one way in which small businesses can grow is by being successful in winning some of the smaller awards that they are not entitled to get feedback on currently because of the award threshold—you have to draw a line somewhere—or because of a human resource issue.

What are the outcomes of that? Does the Government or Scotland Excel map the attrition rate or the reapplication rate of smaller businesses that apply in one financial year but do not apply in the next two or three financial years because they have never won a contract? Maybe they reapply if they get feedback. If the reason for feedback is to encourage businesses—particularly those that are based in Scotland—to reapply, how do we map that? How successful is feedback in getting businesses to reapply?

Mary Mitchell: Our tracking of bidding is always of those contracts that are above the higher

regulated threshold rather than of the lower-value contracts, so my comments are on that.

Over the past 10 years or so, we have seen an increase in the variety of bidders. The size of bidders has diversified over that period, and we have more smaller businesses than we previously had. In each tender, we assess the number of bids compared with the previous time that we ran the exercise for similar groups of products. We do not reach out to those who did not bid to ask why that was the case. If businesses that bid ask us for feedback, we will always give it.

Bob Doris: I think that Mr Cook wants to come in.

I am not trying to imply a criticism; there may just be a gap. If businesses are bidding for contracts that are below £50,000 or £2 million, there is no formal or structured feedback process. That is just a fact. I am not reading anything into that—there are reasons for that. However, if businesses cannot be given individual feedback, has any effort been made to consider whether they can be brought together in clusters of, say, 15 or 20 for support to be given to them more generally, to encourage them? We want smaller businesses to feel encouraged; we do not want them to be disillusioned. Let us say that a business has applied twice but has not won a bid. We do not want it to be wondering what the point of applying in the future is. It will not grow, innovate or learn without feedback. What support is available for it?

Gillian Cameron: A key part of what we deliver is support for businesses not only on how to bid and tender, but on how to deal with the situation when they have not won a contract. We give them that information and support so that they can try again.

Going back to local authorities, I always advise suppliers, even when they have won a contract, to ask why they have won on that occasion, so that they can determine whether there is a differentiator in relation to why they won this time round. It is hugely important that they get feedback, because, as you say, that is how they improve and move forward.

There is now more transparency and openness about the feedback that is taking place, but there is still a way to go.

Bob Doris: There is maybe just a wee gap somewhere, where we could do a bit more. I am a committee substitute today, so I am a mere passenger, but I found that to be of particular interest, and maybe there is something that we could do to address that aspect.

Gillian Cameron: With Public Contracts Scotland, suppliers can say why they are not

bidding for a contract, but none of that information is made public—I do not know whether it is even collated. It would be interesting to have that information, so as to understand the choices that businesses make. They might apply for a tender but then look at the documents and conclude, “That’s not for me.” We do not have overall visibility regarding any common factor. Was it timing? That can be a huge thing for small businesses, as they will see something only at the last minute, so they will not have time to prepare the tender. Is it the budget? There are many reasons why a business might think about bidding but then not do it.

11:45

Bob Doris: Does that get followed up? I can give you a direct example of where such things do get followed up in the Scottish public sector. If someone applies for a job with Social Security Scotland, that is done mostly online and, if the person gets part of the way through the process and does not submit their application, there is a back channel by which, as long as the individual has provided some form of contact, Social Security Scotland will reach out to them, saying, “We see you were thinking about applying to Social Security Scotland but you didn’t complete the application. Is there any way we can support you to do that?” Is there any follow-up when a final bid does not come in but you know that a business was considering one?

Gillian Cameron: Not that I am aware of, but timing will probably play a key part in it.

The Convener: Before we close, I want to ask Gillian Cameron something. In the paper that you provided for us, you discuss “Insufficient lotting of contracts”. The issues that you identify under that heading include

“transparency on the reasons for not lotting a contract.”

Do you want to say a wee bit about that?

Gillian Cameron: There has been a lot of improvement around that, and colleagues around the table have been considering that point. Looking at it from a local perspective, I can say that community wealth building is driving use of local suppliers, and there is a desire to have local suppliers on the frameworks. It may be that the lots are still too big for smaller businesses—not on all occasions, but on some occasions—or it may be a matter of lotting in a different way. That might be not geographical but more down to the sector and the services that form part of it. Those are some of the challenges.

We deliver a course in which we talk about how to get on frameworks, and representatives from Scotland Excel come along and talk about their

services. There are ways of looking at how we move forward with that, and my colleagues are definitely considering how they might improve that.

Scotland Excel is not the only framework organisation out there. There are lots of different organisations that run frameworks, and they are there to support the majority of buyers. I imagine that it is a difficult task to ensure that the framework fits with them all.

There are other approaches whereby things are not lotted in a way that is geographical or in a way that is friendly for smaller businesses. The question is how we can encourage those firms that win a bid to be open to engaging with local businesses, so that they can be part of the supply chain.

The Convener: Thank you. That is this morning's evidence session finished. I thank the witnesses very much for attending.

11:48

Meeting suspended.

11:51

On resuming—

Subordination Legislation

Bankruptcy (Scotland) Amendment Regulations 2024 (SSI 2024/48)

The Convener: Our next item of business is consideration of Scottish statutory instrument 2024/48, which is a negative instrument. That being the case, members are invited simply to note the instrument. Are members content to do so?

Members *indicated agreement.*

The Convener: We now move into private session for the remaining items on the agenda.

11:51

Meeting continued in private until 12:53.

This is a draft *Official Report* and is subject to correction between publication and archiving, which will take place no later than 35 working days after the date of the meeting. The most up-to-date version is available here:
www.parliament.scot/officialreport

Members and other meeting participants who wish to suggest corrections to their contributions should contact the Official Report.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

The deadline for corrections to this edition is:

Monday 15 April 2024

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba