

LOCAL GOVERNMENT COMMITTEE

Tuesday 24 April 2001
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE

12th Meeting 2001, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

*Mr Kenneth Gibson (Glasgow) (SNP)

Mr Keith Harding (Mid Scotland and Fife) (Con)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

*Mr Gil Paterson (Central Scotland) (SNP)

*Iain Smith (North-East Fife) (LD)

*attended

WITNESSES

Iain Dickson (Scottish Construction Industry Group)

Bruce Dixon (Association for Public Service Excellence)

Stewart Gilchrist (Association for Public Service Excellence)

Paul O'Brien (Association for Public Service Excellence)

John Park (Scottish Construction Industry Group)

Sid Patten (Scottish Construction Industry Group)

Peter Peacock (Deputy Minister for Finance and Local Government)

Christie Smith (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 2

Scottish Parliament

Local Government Committee

Tuesday 24 April 2001

(Afternoon)

[THE CONVENER *opened the meeting at 13:32*]

Items in Private

The Convener (Trish Godman): Okay comrades, now that we are quorate, we will start. I hope that you all had a pleasant break over Easter and that you have come back refreshed, although, looking at Kenny Gibson, I have to say that it does not look like it.

Members will not like the next bit. I am going to ask you to agree to take items 2 and 7 in private. The reason for taking item 2 in private is to allow Professor Arthur Midwinter to speak to us. He cannot speak to us in a public session, because the item concerns proposals for witnesses for the budget process inquiry, which might be sensitive. Moreover, we may not wish the Executive to know at this point exactly what we are going to do. Item 7 is to be taken in private because we will be considering the conclusions of a report. Do members agree to take items 2 and 7 in private?

Members *indicated agreement.*

13:33

Meeting continued in private.

13:50

Meeting continued in public.

Scottish Local Authorities (Tendering) Bill: Stage 1

The Convener: I thank the witnesses for coming early. I hope that you have had a good break and that you are fresh and raring to go, as we are—that is what I am saying, at least, although the committee does not seem to support me on it.

We have with us Peter Peacock, who is the Deputy Minister for Finance and Local Government, Christie Smith, who is the head of the local government finance and performance division of the Scottish Executive, and Mary Newman, who is the head of best value in the local government finance and performance division. I welcome them to the committee. The procedure will be the same as before: the minister will make some comments, after which I will open up the meeting for questions. Over to you, minister.

The Deputy Minister for Finance and Local Government (Peter Peacock): I will be brief, because I know that members will have questions. The Scottish Local Authorities (Tendering) Bill is a short, two-section bill, which contains no new policy proposals. It is designed to remove the limit on the period during which the competition provisions in the Local Government Act 1988 may be modified. The reason for doing that is so that the widely supported moratorium on compulsory competitive tendering does not end on 31 December 2001 in respect of those defined activities that are associated with direct service organisations.

To have effect, the bill has to commence by 31 December 2001, which means that royal assent is required before the end of November. DSO managers in local authorities believe that the earlier we can make the change that the bill proposes, the better, as it will mean that they are not by default put to the unnecessary effort of preparing for a reintroduction of compulsory competitive tendering. In effect, the bill will allow ministers to continue the moratorium until we can replace the current regime with the best-value framework, which we are planning. I want to make it clear that, in that framework, we firmly intend to repeal the CCT legislation. We intend to publish our detailed legislative proposals on best value in the autumn. Work on the preparation of those proposals is well under way. I am happy to answer any questions on that as well as on other aspects of the issue.

The Convener: We have a written submission from the Convention of Scottish Local Authorities, which suggests that another way round the issue is to abolish CCT altogether. Why did you not do that? If the proposals for the development of best value to replace CCT are well in advance, why did you not include a later date in the bill, rather than having no date at all?

Peter Peacock: I stress that we regard the bill as a technical measure. There is a question of timing. In essence, if we were to take no action now, CCT would return by default by January, which is just before we want to abolish it. That would happen for the reason that I gave in my opening remarks.

The best-value regime that is being prepared, which has been the subject of a lot of discussion in local government and in the wider community of those who are involved in managing best practice, represents a major set of changes to principles and practices and will be the subject of a complex bill. It will raise many practical issues, which will have to be teased out through the legislative process. It will also raise issues of principle, which I am sure members will wish to test through the legislative process. There may be many probing amendments and amendments to change the bill that we will eventually introduce.

Quite simply, there is no space in the current legislative programme to do justice to that process and to pass what will be a complex piece of legislation. Total repeal at this stage was not an option, which is why we have introduced this bill to allow us to continue with the status quo until we can make all the necessary preparations. I reiterate that we firmly intend to present our proposals to ensure that the change to best value takes place.

You asked why we did not make use of a later date. That was an option, but if the legislative programme altered in any way, we would have had to come back with a similar proposal to change the date again. We thought that it was expedient simply to remove the date from the statute, which will allow ministers discretion to come to the Parliament to continue the moratorium, if that is necessary. We firmly hope that that will not be necessary, but events are not always in our hands when it comes to the legislative programme and the will of Parliament. We felt that the bill represented the best way in which to approach the issue.

The Convener: I take it from your reply that at the moment you cannot give a date and that you do not have an idea of the time scale.

Peter Peacock: For?

The Convener: For CCT—for the whole bill.

Peter Peacock: Our firm intention is to publish our detailed legislative proposals in autumn this year. Our preparations for briefing draftsmen on the bill are well under way. Members will be aware that the proprieties and protocols of Parliament prevent ministers from saying what will definitely be in a future legislative programme. I am constrained by that. However, members will no doubt have got the drift of what I am suggesting. We would not be doing all the detailed preparation work, which is now beginning to take place, if we were not firm in our intentions. Whether we get time for the legislative process will be subject to parliamentary procedure.

Iain Smith (North-East Fife) (LD): To what extent is the Executive's linking of best value with powers of community initiative, for example, behind the delay in introducing the best-value regime? Is the delay also caused by the fact that you are considering extending the best-value regime to the public sector in one go?

Peter Peacock: On the latter point, we are still considering what would be required in extending the regime to the rest of the public sector. We are clear that the principles of best value ought to apply across the whole public sector. It is the precise legislative provisions that present the difficulty.

You ask whether the best-value process is being held up because it is linked to other aspects of a future bill relating to the power of community initiative and community planning. The answer is no. Had we been considering best value as a standalone item, the complexities of the bill would still have had an impact on whether we could get it passed in this parliamentary year. The process was not going to work like that.

However, there is a connection between what will form part of best value as we currently envisage it and aspects of community planning and the power of community initiative. Depending on the final structure of the bill, there may be compliance requirements in a number of aspects—in community planning and in best value, for example. It would be right to get the compliance arrangements consistent across all those fields of endeavour. Linking best value to other aspects has not held implementation back; we would still have been presented with a problem in this parliamentary year.

Mr Kenneth Gibson (Glasgow) (SNP): Is it fair to say that the Executive picked up the fact that the moratorium was going to end this year only fairly recently? Did the Executive have discussions with COSLA, local authorities or any other relevant organisations before the bill was introduced?

Peter Peacock: On the first point, it is right to say that, when the order to continue the

moratorium was made last year, as was required, the officials involved picked up on the point that the date in the current legislation presented a problem and that we would by default end up having to reintroduce CCT if we did not take action. That is what has precipitated the action that we are now taking.

We wrote to COSLA in November last year, when we recognised that we would have to take action. We made it aware that we thought that the change would be necessary. I do not think that COSLA responded directly to us on that, but we understand that its members are comparatively relaxed about our approach.

There has been extensive consultation on replacing CCT with a best-value regime. There was a best-value task force, which involved the Executive, COSLA and the Accounts Commission for Scotland among others. The commission issued a report, which was subject to consultation between December 1999 and March 2000. From June to October last year, there was next-steps consultation on best value. We have been sifting through all the responses to that consultation.

Given that the bill does no more than allow us to maintain the status quo—it does not represent any change of policy—and given that we had conducted that consultation and had written to COSLA on the matter, we felt that it was not necessary to carry out much wider consultation.

Mr Gibson: Could you outline the main drawbacks of CCT and, if there are any, the advantages? I know that the bill is technical.

14:00

Peter Peacock: You are opening up a fundamental issue. CCT was originally introduced in the 1980s as a result of the Conservative Government's thinking that competition was required in the provision of public services and that the taxpayer should not—as the then Government perceived it—subsidise activities that the private sector could provide unsubsidised. That was the underlying rationale. Regrettably, the provisions that were constructed around CCT put a straitjacket on local authorities. Talking as a former councillor who dealt with some of these matters, I believe that the way in which CCT operated latterly led people to one conclusion, whether or not they thought that it was in the best interest of the taxpayers.

Increasingly, local authorities that wanted to configure services in a different way found that the CCT legislation was getting in the way of that. It became a straitjacket, which is why there was a movement towards considering best value. Best value is not about saying that competition is a bad thing; it is about saying that competition is only

one aspect of the way in which services can be provided. Some local authorities continue to choose to put matters out to competition and they will continue to do so under a best-value regime. However, local authorities can also take into account quality issues, which perhaps could not be taken into account when cost was the principal factor.

We need to balance quality, costs and efficiencies in the different ways of delivering services. That is part of the discipline of best value, as is benchmarking against the performance of others who are doing a similar task to determine whether one is doing it as well as one could. It is fine if local authorities choose to have competition—that is to be encouraged in several respects—but we must get away from the narrowing of the discretion of local authorities whereby a decision was purely motivated by price, which most people latterly felt was unwise. That is the underlying rationale.

Mr Gibson: So best value takes the best parts of CCT and excludes the drawbacks.

Peter Peacock: It allows local authorities to continue with best practices. Most local authorities—like me, in my time with a local authority—started from a position of being against competition. However, when they saw some of the impacts, they recognised that it was worth while to benchmark and to look around to see whether things could be done better, not purely on the ground of cost, but to construct the best range of services for the constituents whom they served. As Mr Gibson said, best value allows us to pick out the good parts while removing the straitjacket.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): This question is not so much about the bill as about the intention of the Executive in removing the straitjacket, as the minister sees it, of CCT. Local authorities have asked not only for the straitjacket to be removed but for a level playing field to be created. Will the bill create fairness for local authorities in competing with the private sector?

Peter Peacock: Yes. As well as considering best value and the power of community initiative and community planning, we are considering the trading constraints that exist within local authorities. We will take all those factors into account when we consider the structure of the legislation. There should be a level playing field; we do not want to advantage the public sector over the private sector, but neither do we want to disadvantage the public sector. It is well known that the public sector excels in some fields and that in other fields the private sector may be in the lead—that changes over time. We must create as level a playing field as we can.

One of the challenges that faces us is to construct the legislation. It will be complex to produce precise definitions that allow a level playing field, that enable the best practices that have arisen from CCT to continue and flourish, and that create or support the atmosphere in local government of seeking continuous improvement in performance and in the other matters that I have mentioned. However, that is our intention.

We have established a bill team. Yesterday, I was involved in two meetings with officials at which we had detailed discussions about the bill's structure. Three meetings are planned for the next three weeks to allow us to develop policy more thoroughly. Officials are working on the detail and are beginning to provide instructions to the draftsmen to create the bill. We will have a chance to consider that when we begin the formal legislative process for the bill in the next parliamentary year.

Mr McMahon: Information that the committee received suggested that the Local Authority (Goods and Services) Act 1970 would not be considered. Does that remain the case? I do not believe that you can achieve your intention without dealing with such laws that constrain local authorities, which have repeatedly asked for them to be addressed.

Peter Peacock: We are consulting on that and asking what local authorities and others believe that we ought to do. We are not refraining from considering that issue. We will try to ensure that any frustrations or unnecessary constraints that may have existed are examined. That ties in with the power of community initiative and the ability to address issues and to spend money on matters on which the power to do so is not otherwise given in statute. A relationship exists between that and the trading conditions under which local authorities operate. We will develop our thinking on that. Those issues were part of the consultation on community planning.

The Convener: I thank the minister for giving evidence. The scope of the questions broadened, and I thank him for answering questions that moved away slightly from the one-liner bill.

From the Association for Public Service Excellence, we now welcome Paul O'Brien, the director, Stewart Gilchrist, the executive director of housing and technical services in South Lanarkshire Council, and Bruce Dixon, the corporate manager of environmental services in West Lothian Council. Paul O'Brien will say a few words, after which I will open up the discussion.

Paul O'Brien (Association for Public Service Excellence): I understand that I have four or five minutes in which to make a few opening comments. When we were asked to come to the

committee, we e-mailed our members—about 450 contacts—and asked them for their opinions on the bill, in order to help formulate our evidence.

The Association for Public Service Excellence is made up of 250 local authorities from throughout the United Kingdom, including all the authorities in Scotland. The association consults, develops, promotes and advises on best practice in the delivery of public services. We promote quality public services through networking, sharing information and best practice and we are committed to the philosophy of continuous improvement.

The association fully supports the bill and the further extension of the moratorium on CCT until such time as best value is legislated for in Scotland, although, under the proposals in the bill, the CCT financial framework will remain in place. We fully support the concept of best value, so we welcome the bill as a step towards the full implementation of best value.

Members should note that, while the bill negates the need to tender, the ability to use competition is one of a number of options that will continue to be available to local authorities—the bill does not take that right away from authorities.

We acknowledge that competitive tendering achieved some benefits that should not be lost under best value, but many of the efficiency gains from CCT were achieved through the erosion of the pay and conditions—including sick pay and holiday and pension provisions—of front-line employees with weak market power.

CCT is widely acknowledged to be out of tune with the wider social agenda and with non-discriminatory employment practices, the fair pay agenda and single status, social inclusion and best value.

As we move through the transition from CCT to best value, we look forward to the implementation of best-value legislation in Scotland, as a number of issues remain under both the current moratorium and the proposed moratorium on CCT legislation. Some of our members who gave us their views expressed concerns about the further delay in abolishing CCT, for example. The moratorium still requires local authorities to keep accounts, meet financial objectives, submit financial reports and maintain the sanctions that fall under sections 13 and 14 of the Local Government Act 1988 for defined activities only. Unfortunately, those provisions still dictate how services are structured and delivered and act against innovation and the ability of local authority services to make the customer the central focus.

We welcome the Executive's commitment to ending CCT and the move towards a best-value regime. However, the committee should be

advised of the difficulties that are experienced by councils in fully embracing best value while, at the same time, maintaining the provisions of the Local Government, Planning and Land Act 1980 and the Local Government Act 1988 that are incorporated in the moratorium regulations. Direct labour organisations and direct service organisations are required to run both a CCT regime and the early days of a best-value regime in parallel, but the aims, objectives, processes and methodologies of the two types of regime are incompatible.

Even the Accounts Commission acknowledged those difficulties in paragraph 15 of its recent publication, "Overview of the 1999/2000 Local Government Audits", which says:

"More generally, there are early indications that new methods and structures being developed under Best Value initiatives may not fit easily with the ongoing statutory requirements of the compulsory competitive tendering (CCT) regime."

If, during the debate on the bill to extend the moratorium, some flexibility in accounting for defined activities could be introduced, we suggest that the move to best value would be much less painful. The way forward would be for councils to group similar services together for accounting purposes, thus removing the need for parallel accounting of day-to-day management realities and the artificial requirements of CCT.

We could learn a number of lessons—some positive, some negative—from the experience in England and Wales of best value, for example about the focus on process and over-prescription. Other problems with best value in England and Wales include restricted flexibility and a restriction in the potential to innovate, the cost of inspection and power of the best-value inspectorate, and the types and size of reviews that are taking place. There are also problems with the perception of competitive tendering by default, as the continued focus on service providers prevents the potential to think out of the box of defined activities. There is limited use of cross-public sector and joint reviews that look at local authority provision and health sector provision at the same time.

We recently produced a joint report, on lack of employee involvement in best value, with the Improvement and Development Agency. We can supply members with a copy of that report, which indicates that that aspect is becoming a real problem. In some areas, elected members are excluded from the best-value process.

14:15

There is a lack of clear linkage to the supplementary guidance that has appeared within the past year or two on community planning and the social, economic and environmental well-being powers that have been established under the

Local Government Act 2000 in England.

The best-value legislation for Scotland will be a prime opportunity to utilise the lessons that have been learned to date in England and Wales and to prevent a repeat of the problems that I have outlined. A general specification of duties should be applied and fully supported with clear and specific guidance that is not overly prescriptive. The framework should ultimately not be contained simply by the three Es—economy, efficiency and effectiveness—but should also incorporate the principles of equity and environment.

APSE welcomes the bill, but it is of the opinion that legislation on best value must appear sooner rather than later, to overcome the current restrictions in service provision that have been created by the CCT framework. It is important that, in making that legislation, the Executive learns the lessons from the experience to date in England and Wales.

Thank you for the opportunity to give evidence. I shall supply a copy of our concerns in writing, and we would welcome any further opportunity to give evidence. I shall answer any questions that members have.

The Convener: As you said, you asked your members to comment on the bill and they did so. The Executive has consulted widely on the best-value programme, but not quite so widely on the bill to extend the moratorium. Would it have been helpful if the Executive had done that, or do you think that it has done enough? The bill is only one page long.

Paul O'Brien: I do not want to be detrimental, but the bill is fairly simplistic and is designed to extend the current situation. If the Executive had consulted more widely, the feedback that it would have got is that some people now feel that it should press ahead with a bill on best value.

Mr McMahon: I would like to clarify whether you think there is any possibility of going back to the CCT regime. You said that there was a prime opportunity to move forward, but is there any notion among your membership that there should be a return to the old regime, perhaps remodelled? Do you quite clearly see things moving towards best value?

Paul O'Brien: I do not think that anyone among our membership would like us to go back to the competitive tendering regime.

Mr McMahon: So it is just a matter of time. Obviously, there have been changes in the current moratorium period. What are the main changes that have affected you and what impact is the moratorium having?

Paul O'Brien: My colleagues may also want to comment on that point. Many authorities want to

try some innovative things, such as integration of the client-contractor roles that existed previously under the CCT legislation. The authorities have considered that, but they feel that, under the moratorium and with the financial framework still in place, it is difficult to take such steps, as they are still required to collect their accounting data in a certain fashion.

Stewart Gilchrist (Association for Public Service Excellence): I know from experience that many councils, including our own, have taken the opportunity to consider how services are being delivered and to put greater customer focus on service delivery. That has meant combining existing defined and non-defined activities into new functions. Unfortunately, under the current accounting regime, we are required to account for them separately. That is the point that Paul O'Brien has been making.

The benefit of best value is that we can start to focus on service delivery and on delivering what the customer needs and wants. Unfortunately, however, if the financial regime remains as it is, councils are somewhat restricted by it—although we are trying to be innovative, and I know that councils are being innovative. The longer that that situation remains, the more difficult it becomes to be innovative.

That is illustrated by the example of what we would call facility services, which combines janitorial services, cleaning and catering, for example. Cleaning and catering are clearly defined activities, whereas janitorial services are not. We would like to take opportunities to streamline management and to increase customer focus through a service delivery option, but when we came to account for that, in effect we would have to break activities back down. To an extent, there is an element of false accounting in that, which does not help authorities to move forward.

Bruce Dixon (Association for Public Service Excellence): One of the benefits of the CCT regime was improved outputs from the manual side of councils. However, the regime also created divisions within councils, in that it separated the client from the contractor. In West Lothian—I know that this was also the case in other councils—we want to move towards elimination of the distinction between client and contractor and towards a single point of service delivery. The CCT legislation inhibits that.

Mr Gibson: What impact would a statutory duty of best value have on DLOs and DSOs?

Stewart Gilchrist: I do not think that there is any concern about best value being a statutory duty. Authorities have consistently demonstrated their ability and commitment to meet statutory provisions. The argument is more about whether

we have to apply best value for all services. My understanding is that best value does not apply just to DLOs and DSOs. The requirement would be on all services.

Over the years, local government has demonstrated its ability to meet head on the challenges that have been put in front of it and to be innovative. There are enough potential checks and balances in the system, through the Accounts Commission for Scotland and Audit Scotland and by means of performance management and planning audits. That would demonstrate to the wider public the effectiveness of the local government service.

Mr Gibson: Should best value be extended to all public sector organisations?

Stewart Gilchrist: My understanding is that, effectively, it is there. That is certainly the way in which my council views the situation. It seeks best value in its services. That is more and more the case as we develop community planning. We are interfacing and, as councils, we are very much expected to take the lead locally. We come across other parts of the public sector in which the philosophy perhaps does not exist in the same way, although I recognise that that is changing.

Paul O'Brien: I can give an example concerning the health sector. Last week I was in Hull, meeting representatives of a health trust. The trust has 49 geriatric patients who are taking up hospital beds although hospitalisation is probably not the best way of treating them. At the same time, however, local authorities are closing down care homes for the elderly. If we can arrive at joined-up thinking, there are solutions for everyone.

Bruce Dixon: It is essential that any proposed legislation is not prescriptive, but allows local authorities the flexibility to deliver services in the best, most cost-effective way possible.

Mr Gibson: Should the bill on best value, when it is introduced, be used to encourage and facilitate joined-up government?

Paul O'Brien: Yes.

Iain Smith: Given that the Executive is clearly not yet ready to introduce a bill on best value—we heard earlier from Peter Peacock, who said that because of the complexities of such a bill, it will not be possible to introduce it until the autumn—do you accept that the Executive's current approach of extending the moratorium is an acceptable way forward? Would you rather that the Executive moved to abolish CCT, even if the best-value regime was not ready to be introduced?

Paul O'Brien: We would like the Executive to proceed with the abolition of the CCT regime, which was with us for the best part of 20 years. It is important that the best-value framework that is

put in place is correct, because it could be with us for a long time, so we recognise that everything cannot be done overnight.

Mr Gil Paterson (Central Scotland) (SNP): Paul O'Brien said that the DLOs had two systems of operation. Would there be savings if only one system were in use?

Paul O'Brien: If we consider just one area—the integration of the client and contractor roles that we spoke about earlier—the fact that the CCT framework is still in place limits what can be done. Savings could be made.

Bruce Dixon: There could be significant cost savings in allowing councils the flexibility to integrate client and contractor roles and to run one set of trading accounts rather than a number of sets of trading accounts. In West Lothian, we have integrated grounds and road maintenance. Last year, when we were running trunk roads, we had to run three sets of trading accounts—one for trunk roads, one for the remaining roads and one for grounds. If things were simplified, one set of accounts could cover them all. Significant savings could be made.

The Convener: The Scottish Local Authorities (Tendering) Bill is a one-line bill to extend the moratorium. Earlier, you said that moving from CCT to best value was a good move and that you would come back to the committee if we wished. Michael McMahon or Iain Smith asked the minister about a further bill, but he could not give us a definite date—we did not expect that anyway. However, the Executive is considering a further bill, which will be introduced as soon as possible. I am sure that we will have you back to the committee. Meantime, I thank you for appearing early, which is always a bit difficult. Thank you for your contribution.

I welcome our next witnesses, from the Scottish construction industry group. Thank you for coming early; we are never usually ahead like this—I do not know what is happening. Sid Patten is the chief executive of Scottish Building and is the secretarial representative on SCIG; John Park is the representative from the Scottish Confederation of Associations of Specialist Engineering Contractors on SCIG; and Iain Dickson is the representative of the Royal Incorporation of Architects in Scotland on SCIG. John Park will say a few words and then I will open the meeting up for questions.

John Park (Scottish Construction Industry Group): Thank you. I am grateful for this opportunity. As we represent the construction industry rather than any part or department of local government, I thought that I would give members a brief introduction to our group. I will read from a statement to save time.

SCIG is the voice of the construction industry throughout Scotland. It was established in its current format in response to a Government desire for there to be one independent body to represent the industry in Scotland. SCIG takes matters of concern to Government and promotes the Scottish construction industry. SCIG was founded following the disbanding of the joint advisory panel in 1980. In the 1970s, the construction industry in England and Wales had close communication with the Government through the representative "group of eight". When the joint advisory panel was disbanded, it was agreed that the Scottish group of eight would provide a focused group through which the Scottish construction industry could speak to Government. It was determined that the relevant unions would also be represented on SCIG and that is still the case.

SCIG was formed from the established constituent bodies representing the professions, the contractors, specialist subcontractors, suppliers and trade unions operating in Scotland. SCIG acts as the independent, Government-recognised channel through which communication with the industry in Scotland is maintained.

14:30

The recent "Report on the Impact of the Construction Industry on Economic Activity in Scotland", commissioned and published by SCIG, underlines in some detail the importance of our industry to the economy as a whole. That importance is not properly understood in many quarters. I have taken the liberty of bringing copies of the report for the attention of members. The information contained in the report is not specific to the topic on which the committee is taking evidence, but I hope that members will find time to read the document when they consider today's proceedings.

My colleagues and I are pleased by the on-going acknowledgement of our industry's input into the public consultation process, as evidenced by the invitation to participate in today's committee meeting. As a previous witness suggested, we are perhaps here one meeting too early—that is for the committee to judge.

Three years ago, together with a representative of COSLA and permanent officials at Victoria Quay, we formed a construction industry liaison group to input directly to the task force that the Government had set up to report to ministers on best value in local authority services, which was seen as an imaginative and evolving replacement for the compulsory competitive tendering process imposed on local authorities by the previous UK Administration.

The construction industry liaison group carefully

monitored and contributed to the work of the task force and responded to the interim and final reports on best value. In the summer of 1998, at the request of officials at Victoria Quay, several of us made ourselves available for emergency consultation by the appropriate departments of two local authorities that were in trouble as a result of significant overspending by their direct labour organisations. After several full and frank meetings at their respective headquarters, we like to think that we were of significant assistance to both authorities in formulating immediate efforts to contain their problems and in evolving a medium-to-long-term plan for future processes.

Our work culminated in our response last autumn to the consultative document "Best Value in Local Government—the Next Steps?", which was issued by the Executive after its consideration of the task force's final report. Since then, we have been waiting with some anxiety for the opportunity to continue our participation in the consultation process, to assist in re-energising the impetus that we feel has been lost and to continue the progress towards appropriate legislation and enactment.

I would like to highlight several of our greatest concerns about the implementation of best value. Those are summarised in a bullet point memorandum that I have distributed to the committee.

The first point simply states that we are supportive of the principles of best value and that we will be happy when, at the appropriate time, that philosophy and the processes necessary to implement it replace compulsory competitive tendering. We are concerned that following the discursive and consultation stage, which has now taken nearly three years, there is still a fragmented and inconsistent approach in various local authorities. However, we welcome the fact that there is a culture change and I was delighted to hear in the earlier session that that is being pursued.

Everyone knows how difficult it is to define best value in detail, but we feel that we should concentrate on quality. The committee may be aware that the industry, with encouragement from the Executive's permanent staff in Edinburgh, is trying vigorously to produce credible and independent registration and licensing schemes. We believe that in the legislation or guidance, there should be a move to ensure that, when putting out tenders, local authorities embrace firms that have qualified in training, equality, health and safety and so on. We hope that the legislation will be fairly detailed and that the guidance will be limited because of that.

With compulsory competitive tendering, we found that a lot was left to local decision making. That is not the best way to secure best value.

Although we appreciate the necessity for open legislation and flexibility, we would not want to get bogged down by local interpretation at either a permanent staff level or—dare I suggest it—at a political level. We believe that robust and regular monitoring of the process should be enshrined in legislation and that accountability and fast-track resolution of differences in interpretation should be part of the thinking.

The openness and transparency of the tendering process are obvious requirements, but we ask the committee to consider that our industry is striving for a package of realistic basic rates and independent scrutiny. It is difficult to understand, even with the experience of the culture change, how small and medium enterprises and start-up companies can contribute to the process when, in the pre-tendering selection stage, there are impenetrable barriers. We hope that a way round those problems will, in time, be found. It goes without saying that a philosophy that says that the lowest price equals the best tender is inconsistent with the criteria for best value.

From our consultation with officials in the Executive and local authorities, we are conscious of the huge task that they have been dealing with in recent years. The Scottish Executive will have to assist local authorities with adequate funding and will have to find a way to monitor the process and the independent nature of the scrutiny that we request.

There has been a noticeable culture change in some areas, but we wonder how long the industry will have to wait before the end of the process is reached.

The Convener: I have a general question. To what extent do you support the Executive's approach of passing legislation to extend the moratorium on CCT rather than repealing the legislation altogether?

John Park: We are of the view that CCT cannot be replaced until there is something adequate to put in its place. The view has already been expressed this afternoon that to axe CCT, even at this stage, might be premature. We would go along with that view. However, the industry is unhappy with the way in which CCT was imposed.

Sid Patten (Scottish Construction Industry Group): We have concerns about the moratorium on CCT being extended. We had thought that, by now, best value would be mature enough to be introduced along with relevant legislation.

We are concerned about the fairly clear evidence that the moratorium has been used in some quarters to abuse the best principles of best value. We encourage the committee to press ahead with supporting best value as quickly as possible.

We strongly support the principles of best value. We are keen on accountability and transparency and on the level-playing-field approach. The industry and I view the moratorium as providing some with the opportunity to abuse that level playing field.

Mr Gibson: Several members share your concern and frustration at the delay in introducing legislation on best value. This afternoon, the Deputy Minister for Finance and Local Government made it clear that the Executive plans to introduce a bill in the autumn, so I hope that there is light at the end of the tunnel.

The group's aide memoire refers to a

"Fragmented and inconsistent approach in relation to adoption of principles within Local Authorities."

Will you expand on that and give some examples of that approach?

John Park: Sid Patten has first-hand experience of that.

Sid Patten: We refer to a lack of understanding in some quarters about how best value might be approached in local authorities. We have a programme of meetings with all 32 local authorities. As John Park said, we are encouraged by many whose cultures are changing, but we are discouraged and disappointed by quite a few that have held on to CCT in its worst format during the moratorium and have not adopted the principles and spirit of best value.

We have given the Scottish Executive examples of work that it would have been impossible for local authorities to undertake at the price at which it was done. That is what we are concerned about. We are not bashing DLOs. We think that they and DSOs have a place. The private sector is happy to work and compete with them.

I am sorry to mention this again, but there is still no level playing field. We are concerned that all 32 local authorities appeared to get through the process of implementing best value—the hoops, so to speak—without ensuring the accountability that we would have expected. We might have expected too much, but we were concerned that some local authorities in which we knew abuses were happening were surviving the best-value process and framework. We have provided evidence to the Scottish Executive on that and, although I will not mention the names of the local authorities, we have gone high profile on some of the problems that have been experienced, which we have taken up with the senior elected members of and officials in those local authorities.

Mr Gibson: Do such abuses continue? Are they being or have they been resolved?

Sid Patten: The abuses are reducing. There are

enough examples of good practice in local authorities to encourage other local authorities to begin to get on that vehicle. However, I am sorry to say that problems remain. We are in heated discussion with one or two local authorities on their problems. We are getting there, but it is taking a heck of a long time.

We have been happy to be part of the construction industry liaison group for the past three years under best value. We have been told that a culture change is needed in local authorities. We understand that and see it happening, but we wonder when the culture change will be ready for legislation to be passed.

Iain Dickson (Scottish Construction Industry Group): I will talk about the procurement of professional services not just by local authorities, but by organisations throughout the public sector. There is concern that a first-past-the-post requirement is often still the criterion that is set, notwithstanding any guidance that is issued from a higher authority.

One of the reasons for that is that it is quite difficult for individuals to put in train a best-value approach to procurement. Frequently, they do not have the time. The procurement of services must be considered realistically. Authorities must be given adequate time to procure what provides best value rather than what is cheapest. It is quick to get the cheapest; it is not quick to get best value.

Mr Gibson: I have a follow-up question. Mr Park touched on the issue, too. The philosophy that the lowest price equals the best tender is the bugbear that you have identified, and it is of concern. How do you want the best-value legislation to impact on that? What you are looking for is something that is robust enough to ensure that quality wins out—that the consumers of your service get the best bang for their buck, so to speak. How could that be achieved?

John Park: I think I speak for us all—no doubt I shall be corrected if I am wrong—when I say that it is down to what the registration and licensing process reveals. That does not mean that the largest firm is the best trainer or the most disciplined. We would be here for considerably longer than this afternoon if I fleshed out the skeleton of ways and means.

We have enjoyed the consultation process over the past few years—it has been quite different from anything I experienced in my previous 30 years in the industry. If we could overcome the hurdle of the industry being consulted only when 90 per cent of the work has been done and the draftsmen or draftswomen have completed their work, we could help a great deal. We would be prepared to put manpower and initiative into the process if we were consulted as the industry

practitioners.

The view has long been held in the political arena that one does not consult vested interests because they will have an axe to grind or a corner to fight, but we are the people who understand our industry best. We have practices, conditions of contract and ways of setting out tenders, and—with the greatest respect, and mindful of the beleaguered resources of local government and the Scottish Executive—we feel that we might be able to help. However, we need to be consulted in some depth at the working-party stage rather than when a green or white paper is produced.

Mr Gibson: So you are saying that companies that tender should have to fulfil certain criteria and that, at the end of that process, they should be awarded a certificate of best value. You are saying that only those companies should be able to tender for public service provision.

John Park: Yes, provided that that process is relatively simple and that there is a safety net. We are conscious of the fact that companies have started up, succeeded and then failed in the space of three or four years—that is the nature of our industry. It is not fair to preclude well-designed and projected companies simply because they do not possess a 10 or 15-year pedigree. Nonetheless, there must be some rule, and we would like to discuss that possibility in depth with the officials who are responsible for drafting such fine points of legislation.

Mr McMahon: You have made clear your support for the best-value regime, although it has taken a while for you to do so. In your conclusion, and in answer to Kenny Gibson, you referred to caveats and additions that you would like to be put in place concerning regulation, scrutiny and monitoring. Do you believe that there should be a statutory duty in the best-value regime to ensure the achievement of those standards?

John Park: I think so, but that duty would have to be limited, otherwise the statute book would be suffocating both for local authorities and for the private sector. We believe that certain cornerstones of best value must be enshrined in legislation. Throughout my lifetime in the industry, it has been proved that voluntary ideals seldom work in the cut-throat world of the marketplace.

Mr McMahon: You mentioned that, a few years ago, you became involved in a couple of DLOs. As a representative of one of the constituencies in one of those areas, I recognise the outcome of that.

As it progresses, will the best value regime assist in the development of partnerships, rather than competition, between local authorities and private companies?

John Park: In a word, yes. Partnership has a place; it will develop.

Sid Patten: We are seeing examples of that now—fairly big time—in certain local authorities where the private and public sectors are coming together. That is to be applauded. We succeeded, in the work that we did with the two authorities that John Park mentioned, in working with them rather than against them. The results of that were very positive.

A lot of repackaging and retendering of work was done then and there was a fair share-out of work. It certainly helped the local authority and the DLO. One of the DLOs has gone on to a fairly large joint venture partnering arrangement with the private sector. We see that sort of arrangement developing in the future, rather than the competitive approach. The best skills of the public sector need to be shared with the best skills of the private sector.

Iain Dickson: The previous witnesses spoke about packaging units together. That has great merit. If it is done to the extent that the multinationals are quoting and bidding for the work, there is concern that local businesses and practices will not get that work. By and large, work will filter down within the contracting sector; local contracting companies will get the work. In the professional sector in the construction industry, however, the majority of firms consist of fewer than five people and the likelihood is that work on the very largest projects will go outside Scotland. We ought to beware that situation.

John Park: A classic example of that was when Glasgow District Council—or maybe it was still the corporation in the late 1970s and early '80s—set about refurbishing much of the Victorian domestic property in Glasgow. Packages were put out that could not be contemplated by the tradesmen who had worked on the properties for two or three generations. There is a grave danger of that happening if the package structure is not compatible with the structure of the industry. It is important that local authorities remember that a small to medium enterprise in the construction industry employs fewer than five people to 25, not between 50 and 500 people.

Mr Paterson: Has the moratorium on compulsory competitive tendering had a significant impact on the construction industry? If it has, can you summarise the impact?

Sid Patten: The impact was severe in the first stage of the moratorium. Many small to medium companies, which traditionally relied on local authority work, found that it was slowly but surely disappearing. A number of our members in the Scottish Building Employers Federation went to the wall because of that. You could say that it was

their fault for relying too much on public sector work. There has been a change in the private sector—there had to be.

Now we have gone down the road a little bit, we are finding that more work is coming out of local authorities. That is because of the adoption of the principle of best value and the recognition that the work does not always have to be kept in-house. Some relaxation has taken place, but the early stages were horrendous for the private sector.

Mr Paterson: Did those companies develop in the first place to cater for CCT?

Sid Patten: Not necessarily. I know of one or two companies that had been in business for many years—40 or 50 years—but they had developed into doing public sector work and had become reliant upon it, which was probably wrong. That has changed.

John Park: It is not easy for small companies with a fairly small, but stable, capital structure to change, even over several months, to become a multidisciplinary company and extend into kindred trades. Another example of the problem—I will cite only one—is in my industry, which is plumbing and heating. Several large local authorities make it impossible for a company smaller than Transco to tender for their domestic heating maintenance contracts, yet a firm such as mine could carry out that work perfectly well at good quality and rates if the packages that were put out for tender were such that we could absorb the risk involved.

Iain Dickson: There is a concern that professional firms were bidding low to secure work. That had a number of ramifications: firms that did not necessarily have expertise that had been built up over many years were not beaten in the tendering process and there was a lack of contact with the users of buildings and the briefing of projects fell by the wayside because of lack of resources. That did not always happen, but on occasion the quality of the final result suffered.

Mr Paterson: Your third bullet point sets out the "Requirement for a clear and unambiguous definition of Best Value - quality issues."

Could you please expand on that statement?

John Park: Over the past three years, we have seen how even the most qualified, determined and dedicated officials have found it difficult to describe best value. At the beginning, almost every individual in the construction industry and in local authorities had their own pet definition of best value. Trying to draw all those strands together has proved an understandable impediment to swift progress. I repeat that we see best value as giving as wide an opportunity as possible in the pre-tender process to the private sector and to the existing direct service organisations. Then the

criteria that are absolutely paramount and mandatory to the tender must be identified. They should not be an impediment to any firm, whether small or large. Thereafter, how a definition of quality is achieved depends on the size and type of work. If the work is large, the quality of supervision may have to be analysed. If the work is small and individual, the quality of reporting may be most important. If it is emergency work, the speed of response is paramount. All those factors must come in to a definition of best value.

In my experience of both CCT and, latterly, best value, we continue to receive documents that are over an inch thick because of the onerous conditions they contain. We are given what in the past would have been termed public service agency rates. We can add or deduct only one percentage from those rates, which makes it a very blunt instrument. All sorts of different disciplines and tasks are set out in a document of several pages, but we are allowed to apply only one percentage for all components, whether they are large or small.

We understand local authorities' protestations, particularly given our intense work of three years ago with two local authorities—as we mentioned earlier. It is understandable that local authorities have always said that they are sorry but that they do not have the resources to put out, scrutinise or set up the packages that the construction industry would like.

One authority set up a six-figure expense: a new computer system that was purchased on the basis of circumstances that pertained before it was asked to bring in best value. Suddenly, the computer system, which the local authority had budgeted for use over the following three years, was not up to the job. We run businesses and can therefore understand and sympathise with local authorities' feelings of despair and frustration. However, we have to say that the Scottish Executive and local authorities must work together to overcome those problems so that the construction industry is not the victim of local authorities' inefficiencies and frustrations.

The Convener: I am sure that we will invite the SCIG back when we move from CCT to the best value bill. As this is a one-line bill, we allowed the discussion to broaden a little this afternoon. That has given us further information and thoughts about some of the things the committee may wish to say when we get to consideration of the bill

Thank you for your time and for coming to give evidence earlier than was scheduled.

15:00

John Park: On behalf of my colleagues, I thank the committee for inviting us to give evidence.

Petition

The Convener: Members will see that we have received petition PE119, on allotment provision, from Mr C Ogg. I recommend that we consider the petition with our other submissions when we give full consideration to allotments. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

The Convener: We have a negative instrument to consider—the Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2001 (SSI 2001/115). As of today, no comment has been received. Do members agree that the committee has no recommendation to make on the regulations?

Members *indicated agreement.*

15:01

Meeting continued in public until 15:07 and thereafter in private until 15:36.

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