



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 13 November 2013

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CONTENTS

INTERESTS.....	Col. 2817
PROCUREMENT REFORM (PUBLIC SERVICES AND COMMUNITY REGENERATION).....	2818

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
29th Meeting 2013, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
Cameron Buchanan (Lothian) (Con)
*Mark McDonald (Aberdeen Donside) (SNP)
*Stuart McMillan (West Scotland) (SNP)
*Anne McTaggart (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ashley Gould (Highland Council and Society of Procurement Officers)
Ronnie Hinds
Bill Howat
Alex Linkston
Allan Mackenzie (Aberdeenshire Council and Society of Local Authority Lawyers and Administrators in Scotland)
David Martin (Renfrewshire Council)
Fraser McKinlay (Audit Scotland)
Elma Murray (Society of Local Authority Chief Executives and Senior Managers and North Ayrshire Council)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 3

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 13 November 2013

[The Convener *opened the meeting at 09:30*]

Interests

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee's 29th meeting in 2013. I ask everyone to ensure that they have switched off mobile phones and other electronic equipment.

Agenda item 1 is a declaration of interests from Mark McDonald, who has joined the committee. Does he have any interests to declare?

Mark McDonald (Aberdeen Donside) (SNP): I direct members to my entry in the register of interests. I do not believe that I have any live interests that are relevant to the committee.

The Convener: I thank Stewart Stevenson for his time on the committee. He will be sorely missed in some aspects of the committee's work. We wish him all the best in his new roles.

Procurement Reform (Public Services and Community Regeneration)

09:31

The Convener: Item 2 is our main business today. It is an oral evidence session on the implications of procurement reform for public services and community regeneration. We will hear from three panels. I welcome the first panel: Alex Linkston, former chief executive of West Lothian Council; Ronnie Hinds, former chief executive of Fife Council; and Bill Howat, former chief executive of Western Isles Council. Do you have opening statements, gentlemen?

Bill Howat: Yes. Thank you for the invitation. We have been invited here as former council chief executives, but some committee members know that I also chair a charity in Edinburgh that runs supported businesses, and I would be happy to reflect that experience in the evidence session.

I did not provide a submission, but I listened carefully to last week's evidence session, and I thought that it would be useful to reflect on the issues that the committee raised. My point is simple. Last week's evidence session showed that the implications of the Procurement Reform (Scotland) Bill for local government are hard to discern. It is important for the committee to reflect on why that is the case. My view is that it is largely because the bill affects individual members of community planning partnerships. How each of those groups responds to the bill will collectively determine how community planning partnerships behave.

I will introduce a general thought immediately, given the committee's perspective and given its interest in public services reform and regeneration of late. I sense that the bill is well meant; it seems to collate good practice and existing regulations and legislation that are good. However, the committee should ask how much change it will bring and whether it will add value, because the committee has heard evidence in other areas—and got more of it last week—that procurement is complex.

Two points leaped into my mind as a former chief executive when I sat down to read through the bill and the policy memorandum. The first was: where are the resources to implement the provisions? They are not cost free and there will be implications for lots of people, not just public bodies.

The second point is important and reflects what the committee said in its report back in June. What is the interaction with best value? I see nothing in

the bill that would not be done by an authority that is signed up to the best-value duty. I admit that the bill codifies and explains things, but the danger is that it is another level of duties, responsibilities, bureaucracy, regulation, scrutiny, monitoring and reporting. Committee members ought to ask themselves whether the costs that are associated with the bill will be fully met and whether it will add value to the process.

Those are my opening reflections. I am sure that we will go into more detail on them later.

Alex Linkston: I will make one or two initial comments. I am not as negative as Bill Howat is about the bill; I quite welcome it.

Prior to my retirement, I was a member of the Scottish Government's central committee on procurement and, over the years, a lot of welcome developments have come out of that work. The bill addresses one of the complaints that I have previously received from small contractors and although it might have a limited role to play in the overall scheme it is nevertheless very welcome and fulfils its purpose.

Many council contracts go out through the Government's portal or Scotland Excel and, as most if not all of them are above the European Union limits, they will not be caught by this legislation. However, I believe that a witness last week mentioned three types of contract that would be caught: small building contracts below the EU limits, technology contracts and social care contracts. I do not particularly disagree with that analysis, except in the case of technology, in respect of which there will be either national or procurement framework contracts that I doubt will be caught.

I think that the bill will have a positive effect on building contracts. Small contractors in my area frequently complained to me about the bureaucracy associated with bidding for public sector contracts and the fact that each organisation had its own set of conditions; although there might have been a lot of similarities, things were asked for in different ways. The thrust of the bill is to simplify the system, which I think will be a big boon. Moreover, the fact that there will be more dialogue with local companies will, I think, help those companies get work and encourage people to compete for contracts, resulting, one hopes, in better prices.

I believe that last week the committee heard a number of negative comments about using this particular framework for social care contracts. As a former chief executive, I agree with that. I would be worried if the framework were to be used for social care or even early years contracts, in which you buy people's expertise and track records in working with elderly people, dysfunctional families

and so on. One of the downsides with regard to personal contracts is that the arrangements will be a lot more transparent, which means that if someone does not like the result or thinks that you have not complied fully with the terms of the contract it will be much easier for them to make a challenge. As a result, the assessment criteria will have to be able to be applied fairly. That approach can work pretty well with building contracts but with care contracts there can be a real difference between what someone claims they do and what they do in practice and it is very difficult to build such considerations into an evaluation.

In short, the bill represents a welcome addition to the modernisation of procurement and will play a very important if limited role.

Ronnie Hinds: I am somewhere in the middle—quite literally, as it happens—between my colleagues.

I think that the bill will perform a potentially useful function. Bill Howat commented on the connection with best value but I would take a different lesson from that. If you look back on the discussions that I remember having when best value was similarly being put forward as a legislative requirement, you will find that we all said, "But we are already doing it." We gave it a slightly different name—value for money—and we felt that we were doing things that we could represent as being value for money. However, the difference between then and now is that we are doing these things far more systematically and councils—and indeed other public bodies—have a clearer and more consistent idea about what we really mean by best value and a good set of guidance and procedures that we try to follow to provide it. That is not to say that the system is perfect, but it is certainly a lot more coherent and systematic than it was before we had the legislation that provided this particular framework and I think that this bill could do something similar for procurement.

My second and final point about the bill is that there seems to be a strong sense that we should try to connect procurement activity with the delivery of better outcomes. Such an objective is laudable. If we agree, as most people now do, that focusing on outcomes results in better service delivery to the people who need it, we need to realise that procurement, which plays such a large part in the design and delivery of services, cannot be isolated from those outcomes. Anything that the legislation and any subsequent regulation and guidance can do to make that connection closer and clearer would, I think, be work well done.

The Convener: As you will be well aware, the committee has been visiting various communities around the country and talking to people about a number of issues. On more than one occasion, we

have been told about the difficulties faced by small organisations that are bound by what in some cases seem to be pretty severe local authority procurement rules. We heard, for example, about the hassle that one particular group had in trying to buy a wheelbarrow. Have certain procurement rules set by local authorities been too draconian and will the bill help that situation a little bit?

Alex Linkston: Over the years, local authorities have greatly tightened up their procurement. There will always be cases of people who want to buy, say, a wheelbarrow saying, "I could've bought it more cheaply at the local shop," but the point is that we should look at the system as a whole. The procedures that have been introduced over the past five, six or seven years have managed to secure greater value for money. Previously, people would simply go to the local shop and buy the pen, the pencil or whatever it was they needed; the unit cost might have been cheaper but when one took into account the staff time that was spent and the cost of creating the computer record to pay the individual supplier the total cost was probably a lot more. There are times when it is expedient to buy things in a local store but, in the main, we need a systematic approach to achieve the best value that Ronnie Hinds referred to and the current framework delivers best value overall.

The Convener: I think that a little bit of gumption and common sense should be applied in some of these cases. For councils that are buying lots of pens and pencils—and probably quite a few wheelbarrows—I can understand the logic of using the professional electronic commerce online system or some other system to record from whom you are buying things and all the rest of it. However, it seems a bit strange that community groups, no matter whether they are funded by the council, have to go through this huge bureaucracy, which I think takes up not only a lot of the group's time and energy but the time and energy of the local authority. When I heard that example, my instant reaction was: if the council was so concerned about the purchase of the wheelbarrow, why did it not just purchase the barrow itself and hand it over? Do you not think that in such cases a bit of common sense should be applied?

Alex Linkston: I am not aware of any requirement on community groups to buy things through local authority contracts. If there is such a requirement, it has come in since I retired. There are instances of community groups wanting to buy things through a local authority contract because the prices are much more advantageous but I would be very surprised if the rules were now so tight that community groups were being required by local authorities to buy, say, a wheelbarrow through such contracts.

The Convener: I do not think that that is happening across the board; it is just that some local authorities seem to be applying much more rigorous rules and to be a little bit risk averse in dealing with the situation. I am a great believer in following the public pound, but in some of the cases that have been described the purchase probably cost a fiver.

Bill Howat: First, I apologise to my colleagues if they felt my opening remarks to be negative—I thought that I was being challenging. I will need to watch my language more carefully. *[Laughter.]* I actually agree with everything that they said; I was simply trying to open up the debate in other areas.

Your question raises a number of issues that affect any Scottish legislation: the diversity of Scotland, its range of public bodies and the scope for interpretation.

09:45

It is always difficult to talk about a particular case unless we know about the issues—I know that you were using the case that you mentioned as an example of worst practice, convener. In my experience, the reason why people are risk averse, particularly at lower levels of officialdom, is to do with the amount of scrutiny and accountability that there now is. Some members of the committee have been councillors; you will know that when you organise something through a department to help a community group and another councillor finds out, before you know it you have an argument on your hands. That is how life is.

I agree with Alex Linkston and Ronnie Hinds that we need a legislative framework and guidance to ensure that things are done properly, and I agree with the convener that when it comes down to a practical level, common sense needs to kick in.

The Convener: I want to hear the panel's views on whether the bill will make a difference to the problem of people being risk averse. Last week we heard from witnesses—and we have heard this elsewhere, out and about—that procurement is often driven by councils' legal services or finance sections. My experience tells me something different. It is easy for the area of business that is doing the procurement to say, "Ach, well, it wasna our fault that it went that way; the legal folk and the finance folk made us do it that way."

In your experience, is procurement often led by finance and legal departments, or is that part of the great myth that has built up around procurement, which enables people to say, "It's not in our hands," although in most cases it is?

Ronnie Hinds: I do not think that there is a myth in that regard—I think that that might be an exaggeration. However, there is substance to the view, which I think is driven largely by the prevalence of European legislation in the area and is probably compounded by the way in which most of us would tend to organise the procurement function. By and large, procurement sits in the finance department, which works closely with legal colleagues, for perfectly obvious and understandable reasons.

I suspect that all that gives rise to a certain mentality. As a chief executive, I always tried to challenge the overrigid application of rules that were being interpreted and applied in a somewhat defensive way. The advice that I would get back, which I always valued, was, “We’re protecting your back too, Ronnie,” because no one wants to be exposed to the wrong kind of challenge if they have not observed every nuance of the rules. It is part of the role of a chief officer, and a chief executive in particular, to say, “Okay. The rules are a given, but how we behave does not mean that we must observe the rules strictly all the time.” I do not mean that people should be mavericks; I mean that they should think flexibly and intelligently about how they apply the rules.

We can go further than that. Where the procurement function is situated in councils is quite important. A piece of work that I initiated in Fife—and left for my successor—was about relocating procurement in other parts of the organisation, integrating the function with the services that tended to use it most often. Alex Linkston mentioned some of the key services in that regard. In particular I am talking about services where capital contracts are concerned and there is big spend.

The convener talked about a myth, and there is a mentality whereby people say, “Procurement are the naysayers. They say we can’t do this; leave it to us and we’ll do it our own way.” The truth lies somewhere in the middle. If we leave it to people to do in their own way, they will do what they always did and not necessarily get best value. If we bring strategic procurement to bear, we have a better chance of getting value for the public pound. The two camps cannot sit at opposite sides of the tennis net and just bat the ball back and forth. My objective in Fife was to integrate the procurement function strategically into the major buying places. That is how we dispel myths and change culture.

Alex Linkston: I support Ronnie Hinds on that. Many people who complain about centralisation are complaining about the loss of much of their operational freedom. A lot of service managers like to go out and buy what they want from whom they want, which does not always deliver best value and can mean that from time to time there

are accusations from contractors about favouritism, graft and suchlike.

I have spent my whole career cutting out unnecessary bureaucracy, but I have made sure that a strong governance framework is in place throughout the organisation. Procurement rules give us a strong governance framework. If things are run by lawyers and accountants, that is because service managers are not engaging with the process, but they must do that. However, the process itself is sound and there should be no going back from a systematic approach to procurement.

The Convener: Bill, do you want to comment?

Bill Howat: I am happy to agree with my colleagues.

John Wilson (Central Scotland) (SNP): Good morning. The opening comments reminded me of when I set up an urban aid project in 1988 that was funded through a local authority, which I will not name. I was the project manager and I was instructed that I had to get three quotes for everything that I purchased, including for pens and pencils. We have had various systems in place between 1988 and now: best value, following the public pound and three quotes before letting out a contract. Do you think that we can legislate to introduce the best system, or is it about guidance and common sense, as was said earlier?

Alex Linkston: Common sense is not always very common.

The Convener: Unfortunately not.

Alex Linkston: What is common sense to one person is just the rules to another. I think that we have a very systematic approach now, which I support 100 per cent. We have strategic contracts affecting all the public sector that are let by central Government as national contracts; we have sector-specific contracts—we have Scotland Excel for local government; and we have local arrangements, where those are more appropriate. All that is delivering huge savings in administration and in what we pay. That system is very sound.

Mr Wilson’s example of having to get three tenders will have happened before we had a systematic approach. People just applied rules, so if somebody was heavily bureaucratic, they would apply a rule irrespective of what they were dealing with. We now have a much more systematic approach. I would be very surprised if the approach that Mr Wilson described existed now. For example, the supplying of pens and pencils would be part of a national contract or a sector contract.

John Wilson: However, as I understand it, part of what we are trying to do through the bill is to develop a local procurement strategy. You have

just said that certain items would be procured through a national strategy, which would be through Scotland Excel or one of the other organisations that have been established at a national level.

One of the issues that we have faced in the past, and which came up in last week's committee meeting, is how the procurement of certain services is carried out to the detriment of local organisations. For example, they might be able to deliver care services, but Scotland Excel or another organisation will decide to contract or negotiate the care delivery in an area where local authorities buy into it, which can be to the detriment of local organisations that could deliver the care services more cost effectively and efficiently at a local level. Because local authorities have bought into the systems that have been established, it becomes difficult for those local organisations to get the contracts.

How do we get the procurement process right to allow what the bill seeks to achieve, which as I understand it is to get local economic regeneration as part of the procurement process, to happen? If we go through national structures, then surely the local element gets lost and we just continue to rely on national and international bodies to deliver services.

Alex Linkston: That is part of the dilemma in taking a national procurement approach, because certain things that were procured from a local supplier can be procured much more economically from a national supplier. I am afraid that that is just a by-product of getting better value for money out of purchasing.

John Wilson: The phrase "best value" has been used by local authorities for a long time, and there have been various examples and definitions of it. You have mentioned common sense, but the definition of best value has not always been applied equally across the 32 local authorities or the public sector organisations that procure. What you define as best value may come through a national procurement arrangement, but surely best value may also include local procurement that involves local delivery by local organisations, so that social and economic regeneration in a local area may be addressed through the best-value model.

Alex Linkston: Yes, for contracts that are outwith the national framework it is up to local authorities to decide that. Several local authorities have tried to develop relationships with suppliers to open up the market to them, and for construction-type contracts the thrust of the bill is positive in helping local companies. It will make the process more transparent and it will make it more cost effective for such companies to compete, which is an issue on which I frequently

received complaints from small companies. That will be a huge improvement. If you are suggesting that we should go back to local authorities doing their own thing, you must recognise that that would come at a cost. A lot of things can be procured much more cheaply through a national contract.

I have no experience of Scotland Excel putting care services out to tender, but we were starting to talk about that when I retired. That would worry me because a lot of good charitable bodies have developed expertise, especially in dealing with dysfunctional families, and it would be extremely difficult to evaluate all those qualities equally and effectively for every tenderer for a contract. It would end up coming down to the lowest price, which is the last thing that we would want. There was an example up in Aberdeen a couple of years ago concerning a person's care arrangements. I forget the number of carers who were involved, but it was a huge number. That can be a by-product of driving it down to the lowest price. I would be worried about using that framework for care contracts or contracts for professional expertise and skills, but it lends itself very well to building contracts.

I could be proved wrong and the framework could be proved to work successfully for care contracts, but the stories that I have read in the past two or three years about councils putting care contracts through a huge tendering process suggest that it ends in a lot of grief. It is sometimes about buying the expertise that a charity has developed, and there are other ways to implement best-value arrangements than going through a rigid contract process.

The Convener: As John Wilson suggests, you are putting a lot of store by Scotland Excel, whereas some local authorities and other bodies have got together to create other procurement units. For example, Aberdeen City Council and Aberdeenshire Council have a joint procurement unit, and in Aberdeen we use the professional electronic commerce online system—PECOS—which enables individuals to buy, including from local companies that are outwith the framework agreement. Is that the norm? Are we putting too much store by what Scotland Excel does? There have been framework agreements for a number of things but, in my experience, folk have not necessarily bought within those framework agreements but have gone elsewhere for lots of reasons, including to give local companies an opportunity.

10:00

Ronnie Hinds: I return to the starting point of the question, which was partly about the interpretation of best value and the competing

accounts that you are getting from witnesses. One of the things that have been good about procurement since John McClelland produced his report is the point that Alex Linkston is drawing attention to, namely that we have tried to secure best value, certainly in local government, by gravitating towards economies of scale—just buying bigger. There are markets in which that is unequivocally the right thing to do. Energy is the example that everyone always gives. I have no doubt about that.

The mistake that we may have made is to think that one sizes fits all and that economies of scale represent best value in every instance. That may not be the case. However, if you argue to the contrary, you have to prove your case, because in a range of areas you can make savings by buying bigger. It is a matter of judgment whether that applies equally well to social care, for example. I probably have a slightly more sanguine view than Alex Linkston does about that, but I think that it would be a mistake to put all your eggs in one basket and say that the way to carry out effective procurement is always to buy bigger and in bulk. There must be more to it than that.

One of the benefits of the bill, if we get it right, is that it will act as a corrective mechanism to that train of thought. The bill highlights other aspects in which good procurement does not necessarily mean operating at scale all the time but is still consistent with getting the best value possible for the public pound. Part of the corrective mechanism that we are looking for here is to widen our thinking a little. The bill's executive summary uses words such as "effective" and "proportionate". For me, the best-value equivalent to buying at scale might be effective, but it is not necessarily proportionate, so we need to widen our thinking a bit.

Bill Howat: I agree. "Proportionate" was the word that I had in mind, so good for Ronnie Hinds for getting it in.

John Wilson raises a tension in his question, which in some senses the bill cannot address because it is done in the framework of European legislation, which necessarily starts from opening up markets at a European level.

If I put my other hat on, as chairman of a small, local, sustainable business, I can say that we would love some of the proposals in the bill to come to fruition. However, we would not argue about best value. The phrase that we would use is social value. As chair of that business, I would argue that the current system is not capable of reflecting that. To put it simply, if you visit us, which you are welcome to do, you will find that we are giving employment or training to a group of people who are all severely disabled. We are bringing them back into society.

I can do a calculation for you—or, more precisely, my team can do a calculation for you—as to the benefits that society will get from that, which will include savings in the Department for Work and Pensions budget and in the social care budgets of the City of Edinburgh Council, West Lothian Council and East Lothian Council. I can go through all of those. However, what I cannot do is to say to those organisations, "These are the savings that we're helping you to make. You should now pass them back to somebody else to do something about." The demands on those services are so great and the amount that we can do is so minuscule that it will not show up.

I use that as an example at a very local level to contrast with what my colleagues are showing at a very strategic level. They are right to argue that we already have quite a good framework in place. The bill probably tightens it up and helps it a bit, although I have made challenging remarks about some other aspects.

I do not see an easy answer to John Wilson's question, other than, as Ronnie Hinds said, that it is about proportionality at the local level, and people taking a more flexible view and recognising that there can be wider benefits in procurement than just to their budget.

John Wilson: That is right. What I am trying to draw out is the balance between nationally negotiated contracts and what can be delivered locally by local community organisations and businesses.

It was mentioned in the opening remarks that one of the common complaints that we receive from small businesses is that they are frozen out of bidding for contracts at local government level, either because the paperwork is too onerous or because of the conditions that the local authority applies. That is particularly the case for community organisations that want to provide social care. The financial wherewithal that is required to deliver projects can sometimes be a barrier and, because departments in local authorities apply procurement rules slightly differently, when we start multiplying that, we get a lot of different rules being applied. It is about trying to ensure that there is a level playing field for smaller organisations, particularly community organisations. How will the bill impact on the ability of those smaller organisations to make bids to deliver services at local level? Is there anything else that we need to do—within the European legislation and the guidance on contract numbers—to ensure that they can do that?

Ronnie Hinds: There is probably more that we could do, but I do not think that we should lose sight of what is being done at the moment, so I will start with that.

I would say that most councils that I am aware of are working as well as they can do within the constraints under which all of us have to work—particularly those that emanate from European legislation—to make it easy for suppliers to understand what opportunities are available and to play the game by the rules that have been set. The supplier development programme is probably the most obvious manifestation of that. In Fife, we engaged regularly with businesses—particularly small businesses—in the local area. We told them how we thought that things had to be done and that, because we did not want them to be prohibited from bidding, we wanted to work with them to help them to understand the bureaucracy and to take off some of the weight. That was how we worked with the grain of the existing system.

I hope that the bill will lighten that burden a little and make it easier for that way of thinking to spread so that we do not have to do as much hand holding as we have done with some small and medium-sized businesses. I hope that some of the hurdles will be removed so that there will be fewer of them and we will no longer have to teach businesses how to get over them.

We should not lose sight of the fact that that good work has been done. There is evidence of it—I can provide such evidence from Fife, which I had to remind myself of only three or four months after stepping down as chief executive. If we look at Fife Council's procurement for goods and services, we see that some 40 per cent of the contracts that are won there are won by Fife businesses. That is entirely within the law. Fife Council is not going out of its way to give those contracts to Fife businesses, but they have a remarkably high strike rate, and I dare say that that is comparable to what happens in other parts of the country. The single outcome agreement for Fife has a target of raising by 20 per cent the value of contracts that are won by local businesses from the public service in Fife as a whole, so the issue clearly forms part of the strategic vision of what organisations in Fife are trying to do. I return to my opening remark—that has all been done within the current system, which imposes requirements that Fife Council, as a statutory authority, must follow.

Alex Linkston: I agree with Ronnie Hinds. West Lothian Council had regular dialogue with small contractors, and we took their views into account when we framed things. That will be a requirement under the bill. The fact that the committee is having a dialogue before it goes into detailed consideration of contract conditions can only be a good thing and should help local companies to compete. Hopefully, the Parliament will get the bill right so that, within the law, councils will be able to take into account best value—however that is defined—and social value. Therefore, I think that

the bill, if properly applied, should start to address many of John Wilson's concerns.

Bill Howat: I agree with colleagues.

John Wilson asked specifically whether there was something that we could do collectively to make the process easier and to achieve the objectives that he described. I watched the committee's evidence session last week, when I thought that it was given a good illustration of one of the key elements of the whole procurement process that the bill partly addresses, but which could perhaps be taken further in the guidance—commissioning. In other words, how should the service be designed, with whom should it engage and—above all—how should that lead into the scoring system? Under the current arrangements, as Alex Linkston and Ronnie Hinds have said, we have a proportionate system and a good overall contract arrangement. A number of criteria can be set, to which weightings can be attached.

With regard to local delivery, which John Wilson asked about and on which we have raised issues, my view is that that should be dealt with up front at the design stage and at the commissioning stage. That will mean that by the time the procurement stage is reached, an authority will know that it has a system that will attach appropriate weight to the various factors that it must take into consideration. As Alex Linkston said earlier, none of this is about getting to least cost; it is about having regard to a range of factors. I used to do mathematics—it is called constrained optimisation. In my opening remarks, I was asking whether we were adding too many additional constraints. That is the issue—how many constraints are there? What we get back from SMEs and the third sector is that they feel constrained.

The Convener: There is likely to be much more joint procurement—I am thinking about health and social care integration, for example. We heard during evidence for our public service reform inquiry from a witness from NHS National Procurement. That guy said that, as it stood, there were constraints on co-operation between the national health service and local authorities. Will the bill help to eradicate some of those constraints? If not, what needs to be done to ensure that the situation is eased a little bit?

Alex Linkston: I am not sure what constraints that witness was talking about. I go back again to my days in West Lothian, where we did a lot of integrated work with the health service. There were no legislative constraints; there were, perhaps, constraints because of individuals and managers who wanted to hold on to what had aye been.

Legislation is not necessarily a barrier. In Highland, the health board and the council are

separating functions in a lead agency model; they are working within the current legislation. People can always say that things are barriers, but I am not sure that, in reality, legislation poses a barrier. It will certainly not be a barrier to 99 per cent of what we want to achieve through integration of health and social care. The biggest barriers will be the old ways of working and the “This is mine” attitude.

The Convener: I am thinking off the top of my head, here. I think that the guy in question was one of the chief procurement officers in the NHS. He referred to legislation that stated that his organisation could procure for the NHS only. It was not so much that he was setting up any barriers; he had actually broken down a number of barriers and applied the gumption that we all hope for. However, if there are pieces of ancient legislation that folk who are slightly less flexible than him might use, we should try to eradicate those barriers. Can the bill help to do that?

Ronnie Hinds: Perhaps this bill cannot—although, why not try it twice? However, as I recall it, there will be provision in the bill on health and social care integration to enable the remit of the body that does a lot of the joint purchasing for health—the name of which escapes me at the moment—to be expanded to do public sector contracts more generally. When I read that, I took it to be a gesture in the direction that your question suggests. What I mean is, if we have imposed artificial constraints on how that joint purchasing body should operate, and it is only about health contracts, why not think about opening that up?

I return to my earlier observations on John McClelland’s work. When local government was being enjoined to get better at procurement—in large part, that meant authorities joining up and procuring more effectively together—health was held up as the exemplar. There are reasons why the health service uses joint purchasing, which are to do with the nature of the difference between it and local government, but we took seriously the comparison and decided to try to do it.

We are now in a situation in which the two could conceivably come together. If health and social care integration is going to work, part of it must be some form of joint procurement of services that individual organisations will encompass when they are created.

Bill Howat: I agree with my colleagues. As former chief executive of Comhairle nan Eilean Siar—I had to get that into the *Official Report* at some point—I cannot help but reflect that we had no doubt about what would be the answer to the convener’s question: it would be a single public service delivery agent in the islands. I understand that that is now the policy of all three island councils. If we are going to avoid the issues that

were raised by the chief executive—from memory, I think that that is who raised them—that is the simple way of doing it.

The Convener: Our wonderful clerk says that the guy represented NHS National Services Scotland, which used to be the Common Services Agency.

Anne McTaggart (Glasgow) (Lab): I will go back over a point that Ronnie Hinds made earlier. You referred to 40 per cent of Fife Council’s procurement being won by local businesses under the existing structure. How will the bill assist or support that? You mentioned that you are looking for a 20 per cent increase from SOAs.

10:15

Ronnie Hinds: Roughly 40 per cent of the contracts by number are going to local businesses in Fife. I forget how many contracts there are—it is about 1,000. By value the amount is slightly less, which you would expect because there are some contracts that local businesses will never win, in Fife or anywhere else—energy being the usual example. However, the strike rate there is about 30 per cent, which is still quite good, and the target to increase that by 25 per cent is written into the SOA.

What we are saying is that there is already awareness out there, with some good practice to back it up; people are saying that they are on to this and are trying to do something about it. I see the bill helping to reinforce that mindset, by making it a duty to think in such terms and, in particular, by wiring that thinking into local economic development, which is absolutely critical. The duty would be no bad thing in itself, but some other provisions that are being mooted would also help: the idea of a single portal for subcontractors comes to mind. When we consulted businesses, part of their feedback was to say that they are realistic—they know that they cannot win some contracts because they are beyond their scale—but they want to know whether they can win some of the supply chain stuff. The easier we can make it for those businesses to find the supply chain opportunities and for us to continue the work that we have always done on telling businesses how to put successful bids together, the more success and better outcomes we will have.

I would be pretty confident of meeting that target of a 25 per cent increase in Fife in 2017—if I was still there. If we have those things working for us, and the bill gets behind that and says, “This is important,” we will have a fair wind.

Anne McTaggart: The bill will place statutory duties on local authorities, as you just mentioned. Community planning partnerships are not

contracting authorities, so where do CPPs and their members fit into the duties?

Alex Linkston: They do not fit into the duties, per se. Community planning is about agreeing what the priorities are in an area and working together. Procuring would be done by one of the agencies. Because a CPP is not a corporate body or legal entity, in joint work one of the partners would let the work and the rules would apply to it. The duties are pretty neutral when it comes to community planning; they will neither enhance nor reduce the effectiveness of community planning.

Ronnie Hinds: It would probably be a mistake if the bill were to shoehorn CPPs into an arrangement in which they tried to create opportunities for joint procurement for the sake of it, so that they were seen to be operating as coherent organisations with a shared purpose.

I would draw a parallel with health and social care integration. We could have spent five years working out how to harmonise the terms and conditions of the health board workforce and the council workforce and nothing would have been done to improve patient experience over those five years. Why create a problem unnecessarily? The same thinking applies here: why force artificial joint procurement? If there is an opportunity there, by all means take it. However, the more important thing for CPPs is to have dialogue and to have mutual influence, so that if one organisation tries to fulfil the bill's requirements through a certain procurement strategy, a dialogue will take place around the table, in which people say, "Are you doing that? If not, why not? If you're doing better than we are, what are you doing that we're not doing?" That is where the value is.

Bill Howat: The section in the bill that gives leverage to do that is on creation of procurement strategies. If I was dealing with the community planning partnership in the Western Isles, I would be saying, "Right. We've all got to do these, so let's make sure that we all start from the same place and that our principles are all the same, and that"—as Ronnie Hinds said—"we're all working together." It would then be up to each agency to work that out at a lower level, because they work in different areas, with different kinds of procurement.

To return to Anne McTaggart's first question, and to pick up on Ronnie Hinds's point about helping people to deal with such matters, I have a practical example from just across the hill in Edinburgh. In Forth Sector, which is a charity, we are working with SMEs and contractors who are bidding for contracts on the new sick kids hospital. That is a national procurement exercise and, as Ronnie mentioned, it will be really big. Throughout the procurement process the hospital must demonstrate that it is using local firms, and the

local firms in turn need to demonstrate that they are delivering community benefit. The firms have turned to us, as a charity, to ask what is meant by "community benefit" and we are helping them to work that into their bids so that they get a decent chance at the tender stage. That is an example of what happens under the current system.

Mark McDonald: John Wilson made the point that best value is not just a monetary consideration, although it is frequently referenced in that way. Alex Linkston made the very good point that, as the convener often says, when you buy cheap, you end up paying dear. The carer in the case to which he referred is one of my constituents. Do we have the balance right between the monetary and wider quality considerations in procurement?

Ronnie Hinds: No, we do not, which is why I said that the value of the bill might in part be correction of our current direction of travel.

It is entirely understandable, particularly in the conditions of austerity that we are working with, that a preoccupation with the bottom line dominates our thinking in a number of topics, including procurement. When we were trying to take on board the lessons from the McClelland review, we tended to think in that fairly focused—rather than narrow—way about what we can do through procurement. We have not entirely neglected the quality side, but if I am honest about it, even if—as we do—we write into contract specifications the balance that we want to strike between price and quality, it is how that is interpreted and the performance of the contracts rather than the words on paper that make the difference. If the mindset is that money must be saved, the risk is always that quality will be sacrificed on that altar. We have to be very careful about that. The balance is not quite right at the moment.

I did not hear the evidence from third sector colleagues, but there must be greater recognition on the part of the other side of the contract that the cost will remain a considerable factor because there simply is not the money, so the challenge is to get better for less. That is a challenge for everybody who engages in a contract, whether they are bidding for or letting it.

Alex Linkston: An objective of the bill is to promote good, transparent and consistent practice, which we would all find laudable. However, that in practice means a set of rigid legal rules being applied to the process. Anything that cannot be fairly evaluated among competitors cannot be used because it could make a contract subject to challenge. Indeed, we are seeing a lot more challenge to contracts from unsuccessful tenderers because the more information they

have, the easier it is for them to feel aggrieved and to challenge the awarding of the contract.

To return to my point about care contracts, I would, if I was a chief executive going down the road of social partnership, much prefer the use of models that have a less rigid legal framework so that we could take into account the quality factors that we think are important. I would not feel comfortable putting social care contracts through a model with such rigid rules. I could be wrong; perhaps it has been done successfully over the past few years, but I feel that we end up coming down to those who offer the lowest hourly rates and wage costs, which is not necessarily a good model for social care contracts.

It is horses for courses. The legislation would have a good role in certain situations, but a bad role in others.

The Convener: Bill, do you wish to comment?

Bill Howat: I will comment only to make the general point about language. We sit here talking at strategic level about whether we have the balance right. I agree with Ronnie Hinds that, over the piece, we are not getting it quite right. Everything that the three of us are talking about today is to do with the system—the legislative framework and so on. When that is applied locally, it is inevitable that there will be disparities and that, as we have all said, somebody will challenge awards every now and then. Depending on how we handle such challenges, we can find ourselves in difficult situations. That leads to more legislation, which is sometimes bad legislation because it follows particular cases. It is an interactive, iterative system. Even if we were saying to you today that we have got it right at strategic level, there would still be problems at local level with implementation.

Mark McDonald: Sure. We need to hear that as well, because it has an impact in relation to, for example, guidance that might follow the legislation.

How do you see community benefit clauses working? What benefit will be derived from their operation?

Alex Linkston: I welcome the fact that they are being legislated for; in appropriate circumstances, social benefit clauses are good things. I do not think that they should be applied to every contract because that could be counterproductive, but giving them legislative backing is a welcome step forward that will address some of the social benefits that we want to get out of contracts, so it is to be encouraged.

Ronnie Hinds: I agree. When we want to insert social benefit clauses, the conversations with contractors of all sizes can sometimes be quite

awkward and difficult. Recognition of those clauses in legislation will provide a strong foundation for those discussions in the future, so I support it. Alex Linkston is right: I cannot envisage their being applied in every contract, but I would tend towards thinking of them as being the norm and would make people define exceptions to the rule rather than have them start from a position of saying, “It doesn’t apply here.”

Bill Howat: I am totally supportive of the idea but, if I may challenge it, I have a worry, because “community benefit” is another phrase or concept that is open to interpretation. A few years back, I had dealings with people in the private sector in which I was supposed to advise them on how the public sector operates and so on, and they proudly told me that, under their corporate social responsibility policy, they had taken their whole board away to paint somebody’s fence for a day. I had to say to them quietly that I did not really think that that counted as community benefit, although it may have given them a feel-good factor.

To go back to my role as chair of another organisation, we have a small consultancy that seeks to help to define community benefit and works with people to try to spell out what it is. It is not an easy thing. As a former chief executive of Western Isles Council, I know that what benefits a community in Harris or Shawbost is different from what benefits a community in one of Ronnie Hinds’s mining villages or in West Lothian. I live in Alex Linkston’s former fiefdom, so I have experience of West Lothian and the Western Isles.

I make the point again that I totally support the concept, but how it is implemented and applied locally is a potential difficulty and has to be watched. I return to the point that there may need to be some guidance on that.

The Convener: Richard Baker has a wee supplementary question. I will then go back to Mark McDonald.

Richard Baker (North East Scotland) (Lab): To cut to the chase, given that community benefit clauses can already be used, will the bill deliver significantly more of them, or is it more of a resource issue?

Alex Linkston: I think that the bill will deliver more community benefit clauses because the fact that community benefit clauses are provided for in legislation will encourage all councils to consider how they can use them. I agree with Ronnie Hinds that there should be a presumption within councils that we want to use such clauses unless there are clear reasons why we should not. With small contracts, it will not be practical to use them because the cost of administering them would be higher than the value of the benefit. People would end up doing things that would inflate the cost, so

there would be no real benefit. It would be better to get a cheaper price.

It is horses for courses, but I am sure that all local authorities will look at how they can include community benefit clauses in their contracts, if they are not already doing so. I think that we will see a mushrooming of them over the next few years.

Ronnie Hinds: The only thing that I would add to my earlier remarks is that I see a potential alignment between a requirement for community benefit clauses and another aspect of the bill, which is about encouraging innovation by businesses. We can imagine that the first response of a business might be, "A community benefit clause means more costs. You should be aware of the consequences of your actions." Our challenge in response should be to ask, "Does it have to be that way?" Community benefits can be delivered in various ways and we might have identified only a small number until now, but we have a duty, between us and business, to get better at that. We should say, "You can innovate, because that's what you are in the business of doing, so tell us how you can deliver a community benefit better than we might have thought to put down in a contract." That could be a fruitful dialogue.

10:30

Mark McDonald: I want to follow up on the issue of how such clauses are applied and monitored by asking about accountability and about monitoring and scrutiny of procurement performance. In the past, and even in the present, we have tended to focus on whether projects are on time and on budget. Might the direction in which the bill is going lead to wider scrutiny of procurement performance and of the wider benefit that is derived from procurement rather than simply consideration of whether project X is delivered on time and on budget?

Alex Linkston: The need to have a dialogue with potential suppliers will encourage councils to consider how they are doing things and engaging. That dialogue is a welcome addition. In the past, a technical officer would draw up a specification and put it out, and companies would then price against it. In future, there will be an annual dialogue on the work that will go out to tender and how it will go out. That will be a good thing, and I hope that it will lead to innovative solutions from the private sector, as Ronnie Hinds described.

Ronnie Hinds: We already have the procurement capability assessment, which is a product of Scotland Excel. Although that is still in its relatively formative stages, it provides the foundation for doing what I think the question is

about. If you like, it is a template against which the performance of procurement functions in local government, in very wide terms, can be compared. By virtue of joining Scotland Excel—it is covered by the membership fee—councils get a report once a year.

Let me put on another hat that the committee has seen me wear before. As that approach develops, it will give us the opportunity to compare performance. If I were still in the chief executive's chair, I would look at the report and consider what it tells me about the procurement function in Fife and how it compares, across the various measures, with other councils. Through that comparison, I would look at where other councils are getting a better assessment and consider how we could drive improvement. The bill will certainly support that, because it is about ensuring that we see procurement in broader terms and, as you suggest, it focuses on how we will know whether things are getting any better and what forms of monitoring we can apply. The procurement capability assessment, as a good form of monitoring, is a candidate for use within organisations and as part of public reporting.

Bill Howat: I agree entirely with that. The important thing, at least from my reading of the bill, is that the bill does not introduce something radically new and different. Like Ronnie Hinds, I hope that the bill will encourage evolution. I do not want new bureaucracy or new checklists. The main thing that the bill ought to do in relation to community benefit is to change the nature of the individual contracts, so that there is a clear indication of what is happening at the individual level. As Ronnie Hinds said, that can be captured by existing systems to show what is happening at the overall level. I would not like whole new monitoring systems to be put in place—there has to be evolution.

The Convener: Under the bill, community benefit requirements will apply when

"the estimated value of the contract is equal to or greater than £4,000,000",

although the contractor has the ability to use community benefit in contracts whose value is less than that. Is that figure about right? Do you have an alternative view?

Bill Howat: I have a very different view.

The Convener: Can we hear it?

Bill Howat: Again, this takes us back to the diversity of Scotland. I am sitting with two former council chief executives. I forget what Ronnie Hinds's budget was, but it was something like £1.3 billion. Is that right?

Ronnie Hinds: I think that it was about that.

The Convener: He has been out of the game for four months, now. [*Laughter.*]

Bill Howat: The Western Isles budget, however, was a tenth of that. It seems to me that, given the range of budgets among the 32 councils, let alone across the public sector, setting absolutes is an issue. Therefore, it would be better to make the figure a proportion. That is a simple view.

Why is the figure £4 million? Why put a figure in the bill at all? Surely community benefit is something that contracting authorities ought to be thinking about in the context of the duty to get best value, which I mentioned in my opening remarks. We should be looking at how we get the best value from the public pound across the piece, and the bill does not change that fundamental requirement, although it perhaps adds a gloss to it and offers a bit more precision in some areas.

Do we need the provision? If we need it, why not make the figure a proportion of the budget, given the range of budgets that are around?

Alex Linkston: When I commented earlier, I forgot that there was a £4 million limit—people who are retired start to get a wee bit rusty.

We have to start somewhere. The provision is welcome, and I have no particular problem with the £4 million limit. I presume that the figure could be changed in future and could go up or down. The first thing is to get some experience, and £4 million is not a bad starting point. We can review the figure in the light of experience. The last thing that we want to do is introduce a lot of bureaucracy into a process that is already highly bureaucratic.

Ronnie Hinds: I do not know where the £4 million figure came from. Any number would look arbitrary against the background of procurement spend of £9 billion in Scotland, would it not?

I agree with Alex Linkston. Let us take a step in the right direction, to begin with. As far as I can see, there is nothing in the bill that would preclude a contracting authority from having a conversation with someone about community benefit in relation to a contract that was worth less than £4 million. Once the idea that the approach has statutory underpinning is embedded, I expect practice to follow, so that even if people do not have the force of legislation behind them they will be supported by the knowledge that community benefit is one of the things that public procurement is intended to produce. Therefore, if someone is letting a contract for £3.9 million that they think is fertile ground for community benefit, they will be inclined to have that conversation with the contractor.

The Convener: We might be in a suck-it-and-see scenario. I note that the bill provides that

ministers may change the figure if they deem it appropriate to do so. I will bring in Stuart McMillan.

Stuart McMillan (West Scotland) (SNP): Convener, you stole my thunder when you asked your final question. I will follow up the witnesses' comments. I appreciate what Bill Howat said about the difference between smaller and larger authorities' budgets, but would making the figure a proportion of the budget, as opposed to the figure that is in the bill, create additional bureaucracy, because organisations would have to establish whether they could or could not consider issues to do with community benefit?

Bill Howat: In my view the current approach is worse, because as soon as we put a limit on anything we create a behavioural response. In this case, people might say, "This contract might come in at £4 million; let's make sure it comes in at £3.8 million, to avoid the issue." That is a general issue of principle for you as legislators—hence my other question, which was why have a limit at all?

Ronnie Hinds is right. If the figure is £4 million, once the system has got going and become embedded, and above all, once people locally have begun to see the advantages of the system, the figure will become irrelevant. What changes behaviour more than anything is people's ability to say, "We did this and by Jove it worked. We got the outcome that we hoped for." I am at one with Ronnie on that.

Alex Linkston: I agree that we should suck it and see. It is a huge step forward; let us see how it works and then revise it. The last thing that we want to do is make procurement more complicated than it already is. I presume that the private sector has agreed to the £4 million figure, so it is a good starting point. The private sector has signed up to delivering community benefit in contracts of more than £4 million, so we can get some experience of that and review the approach in the light of that experience.

Ronnie Hinds: Legislation tends to be at its worst when it tries to be too prescriptive, and setting a particular figure smacks of that. However, I understand the reason for doing so, and it is more important that the bill creates the right ethos in relation to what community benefit is all about. As long as it does that, we can worry in due course about whether £4 million was the right figure.

Stuart McMillan: I have a question about Bill Howat's comments on social value and the knock-on effect on public agencies such as the DWP, the NHS, local authorities and so on if a contract is awarded elsewhere. That took me back to a contract that was awarded in 2005 or 2006—it was not a local authority contract; another public agency was involved. Arguments were made at

the time about the knock-on effect if the contract was not awarded to a particular location—a number of jobs would be lost, there would be an effect on housing in the area and so on. How can the bill's provisions fully tie in with EU procurement regulations while maintaining the strong ideal of social value for our local communities?

The Convener: Who wants to have a crack at that first?

Bill Howat: As I was speared as the originator, I will have a go. The first thing that came into my mind when Stuart McMillan posed the question was that the bill cannot do that. That might be a bit strong, but I think that it is a good starting point, so let me just reflect on why I thought that.

First, the specific example that you raised must have involved a very large contract.

Stuart McMillan: Yes.

Bill Howat: Therefore, it would have probably have taken you into state aid territory, which is another matter altogether. I am not sure that, for contracts of that size that are going to affect a very large area and a lot of jobs, the bill's provisions would help greatly. Such contracts will be affected by and impinge on a lot of other areas, and I suspect that they will get up to EU level very quickly on several fronts. I am probably not the best person to comment on big contracts.

On the general principle, however, I think that all I can do is reinforce what my two colleagues have said throughout the session. The bill is attempting to take forward an already established system that is trying to achieve the objectives to which we all aspire. As I think Alex Linkston said earlier, they are laudable objectives, whose aim is to give people the facility to take a proportionate view within their area and try to devise social value or community benefit—or whatever phrase you want to use—and integrate that into the decision-making process. I will pause there, because I do not think that we can do much more than that.

At the end of the day, as we have all said, the decisions are about a balance of factors. That takes me back to the point that the way to deal with whatever is regarded as social value is to ensure that it is written into the scoring system and that the earlier commissioning and design process has regard to it.

Ronnie Hinds: If best value is a somewhat nebulous concept, social value is even further out there and its beauty is very much in the eye of the beholder. I say that because, for me, when we talk about concepts such as social value, it is as well to broaden our thinking beyond what the bill can do. I think that the proposed legislation on community empowerment is probably more directly relevant. My main point is that there needs

to be some alignment and synergy between the Procurement Reform (Scotland) Bill and the proposed community empowerment bill, particularly when you are trying to hit very abstract targets such as social value. It would be a mistake to plough too deeply into procurement if social value is really what you are trying to achieve. I do not dispute that the bill can make a contribution, but it would be an error for the bill to work in isolation from other activity, particularly on-going legislative activity.

Alex Linkston: I agree with the comments of my two colleagues. Social value must be considered earlier, at the point when people are thinking about how something is going to be done. The tendering and procurement process is a legalistic one in which it is difficult to see social value playing a role. I think that you would end up in the courts. Social value should be taken into account in the initial consideration, when decisions are being made about what to do.

In terms of the relocation of jobs, it is difficult to see contracts that are below the EU threshold having that effect; I think that that would involve much bigger contracts.

10:45

John Wilson: I have just a small question. Bill Howat said that we do not want to create more bureaucracy around procurement, and Alex Linkston has just referred to the current highly bureaucratic procurement system. How do we turn that around, given that procurement is partly about trying to reduce costs to make delivery more effective? If the system is already highly bureaucratic, how do we balance that out and measure the real benefits to local authorities from procurement reform? If local authorities need to set up systems and procedures for letting and monitoring contracts, that might outweigh any benefit that comes from putting the contract out to procurement.

Alex Linkston: First, there are two types of bureaucracy: good bureaucracy and bad bureaucracy—

John Wilson: You may take that view, but some would argue otherwise.

Alex Linkston: Well, the fact that you have a committee with a convener is bureaucracy. That is setting down—

John Wilson: That is part of the democratic process—

Alex Linkston: The democratic process is why you need bureaucracy, which sets down the rules on how an organisation operates. When there are too many layers of bureaucracy, it becomes confusing, but you need bureaucracy. In saying

that the procurement process is highly bureaucratic, I mean that it is very prescriptive, which is what you want. If you are to get the best value out of procurement, you need a systematic approach that says, "These are the rules, and this is what you do." The other extreme would be to have no rules, but you would then get back to all the problems that we previously had in procurement. Like everything, the best solution involves a happy medium.

We have an efficient system, but it involves a set of rules. We have the national portal, we have sectoral portals and we have local arrangements. The joint procurement in Aberdeen and Aberdeenshire that the convener mentioned is part of that local remit. All of those fit into an overall procurement strategy for local government in Scotland, which includes PECOS—the professional electronic commerce online system—and all of that.

All of those have an essential role, but it is a prescribed role. That is what I meant by "highly bureaucratic". I certainly was not using the term in any derogatory sense. In fact, bureaucracy is a strength when it comes to procurement. To have an open and transparent system that wins public trust, you need a defined set of rules that people follow.

Bill Howat: One difficulty of language is that we use the word "bureaucracy" in a pejorative sense. The reality is that we are a democracy and we have what most people would describe as a social market economy. That means that almost all our markets are, to a greater or lesser degree, regulated. That implies some form of official support, which comes under the term "bureaucracy". I understand John Wilson's question, but I think that the issue that we need to tease out in relation to what the bill is trying to achieve is whether the amount of bureaucracy is proportionate. Whether we have too much bureaucracy is probably the question that we need to consider.

On that, I refer members to paragraphs 97 to 107 of the excellent report that the committee published in June. In those paragraphs, which deal with procurement and best value, the report sets out the current situation, which is that we have well-intentioned procurement systems and good legislation, but procurement is now beginning to develop into its own industry. The question that I was trying to pose at the beginning was to ask, "Given the view that the committee has formed, as expressed in its report, to what extent will the bill improve or fail to improve the current situation?"

I do not think that I am in a position to answer that question. As I said in my opening remarks, the problem with the bill is that it will apply to all the

individual organisations within community planning partnerships, each of which will respond differently. They could respond at the strategic level in producing a procurement strategy, but how they perform at the local level and in the actual bidding for and awarding of contracts will depend on both the nature of the organisation and, quite frankly, the people involved. The only answer that I can give is that there needs to be proportionality. We have argued—in particular, Ronnie Hinds and Alex Linkston have argued very strongly—that we have a system in place that the bill is trying to improve and make more focused, and I think that we should push forward and go ahead with that.

The Convener: Just to finish off on bureaucracy—good and bad—sometimes our use of language does us no favours. Alex Linkston mentioned PECOS, which is used by folks in all sections of the councils that have it. I was told that the best use of PECOS and the best scrutiny of what was being bought happened after the dinner ladies and the cooks in Aberdeen were trained up on the system. A lot of good practice came out of that, which was exported right across the council. How do we export best practice from one council to another? We are still sometimes a little bit wary of sharing good practice across the board.

Ronnie Hinds: I endorse your comment. At an earlier stage in the discussion, I recalled that when we were trying to get the best value out of the system that we used in Fife—it was not PECOS—the same issues arose. The challenge was to create an experience of ordering and purchasing through the system that was as close as possible to what people are used to doing with Amazon. That is a really high standard; the process has to be that intuitive and easy to use. Our systems tend to be a bit sclerotic by comparison with Amazon's, but that is the standard that we want to hit if we are to engage people properly with procurement as an activity within councils.

To address the question directly, I have already said that we have the makings of comparisons. We have the procurement capability assessment process, which includes some quite distinct facts and figures, and some quite nice judgments about how people are doing procurement are being made. That process gives us the consistent basis that we need to look across the piece at 32 councils and say how well council A is doing in procurement compared to council B. We have the tool to do the comparative analysis and benchmarking. Although it was not designed for that purpose, it lends itself to it.

Alex Linkston: It is a huge cultural issue. PECOS was a nightmare to operate; I know that my staff hated it. I hope that it has improved a lot in the past few years. Such improvement would come through experience, and if your dinner ladies

in Aberdeen found a better way of operating it, convener, I hope that they fed that back to the centre so that it could be built into the system.

On the general point about sharing ideas, we are getting a lot better at that. The benchmarking initiative that local government introduced will make a major contribution to that.

However, with the pressures that we are now under, which we have been under for some considerable time, good managers are searching out good ideas rather than reinventing the wheel. No one has the luxury of being able to design everything in their council. We have to get into sharing resource. I do not mean a formal sharing of resource; I mean pinching good ideas. That might be seen as a major sin, but plagiarism should be a major quality of senior managers in the public sector. I always recognise it as a skill in chief executives. If a manager says that they have developed a system themselves, that is a minus point. If they say that they have pinched something from someone else and adapted it to our circumstances, they get a big pat on the back. We have to encourage that.

Bill Howat: I cannot follow that, but the committee might want to know that the two gentlemen who are sitting on my left were the main drivers of the whole Society of Local Authority Chief Executives and Senior Managers benchmarking exercise, which is probably one of the systems that can pick up on and deal with the issue that the convener raised.

The Convener: I thank the three wise men for their evidence today. I suspend the meeting for a few minutes to allow for a change of witnesses.

10:54

Meeting suspended.

10:58

On resuming—

The Convener: Before we hear from our second panel of witnesses, I should say that Cameron Buchanan, who is a committee member, has been delayed on a train. He hopes to get here, but who knows how he will fare in that regard?

I welcome Ashley Gould, who is the head of procurement for Highland Council and from SOPO, which is a new acronym for you, folks—it stands for the Society of Procurement Officers. I thank Allan Mackenzie of Aberdeenshire Council and the Society of Local Authority Lawyers and Administrators in Scotland for coming to the meeting. He is a last-minute witness because of illness and his presence is very much appreciated.

Do you have opening statements, gentlemen?

Ashley Gould (Highland Council and Society of Procurement Officers): Thank you, convener.

As a community of heads of procurement, we certainly welcome the proposals in the bill. We think that, in broad terms, it provides a useful harmonisation of the standards that will be applied across public bodies both above and below the EU tendering thresholds in respect of transparency, accountability and rights of challenge. There are probably a few difficulties with, for instance, the cost and quality balance, which was discussed earlier, and there is a lack of detail on the construction and use of award criteria, which are obviously present in the EU directive and the implementing regulations. That detail might also improve the consistency of behaviour among public bodies and fill a gap in the jigsaw.

We certainly welcome the recognition of the connection between the single outcome agreements and the contribution that procurement can make to those objectives. In Highland Council, we have been looking at our single outcome agreement for some time, and there is recognition that a great many of the objectives that it sets out are achieved through the means of procurement. We believe that there is a real opportunity to integrate this area of work into the more general thrust of those achievements and thereby—as community planning partnerships or through some other device such as, in our case, the Highland economic forum—to use procurement to its ultimate potential to achieve those outcomes.

11:00

The Convener: Mr Mackenzie, do you have anything to add?

Allan Mackenzie (Aberdeenshire Council and Society of Local Authority Lawyers and Administrators in Scotland): Yes. SOLAR also broadly supports the bill. We see that it will spread best practice and create opportunities for SMEs, supported businesses and third sector bodies. The introduction of the publication of procurement strategies and the reporting obligations are definitely good things.

As I am a lawyer, you will not be surprised to hear me say that I have some concerns about the way in which the technical rules will integrate with the European rules. We might come to that issue later as you ask your questions. I suppose that my concerns are more on the practical, day-to-day level because, in my job, I give advice on the regulations to various services that do contracts on a day-to-day basis, so the bill will directly affect what I do.

The Convener: Let me start with a question on the issue that you mentioned. Where will the tensions lie between the European rules and what is proposed?

Allan Mackenzie: The bulk of procurement is already regulated by the European procurement rules. Contracts above £173,000 have to go through the EU procedure, and it is within the competence of only the European bodies to alter that legislation. The Scottish Parliament cannot change it in the sense of liberalising anything. It is quite restrictive, and it is the way that it is. What you can do—the bill does it—is add another layer on top of that, and possibly make it slightly more prescriptive. That is within the competence of the Scottish Parliament, but you cannot liberalise things.

One of the bill's objectives is to make it easier for SMEs and third sector bodies to get work, but it is difficult to achieve that because, in a sense, it involves public authorities—I will not say “acting in a more discriminatory way”—targeting their procurement in such a way that those bodies can apply for and get that work.

The Convener: “In a discriminatory way” is an interesting term.

Allan Mackenzie: Transparency and proportionality are parts of European law, and they are already required above the £173,000 threshold. Below that, councils will have financial regulations that determine how they go about procuring services, which usually involves them getting four quotations to make sure that they are getting best value. However, who they go out to below £173,000 is within the discretion of the authorities. They can—and often do—choose to pick local suppliers to bid for work.

If, as will become the case, authorities have to advertise all those opportunities on the public contracts website, it will be open to other players to come in. The bill creates new processes for sub-threshold procurements, which will have to be open and transparent, so those other providers will have to be given a fair crack of the whip. It is possible that one of the outcomes will be that fewer local businesses will win contracts—that is a possible unintended consequence of trying to legislate in the area.

The Convener: That is interesting. I do not want to put words into your mouth, but the best way to describe the approach might be to say “in a discretionary way” rather than “in a discriminatory way”.

Allan Mackenzie: Europe has set the threshold at £173,000 because it thinks that, below that level, there will be no cross-border interest from other member states. Generally speaking—and I say that because things are not quite that strict—it

is not really concerned with such lower-value transactions because they do not affect trade between member states and, as a result, we have some discretion in how wide we cast our net when advertising such opportunities. If we have to advertise them all on public contracts Scotland, anyone will be able to come along and bid for them.

Stuart McMillan: I found that response very interesting, particularly given the evidence that we heard in the previous session about the social value of contracts. I also found it interesting in the context of section 9, which relates to the sustainable procurement duty, and in particular section 9(1)(a)(i), which requires a local authority to consider how a procurement can

“improve the economic, social, and environmental wellbeing of the authority's area”.

There seems to be a bit of a contradiction between what you have just said and this particular section. Indeed, my understanding is that the bill actually deals with the point that you have raised.

Allan Mackenzie: Are you talking about below-threshold transactions?

Stuart McMillan: Yes.

Allan Mackenzie: As a result of the bill, when local authorities think about how to divide up this work, they will have to be more minded to frame the contract in a way that gives third sector bodies and SMEs opportunities to bid and might well cut up the work into smaller lots of lower value to make things easier for those organisations. However, there will still be a process to go through and, to date, that process has been relatively flexible. I will not call it informal, but it is far more flexible because it is not prescribed.

Once you cascade the rules on transparency and proportionality, the process for larger-scale European above-threshold transactions will be pulled down for transactions above £50,000. The scary issue for the bodies involved is how they can cope with an invitation to tender or a pre-qualification questionnaire or how they can fill in those forms, and that will be a problem here. I know that that can be dealt with through training and other initiatives but all I am saying is that people will enter this particular process and, when they lose the competition, will blame the process itself. I am not saying that they were more favoured in the past but they might have had a better chance simply because there was more flexibility in the system.

Stuart McMillan: My impression from Bill Howat's comments about the social value of contracts and the need to consider at the very outset of the proposed works the social outcomes that the authority wants, certainly with regard to

smaller contracts, was that that work was already taking place and that that situation did not necessarily need to change as a result of the bill.

Allan Mackenzie: If you are talking about social outcomes being written into the specification of the work that the provider has to carry out, I am sure that that is already going on. However, if you are talking about local authorities applying some kind of social factor in their assessment of various bidders and saying, for example, "This is a local company so it should get more points," I have to say that that does not happen and, indeed, cannot happen under current EU rules.

Stuart McMillan: I am not suggesting that at all; I am simply talking about the social and economic outcomes for a particular area with regard to smaller contracts.

Allan Mackenzie: If I heard you right, you gave an example of jobs being threatened because—

Stuart McMillan: But that was not a small contract. It was a larger one.

Allan Mackenzie: The Transfer of Undertakings (Protection of Employment) Regulations will protect those jobs. If a new provider comes in and people are already doing those jobs, most of them should transfer over. That should not have been a problem in the example that you mentioned—I do not fully understand it. Perhaps there was going to be a massive reorganisation and the jobs were going to disappear anyway because of redundancies. However, if it was a straightforward case of a new supplier coming in, the people who were already doing the work would have had to transfer over.

The Convener: Mr Gould, do you have any comments?

Ashley Gould: Given the general direction of travel of the legislation, we may see some changes coming through the new procurement directive and the implementing regulations. Those will harmonise more obviously than has been the case with the existing regulations in terms of what all levels of government, from the European Parliament through to the Scottish Parliament, are trying to do on procurement activity. There is a great deal of interest at all levels in making things more accessible to SMEs and in using procurement as a means of achieving such outcomes.

There are currently areas within the Procurement Reform (Scotland) Bill in which there is ministerial discretion to introduce new standards by orders, regulation or whatever, but the gaps will be filled when the implementing regulations of the new directive are introduced and there will be more harmonisation there. As a result, we will be able to see a clearer connection between what the

bill is trying to do and what the directive is trying to do.

On transparency, there is always a balance to be struck between how public bodies open themselves up to the accountability and visibility that they are required to deliver in their business opportunities and how they maintain the desire to award contracts to businesses in their local areas. The threshold of £50,000 for open-tender advertising through PCS has been Scottish procurement and commercial directorate best practice for a number of years; all that the bill does is put that in statute. Nevertheless, the threshold has varied substantially from one council or organisation to another for a number of years. We could argue whether the threshold should be £50,000, £40,000 or £100,000, but it will probably be helpful to everybody if the same level is established across the public sector so that everybody knows what will be advertised openly and what will be subject to local quotation exercises.

The Convener: Thank you, Mr Gould. Stuart, do you want to come back in?

Stuart McMillan: Not at the moment, thank you.

Anne McTaggart: I have a question for Mr Gould. In the written submission that we have received from Highland Council, as opposed to SOPO, your answer to the question, "How should communities be empowered by the new procurement system?" is not very positive. How do you think the bill will assist community empowerment?

Ashley Gould: The bill is quite vague about how it will deliver that. For various procurements, there is a requirement to consult the people who are affected by them, which is entirely right and proper. There are examples of Highland Council having done that in the provision of care at home, whereby we have engaged the Highland senior citizens network as a direct stakeholder in that project. It is entirely positive that that will continue and be built on.

The call for evidence makes a clear connection between the single outcome agreement and community planning partnerships in how those partners can work together using procurement to deliver outcomes. That is entirely laudable as well, but the bill as it is drafted does not articulate clearly exactly how that is meant to be achieved.

The community planning partnerships or economic forums—whatever they are—in the various regions can advance the outcomes considerably and in many areas are probably doing so, but the means of achieving that are not apparent in the bill.

11:15

Anne McTaggart: The evidence suggests that CPPs can be improved, but no provisions in the bill appear to further that aspiration. Should such provision be in the bill? Will CPPs not improve until there is legislation in that regard?

Ashley Gould: There is certainly a risk that the issue will be missed, if that is an aspiration of the Scottish Government. It seems to be a positive outcome that we should act more in partnership, not just as users of the same frameworks but as stakeholders in the same outcomes. I can speak only for my council's single outcome agreement, but a great many of the outcomes are delivered through procurement, so at least a cross-section of partners in each case, if not all the partners, will be stakeholders in those outcomes. There is therefore a strong argument for having all stakeholders act collaboratively to influence how the specification, the award criteria, the supply selection criteria and so on are formed, and how the resulting contract and delivery machinery is governed, to ensure that the outcomes are delivered as required by the partnership as a whole.

Anne McTaggart: How could we amend the bill to ensure that we increase community empowerment and community benefit?

Ashley Gould: Perhaps, rather than specific provision in the bill, there should be a stronger connection between the bill and community engagement in general, that is, how councils and other public bodies engage with their communities and report back on the engagement.

If the bill is amended to require that someone who is dealing with a procurement project must consult the community, care will need to be taken to ensure that bodies speak to people who actually have an interest in the outcome that is being delivered. A broad section of the community will probably not have an interest in each procurement project; the issue will be how consultation is targeted.

A provision to require consultation with the people who would be affected by a project might be as far as the bill needs to go. However, the legislation that covers community empowerment and dialogue in that regard should perhaps refer to the use of procurement as a tool of public service delivery and require that there should be community engagement, specifically on the procurement mechanism that is used to deliver the outcome that is under consideration.

The Convener: I heard a phone beep. I remind everyone to switch off their phones, because they interfere with the broadcasting equipment.

Richard Baker: Mr Mackenzie said that it will potentially be more difficult for small local businesses to win contracts under £173,000. Will that be addressed by other aspects of the bill, such as the provisions on social outcomes, community benefit clauses and the like? What you suggested would fly in the face of the whole drive of the bill, as I think Mr McMillan said.

Allan Mackenzie: I am looking to the future. I do not know for a fact that what I suggested will happen, but my impression is that a complicated procedure will frighten off inexperienced bidders. Currently, we can have a reasonably flexible procedure for contracts under £173,000.

When the new approach comes in, which broadly mirrors the European requirements—there is more regulation to come—I expect that councils will procure for lower-value transactions in much the same way as they currently do for above-threshold transactions, which will be an intimidating process for less-experienced providers. It is about psychology. Even though the point is to try to make the process easy for people, I think that the system will put some people off.

Richard Baker: Should the Scottish Government revisit that element of the bill?

Allan Mackenzie: I can see that the Government is trying to encourage best practice throughout. In a sense, it wants to standardise the approach. Ashley Gould will be able to speak to that better than I can because he runs a procurement service, but I cannot see how we can do it in any way other than to run a similar kind of operation that will be transparent and proportionate. We will have the same considerations in the back of our minds. We might have a slightly cut-down procedure, but it will be similar.

Ashley Gould: Assuming that the £50,000 limit for advertising and the other provisions of the bill are enacted as they stand, there will be a mirroring above and below threshold of the need to advertise, respond, invite invitations and award transparently. However, those are pretty fundamental principles. Aside from the advertising aspect, even though we are self-selecting people through a quotation process, that process should still be open, transparent, properly competitive and accountable in its procedures and decisions.

How we as public bodies deal with risk and how businesses respond to that are elements of that. By that, I mean not the risk of legal challenge, but the perceived risk of any given project and how that risk is built into the various aspects of what we do.

This is perhaps ignored initially, but we have to start by asking questions. What outcomes are we trying to achieve through the project, and what

risks—financial, service and legal—are associated with it? How do we deal with those risks as we implement the project, from formulation of the specification to delivery of the contract? How do we get the balance right? What, in managing risk, do we deem is the proportionate minimum that we must do in order to put in the safeguards to ensure that outcomes are delivered? How do we, as a community of public bodies, make sure that we apply the standards proportionately, fairly, openly and consistently across the piece?

It is more a question of practice and the approach to all the risks with which we are dealing than, necessarily, of a purely procedural methodology that goes from the point of advertising to the point of contract award. That is how procurement has, historically, been perceived, and it is a wrong perception. It is much broader than that.

Richard Baker: Mr Mackenzie said earlier that he hopes that the bill will generate new approaches to social outcomes, including use of smaller contracts, to achieve some of its ambitions. Mr Howat in particular reflected on the fact that procuring authorities can already take those approaches. Can we be confident that legislating will change the approach and lead to what Mr Linkston called “a mushrooming” of community benefit clauses over the next two years? Can we look forward to that or is it perhaps on the optimistic side, given the current culture?

Allan Mackenzie: I expect that the bill will lead to more use of community benefit clauses. That is inevitable. However, I also suspect that the fact that the bill contains a £4 million threshold will mean that people will think that they do not need to regard inclusion of community benefit as a rule in contracts below £4 million. The more enlightened authorities will apply the provisions below that level, but some authorities will think that they do not need to be too concerned about community benefits if the contract is worth only £2 million. The bill has set a kind of target and, quite often, such targets become the minimum at which people need to think about the measure. I am sure that some authorities will apply the provision below the level—I know because I have worked for a couple of them recently. They will have a matrix of benefits that they expect per £1 million of expenditure.

Richard Baker: That will not just be about legislation on its own; other leadership will be required to ensure that all authorities buy in to the approach.

Allan Mackenzie: I guess—I do not know for sure—that the £4 million figure was chosen because it is broadly in line with the works threshold for public works contracts. The figure for big contracts that must be advertised is, I think,

£4.3 million, and it tends to be works contracts that attract community benefit clauses, such as apprenticeships and training.

John Wilson: Good morning. To return to Mr Mackenzie’s point about getting SMEs and community organisations to bid for contracts, it may be that some local authorities and other organisations want to break up those contracts into lots below the £50,000 threshold. Would not that lead directly to an increase in administration because of the need to draw up, administer and monitor all those contracts? Does Mr Gould have any comments on that?

Ashley Gould: There is certainly a risk of that happening. Developing best practice is a learning process and what the authority is trying to achieve will be determined incrementally. An example that immediately springs to mind is our amenity grass-cutting contracts. The one before last was advertised as a homogeneous, single contract, and although there were a couple of lots in it, we had one single provider. We then divided up the contract in order to get the SME community to access the eight administrative areas that Highland Council used to be made up of. We found that, even after engagement with the business community, we did not achieve that. When we go out to tender again, we will make it up into much smaller lots because when we asked businesses why they did not bid, we were told that the contracts were still too big. For example, a company that might be able to do Wick or Thurso could not necessarily do all of Caithness.

We will learn from that. The next time we go out to tender we want to achieve engagement with SMEs. We do not know exactly how we will lot up the contract; it may be done according to planning and settlement division or by associated school group area. We will find a way to work within the regulations—this is all achievable in the regulations as they stand—to lot up the contracts to achieve maximum penetration into the SME community. A process of engagement with the business community will be needed to encourage them to participate, because getting them to respond to the opportunities that we put out on that basis is an on-going difficulty.

John Wilson: You said that you previously broke one contract into eight contracts, and that you are now thinking about dividing it further. What would be the additional cost to the authority were that to happen? I assume that breaking up contracts does not come without costs.

Ashley Gould: That is correct. We have not quantified the amount, but there would undoubtedly be an additional administrative burden in managing, for example, 25 contracts as opposed to one. However, we will still have to monitor the service where it is delivered. For

example, if one is monitoring the provision of a service across an area such as Highland, one still needs to carry out a service inspection in Fort William and the same inspection in Wick to ensure that the service users are getting the same standard of service. In that sense, whether you are dealing with one or 25 contractors does not make any difference.

There may be a burden in managing the relationships between the contractors. For example, if an authority takes several smaller contractors to task for service delivery failure, that might be slightly more difficult than asking one contractor to provide explanations for failures in specific areas and proof of improvement. However, as I say, the inspection regime would probably be broadly the same.

John Wilson: I accept that the inspection regime might be broadly the same, but what about administration of contracts? If an authority's goal when procuring services—we will work round the phrase “best value”—is to reduce costs, but the administration and delivery costs of those contracts are increased, how is that measured against delivery of the contract? It is fine to say, for example, “We will let out contracts for £250,000,” but if the work will cost more to administer than it did previously with a single contract, how is the value of the contract to the local authority measured? Does that get eaten up in the local authority's administration costs and therefore does not count towards delivery of the contract?

11:30

Ashley Gould: Measurement of our costs has not historically been anticipated or measured as part of the total cost of acquisition.

The Convener: When you say “our costs”, do you mean those of the procurement service?

Ashley Gould: I apologise; I mean the contracting authorities' administrative costs.

On achieving savings or incurring additional costs, the key question to ask right at the beginning of a project is, “What are our goals?” Are we aiming to reduce our costs through the medium of the contract? Is the goal something else, or is it a combination of those things? It is a question of how we look at all the things that we are trying to achieve through the medium of the contract and trying to understand their implications right at the beginning. I presume that, if the only target is reduction of costs and there is no other concern, we would be bound entirely by economic rationality; we would not really care about the socioeconomic effects of a contract, and we would go for the highest level of aggregation. However, that runs contrary to the spirit of what the bill is

trying to do and, certainly, to what my organisation is trying to do on aggregation and lotting. It presumes that contracts will be broken down into the smallest possible lots unless there is a clear justification for not doing so. Therefore, it turns the old approach on its head in many ways.

John Wilson: It turns the approach on its head, Mr Gould, but I understood that the local authorities and other agencies went for procurement to try to reduce costs and get best value for the services that are delivered. However, you have indicated that your authority has not totalled up the costs of breaking up a large contract and splitting it into eight contracts. You have indicated that the likelihood is that you will look at 25 separate contracts. The cost savings to the authority may be minimal, or there may not be any savings at all to the authority, because at the other end of the administration of those procurement contracts, the costs for developing, administering and monitoring those contracts will be more than any savings that are made through the procurement process. In moving from one large contract—I do not know what the value of that contract would have been—to 25 individual contracts, I assume that you would expect to make some savings in the delivery of that contract, but the other side of that is that the additional costs for the administration, monitoring and delivery of those 25 contracts would mean that the costs would be greater than the costs of administering, monitoring and delivering one contract across the local authority area.

Ashley Gould: I should say immediately that 25 was an entirely hypothetical number. I do not know what the number would be.

John Wilson: It was a figure that you threw out; I just threw it back at you.

Ashley Gould: Whatever the number is, we have not historically measured the administrative costs of a lot of the effects of the lotting strategies that we have implemented.

Given the tightness of our resources as we go into the next few years, and the budgetary constraints that we will be bound by, we will undoubtedly need to be a lot clearer about the administrative cost, and to balance our approach to achieving cashable savings through delivery of lower-priced contracts with the costs of taking one view of how a service should be delivered, as opposed to another.

John Wilson: Do you know whether any local authority in the UK has done that work and calculated the real cost to the authority of letting a procurement contract with the additional costs that may be associated with putting the contract out to tender?

Ashley Gould: In terms of internal administrative costs, no. I am not aware of any such work.

John Wilson: Thank you.

Mark McDonald: I have one question, although it might lead to a supplementary depending on how it is answered. I asked the previous panel of witnesses whether the appropriate balance is being struck between looking at procurement in a monetary context and looking at quality. Their response was that, although on paper quality is factored in to procurement decisions, they are still driven too much by monetary considerations. Do you agree?

Allan Mackenzie: In setting out a strategy, we make a judgment about the balance between quality and price. Most procurement transactions are judged on what is most economically advantageous rather than just on what has the lowest cost. It is rare for simply the lowest cost to be considered, because a quality factor is usually built in.

The balance is determined by the thing that we are buying. If we are buying widgets, price will be the main factor. We will set a minimum standard for the widget that we want and the quality element will be pretty marginal. If we are buying professional services, price might be less of a consideration and we will focus far more on quality; the split might be 70 per cent quality and 30 per cent price. We have that discretion now, so there is nothing new there.

We can apply as much importance to quality as we want, although there has to be some kind of economic catch. If we ignored price altogether, people could charge us an absolute fortune because we would just keep paying. We have to set some parameters, but we can attach the weightings in whatever way we determine according to the procurement strategy.

Ashley Gould: I agree. We have a huge range of balances between cost and quality. If we are dealing with something that is defined closely by a British standard or some other technical standard, and it will not vary from one manufacturer to another, the vast majority of the weight will be on the cost. If we are dealing with something that is highly risky, for which the council has huge reliance on a given contractor and which is essential to delivery of public services, we will ensure that the evaluation is heavily weighted towards the qualitative aspects.

Mark McDonald: In all my time in local government, I do not recall seeing a contract being let where the weighting was 70 per cent quality and 30 per cent price, but I take the point that discretion exists.

How do you see the bill's provisions on community benefit being factored in to future procurement weightings and decisions?

Ashley Gould: On your first point, as an example, the weighting for our roads weather forecasting contract is 80 per cent quality and 20 per cent cost, because it is vital that we send the gritters out to the right places at the right time. In many ways, as long as we can afford the service, quality is paramount. The service has to be delivered, so quality has been given that weighting.

On community benefit, it is the goals and the specification that are used to describe the objectives that give rise to the right balance between cost and quality. Focusing on quality will not, in itself, necessarily deliver community benefits. They have to be built in as specific deliverables at commencement, when the requirements and the specification are formed. From that, we can determine what questions we want to ask potential bidders and how much weighting we will afford to those questions.

Allan Mackenzie: I agree. We have to build community benefits into the specification. If they are not in the specification, we should not score them in the evaluation, because we cannot capture them. Someone could say, "I'll give you 100 trainees," but if that is not in the specification, they do not have to do it. It is vital that such things are contractual terms and that, when we plan procurement, we say that we expect people to deliver however many training places. Alternatively, they can populate that area, saying, for example, "We can deliver five apprenticeships." We will capture that, and we can then score it. However, if we have not specified such benefits at the outset, we cannot judge them at all.

Mark McDonald: How tightly would you expect community benefit to be defined, either legislatively or in guidance? You both represent quite rural authorities. The previous panel expressed the view that community benefit in an urban community may differ greatly from that in a rural community. How do you see community benefit being communicated, as it were, to ensure that it is neither just a token consideration for authorities, nor is it so prescriptive as to make it difficult for different authorities to apply it?

Ashley Gould: It has to be linked to the specific targets and priorities of the organisation. The question is really how the procurement project is used to deliver the outcomes, and it relates to the single outcome agreement. What are the links between the priorities that the organisation wishes to deliver and the sets of procurement-based projects that it expects to award over the next year, three years and five years? Can we establish a link between delivery of contracts and

achievement of the outcomes? If we can, that is potentially what community benefit means to the authority. It is important to establish that link.

If you are going to legislate for community benefit, it needs to be defined loosely enough to encapsulate the particular aims and priorities of organisations, which vary enormously from one council area to another, as you said.

Allan Mackenzie: When I worked at Renfrewshire Council, it had a matrix of community benefits that would be expected from certain types of contracts relative to the amount of expenditure. It tried to be consistent in its approach. Aberdeenshire Council also requires community benefits, although I am not sure that its approach is as rigidly defined. Each council is different for the very reason that you suggested—there are differences between what urban councils and rural councils can practically achieve.

It is easier to get community benefits from higher-value contracts than it is from lower-value ones. If an authority issues lots of lower-value ones, it might be more difficult to get community benefits. Getting SMEs involved is a community benefit in itself, but it might be harder for such authorities to get extra traineeships or apprenticeships. If a company is only getting £100,000, how can it afford to take on a trainee or an apprentice whom it will employ for the next five years? How can it build that in and take that risk, unless that is part of the normal business that it is planning anyway?

The Convener: Thank you very much for your evidence today, gentlemen.

I suspend the meeting until 10 to 12 for a change of witnesses.

11:44

Meeting suspended.

11:50

On resuming—

The Convener: We move to our third panel of witnesses. I welcome Fraser McKinlay, the director of best value and scrutiny improvement at the Accounts Commission for Scotland; Elma Murray, the chair of SOLACE and the chief executive of North Ayrshire Council; and David Martin, the former chair of SOLACE and the current chief executive of Renfrewshire Council. Do you have any opening remarks, folks?

Elma Murray (Society of Local Authority Chief Executives and Senior Managers and North Ayrshire Council): If I could say a few words of introduction, that would be helpful. I want

to make a couple of points about councils' position on procurement and the bill.

There is a supportive environment across councils and our community planning partners regarding the principles of the bill. In particular, we want to ensure that procurement is transparent, consistent, sustainable and business friendly. CPPs are also supportive of the measures in the bill that will ensure that there is a level playing field for SMEs, and facilitate bids from the third sector and supported businesses.

Fraser McKinlay (Audit Scotland): Thank you for the invitation, convener. As we say in our written submission, Audit Scotland is undertaking an audit of procurement in local government on behalf of the Accounts Commission for Scotland. We are in the middle of that work, so I am not able to say much specifically about it today, but the Accounts Commission would be delighted to come back in the spring, once that report has been published, to brief the committee if that would be of interest to you.

David Martin (Renfrewshire Council): I do not want to go over territory that the committee has already covered this morning. It is important to work with communities actively to build capacity to engage with the whole procurement agenda. The committee may wish to develop that in questions.

The Convener: Thank you. That is useful. I asked one of the earlier panels about the levels of risk aversion that exist and the blame that is sometimes cast by services that say that the legal or financial sections of councils are driving the procurement agenda. In your experience, is that the case? If not, how can we rebalance the process so that people recognise the reality?

Elma Murray: I do not recognise that within the local authority environment or across our community planning partners. For a few years, councils have been on a journey and, with the help of Scotland Excel, which Mr Martin has a key role in leading, we have a procurement capability assessment that allows us to look at how councils are performing in that regard. A lot of that is about how we work with stakeholders and partners.

Procurement has broadened a lot, and people's understanding of how procurement can be used to more effect in local areas and within communities has changed significantly over the past few years. I do not see any demarcation between different services or any blame—I do not see any of that at all. There is much more collaboration and use of procurement to effect real and lasting change within communities.

David Martin: I take the same view. The previous witnesses discussed the direction of travel of legislation in Scotland over the past five years. Whether that is community planning

legislation, equalities legislation, the proposed community empowerment and renewal bill, the Procurement Reform (Scotland) Bill or, going back 10 years, best-value considerations, it all takes us in the direction of trying to ensure, first, that councils work corporately and collectively and, secondly, that they engage fully and meaningfully with their communities.

SOLACE under me and now under Elma Murray has a largely positive experience of tackling that agenda. There are, of course, war stories and there is no doubt that improvements could be made but my experience of procurement and strategic commissioning over the past few years is that councils have improved things. We have not got it 100 per cent right but the situation is a lot better than it was, and we will continue on that journey.

The Convener: We usually hear about situations in which bidders have failed for one reason or another and it is quite easy for a council's procurement section to lay the blame at someone else's door. Will the openness and transparency that the bill hopes to achieve save some of that grief and allow us to talk in a completely and utterly open way to bidders who have failed about why they have failed? Moreover, will that transparency stop some of the more risk-averse practices that might exist in some places?

Elma Murray: A number of authorities are very supportive of the bill's proposals on giving feedback to bidders, particularly those who have not won contracts in a competition and especially if the bidders were very close in the final evaluation; that feedback will focus on where they featured in the evaluation so that they understand the nuances in the contracting authority's tender. However, although there is already an open approach to and a welcome for the proposals on feedback, I should note that a number of authorities are already giving that kind of feedback because they believe it to be good practice.

To be honest, I have not had any recent experience of or heard any complaints from unsuccessful bidders about one part of an organisation blaming another with regard to procurement in the public sector. The comments that I tend to get are much more general.

As for being risk averse, we in the public sector tend more to talk about being risk aware, understanding the risks and what we are doing to mitigate and manage them. Doing something different or new or taking a different step always comes with some risk, but if we are aware of that risk and have plans in place to manage it throughout the procurement process we will be moving in the right direction.

David Martin: I endorse those comments. Regardless of the size of the contract, debriefing suppliers is much more common and widespread than you might appreciate. There are many good reasons for that. In the previous session, for example, Mr Gould talked about the learning process and I think that it also helps to evolve our thinking about consulting user and supplier intelligence groups before specifying a contract and about how we maximise the opportunities that the procurement reform legislation is trying to capture. That sort of thing is much more commonplace now than was the case; indeed, Scotland Excel has been doing it for some time, although of course it does not cover the totality of procurement activity that Scottish councils carry out.

Previous witnesses have indicated that for many years now all councils have had—indeed, are required to have—standing orders on contracts, most of which reflect good if not best practice. Historically, that might not have been the case. It is commonplace for Scottish local authorities—certainly for my authority and for Elma Murray's—to actively seek out dialogue before a contract is tendered or advertised and after the award has been made to ensure that we learn from the process for the next time that we evolve a contract or set of contracts. It is all about taking a strategic approach to procurement and I welcome the fact that the bill, in effect, simply wraps around that and enshrines it in law.

12:00

Fraser McKinlay: There is a potential inherent tension in all this, and under the general duties in the bill. Section 8(1) makes it very clear that a "contracting authority" must

"treat relevant ... operators equally and without discrimination"

and

"act in a transparent and proportionate manner."

Section 8(2) is about complying

"with the sustainable procurement duty."

That duty is described in section 9. Section 8(3) states that

"a contracting authority must not do anything in pursuance of"

the sustainable procurement duty

"that would conflict with its duty under subsection (1)",

which is the one about equality and avoiding discrimination. Those two duties are not necessarily always easily squared off, particularly if somebody is on the losing side, if we want to use that phrase, in a bidding process. One person's supporting of sustainability might be another

person's lack of fairness, so I think that something needs to be worked through. I am not saying that that is a problem; it is just the way of it. Having a bill that sets that out more clearly is probably helpful.

The Convener: I think that you were here earlier when Mr Mackenzie gave evidence. I am paraphrasing, but he said that authorities can be a little bit discriminatory at the moment in awarding contracts; I tried to see whether he would move towards them being discretionary. Are you seeing some levels of discrimination under the current system in the awarding of smaller contracts?

Fraser McKinlay: We do not have any evidence of that. Obviously, if anything were to come across our table, we would look at it seriously. However, there are lots of examples of people who are not happy because they have lost out. It is important that those claims are taken seriously and considered seriously. As colleagues from SOLACE said, engagement must be at the heart of what the bill proposes. The procurement element should be viewed as part of a system of public service design and delivery whose purpose is to improve outcomes for local communities. Procurement can play an important part in that, but it will not in itself fix it.

The Convener: There is a perception among some folk out there that you auditors look only at the monetary value of a contract and do not necessarily take into account quality, community benefit or various other things. How would you respond to such an accusation?

Fraser McKinlay: Heaven forbid that anyone would think that about auditors. There was an interesting conversation earlier in the meeting about best value. In fact, as you know as well as I do, best value is very clearly defined in the Local Government in Scotland Act 2003. That is our starting point. When we consider best value, we look at the balance of cost, quality, time and other things.

I would hope that we do not take a very narrow view; indeed, I am confident that we do not. We will continue to be challenging around councils being clear what the objective of the procurement exercise is. If a council chooses not to take the lowest bidder, people need to understand why. As we heard from Ashley Gould, if a council chooses to change its process from letting one big contract to letting lots of small contracts, we would want to see evidence about why that was thought to be a good idea. Presumably, in the context concerned, the argument would be about the value of supporting fragile communities in the Highlands. However, we would ask for the evidence that the council had used in its decision-making process and in designing the policy; that would explain

matters and give us confidence that it had not all been thought about after the event.

The Convener: That would include having a look at the council's standing orders.

Fraser McKinlay: Absolutely.

The Convener: Mark McDonald has a supplementary question.

Mark McDonald: Mr McKinlay, you made the point that best value is very clearly defined. Do you think that it is very clearly understood at both officer and elected member level?

Fraser McKinlay: That is indeed a different question. I guess the position is variable. As David Martin said, best value has been around since the 2003 act, but the concept was around a good bit before that. I believe and I would argue—I would, wouldn't I?—that the best-value audit has helped over the years. I think that there is a pretty sound understanding across local authorities of what best value is. Particularly when we get into procurement issues, there can be confusion and people use the term "best value" when they mean cheapest. We are absolutely clear that that is not what best value is about and it is not the basis on which we would review any such process.

The Convener: We have heard a lot about risk and, obviously, there are opportunities. Do the proposals in the bill provide real opportunities and are there any other opportunities that could and should be taken but which are not currently provided for in the bill?

David Martin: Earlier, the question of local authorities' risk appetite was discussed. Since 2008, the willingness of local authorities to take appropriate and proportionate risk, always with an eye on the auditors, has increased significantly. There is an inevitability about that, because of the financial circumstances that councils and other public sector bodies have been facing. That has led us to be more innovative and creative in the way that we deliver services generally. My experience is that council officers and members are much more willing to consider alternative service delivery models and, if you like, co-production. I must admit that that term is not the best, but working much more actively and jointly with communities on all aspects of service—construction, planning, delivery and monitoring—is now much more embedded in local authorities. I think that the risk appetite is much more proportionate as a result.

Elma Murray: Convener, you asked whether there are more opportunities that could be taken. The bill gives us the opportunity to get more of us to the same place more quickly and it gives us the environment to be more creative, because of the social value aspect that is built into it. The bill

gives us much more opportunity to be more risk aware in the way that I talked about earlier.

The Convener: After implementation, if the bill is passed, should the committee revisit it to ensure that best practice is being exported across the country?

Elma Murray: Many of us would probably welcome that.

Fraser McKinlay: One opportunity is to think about how, as has been mentioned, procurement is embedded in the delivery of improved public services outcomes. It needs to be seen in that context and therefore alongside the proposed community empowerment and renewal bill, health and social care integration and lots of other things that are going on. There is a risk that the Procurement Reform (Scotland) Bill is seen in isolation from those other things whereas, if the reform is to succeed and meet the ambitions, it needs to be seen as part of a wider public service reform agenda. Focusing purely on the procurement function ain't going to do that—it needs to be seen as part of a much bigger system of improving public services and public service reform.

Anne McTaggart: I entirely agree with you that the bill has to be seen in the larger holistic context of the other bills that are going through the Parliament.

I want to ask about support for community groups, voluntary organisations and SMEs under the bill. Your written submission says that you are aware of the practice in some local authorities but you are not in the best position to comment on its effectiveness. Can you comment on an example that you have seen?

Fraser McKinlay: I am afraid that I cannot do that today, mainly because I am not close enough to the detail of what the team has been doing on the audit. To be absolutely honest, the submission probably should say that we cannot comment on the effectiveness yet because we are in the middle of doing the work, but I hope that, when we do the audit report in the spring, that is one of the things that we will look at. The good news that I would take from that is that there are examples out there of supplier development programmes and local authorities working to support a market locally, which is a good thing. However, I am afraid that I cannot say much more than that today.

The Convener: We can perhaps come back to that if we decide to go down the route of post-legislative scrutiny.

Anne McTaggart: Thank you for that, Mr McKinlay. I welcome your positive stance. Can the other two witnesses give examples of best

practice in supporting community groups and voluntary organisations under the bill?

Elma Murray: Our written evidence to the committee touches on a couple of examples in David Martin's authority and my own. I will go on to talk about those in the North Ayrshire Council area.

More generally, a number of local authorities, if not all of them, will have regular meet-the-buyer-type events. We get various SMEs in and they meet service managers who are involved in contracting, and our procurement team, and we explain to them the process that we go through, how procurement happens, what its stages are, and we check what support they need to put them in the best possible position so that they can procure or tender effectively.

We also often work with communities to build their capacity. I think that you heard some evidence in the earlier session that not all communities want to engage in this way. Again, we need to balance it and work out when communities want to do that.

In North Ayrshire, we work hard with the Ayrshire Community Trust, which takes the lead role for the third sector across Ayrshire, not just in North Ayrshire. We have been getting Ayrshire Community Trust to lead on a lot of the community activity and we support it in that. Sometimes that is as part of a piece of commissioning that we have done and sometimes it is because it is part of the trust's core role and it just gets on and does it.

The example that is cited in our written evidence to the committee is something called partners for change, which we have been working on during the past year or so. That is led not by our senior procurement manager, but our head of community and cultural services because we strongly believe that getting the third sector more actively engaged in how it works with us has to be done through our community services. That is where we have the strongest degree of trust in working with the third sector just now, so we are building from a good place. We have therefore done quite a bit of work over the past year with a number of workshops. We now have a commissioning improvement programme, the lead roles for which have been shared around all the partners so that it is not just the council. The council does have a role, as does the Ayrshire Community Trust, but other partners have roles to implement particular elements of the improvement programme, so everyone has a part to play.

David Martin: Convener, you made this point earlier in the evidence session, and one of the things that strikes me is that different communities are motivated by different things. For example, the Paisley Development Trust is interested in the

restoration of historic buildings so it wants to get involved in works contracts. The Renfrewshire Carers Centre is actively involved in learning disability services and is commissioning an approach for older people's services. Different communities have different communities of interest, so they require slightly different approaches. The bill needs to recognise and permit that flexibility.

That said, I mentioned community capacity building earlier. One of the approaches that we have tried to take—it is not without risk—has been to commission our single interface organisation, which is called Engage Renfrewshire. We have agreed to pay more than £1 million over three years to Engage Renfrewshire to help us to deliver the community plan and the single outcome agreement. That ranges through everything from running our public services panels—some level of community inspection and involvement is about feedback about services; not everyone wants to get involved in the delivery of services—all the way through building capacity in communities through community learning and development, and providing support services to small and microbusinesses in the third sector. It is a bit of a leap of faith, but we think that it is the right approach to building the kind of capacity that the committee has mentioned this morning.

The approach also has rigour because we are ultimately following the public pound and ensuring that that significant amount of resource delivers the outcomes that we want. The approach is not a hit-and-hope one, to use golfing parlance; it is a progressive and programmed approach to building community capacity.

One of the things that we hope will come out of the proposed legislation is that community businesses, third sector organisations and development trusts will be much less fazed by the bureaucracy of procurement and be better able to engage with it. That is a tangible outcome that we hope to be able to demonstrate in time.

12:15

John Wilson: I will start with Mr McKinlay. You were in the public gallery when I questioned Mr Gould about the cost and the value of procurement to a local authority and whether, when a local authority decides to procure certain services, the additional costs of monitoring and managing that process are taken into account. Will the Accounts Commission look at those issues as part of its work on procurement in Scotland?

Fraser McKinlay: Those are exactly the kind of questions that we will ask with some of the case studies that we will be looking at. We will also ask about the extent to which authorities understand

both sides of the equation. As far as the example that Ashley Gould gave is concerned, it seems to me that he recognised that higher administrative costs are likely to be involved when 20-something contracts are administered rather than one. However, we would expect to see the thinking and the evidence that supports the argument that 20 or so local businesses in fragile and remote communities would benefit from that procurement in a way that they might not otherwise have done.

Our expectation is that if decisions are made to change quite dramatically how a service is procured and delivered, we would want to see evidence that both sides had thought through any possible increases in costs, any additional benefit—by which I mean benefit not just to the local authority but, ultimately, to the community—and the extent to which that would support what the council and its partners are trying to do with those communities.

John Wilson: So, if a local authority were able to justify the splitting up of one contract that had been delivered by the grounds maintenance department of a local authority into 25 individual contracts, although there might be additional administrative costs associated with that, that would tie in with the Accounts Commission's view on best value? Would the Accounts Commission accept that?

Fraser McKinlay: Yes. The best-value duty is about the continuous improvement of the delivery of the functions of a council. We would take that rounded view, as long as the evidence was there to justify that decision.

John Wilson: Logically, that leads to the conclusion—this is my conclusion—that it might not be the best way forward for a local authority to put out to procurement services that it delivers.

Fraser McKinlay: It is horses for courses. We would want to see consideration being given to what a council or a partnership was trying to achieve, the service being designed in that way and a decision being made about how best it could be delivered, and by whom, with the procurement approach and strategy being designed to support that.

I return to my point about the procurement process being seen as part of a system of public service delivery, rather than a thing that happens somewhere else. It has to be built in. This will sound like a plug for one of our upcoming reports but, as it happens, we are to publish a report—in January, I think—on options appraisal as part of our "How councils work" improvement series. We think that options appraisal is an extremely important part of the discussion. It is necessary to figure out what options are available for delivering a service if, indeed, it is to continue to be

delivered. Working through that process will include giving consideration to whether and how a service should be procured.

John Wilson: Thank you very much.

Mr Martin, I note that you indicated in your opening remarks—if I picked you up correctly—that you are the chair of Scotland Excel.

David Martin: I am the chair of the chief officers management group; the chair is an elected member.

John Wilson: Thanks for that clarification. How many local authorities are members of Scotland Excel?

David Martin: All 32.

John Wilson: None of them has opted out. Do they all use the full range of services that are provided by Scotland Excel?

David Martin: They do.

I will give a bit of background on Scotland Excel, if I may. We are now five years old; the first two and a half years of our existence involved all 32 councils, ultimately, joining Scotland Excel. The length of time that that took was not to do with a reluctance to travel—it was because many of them had existing contracts, some of which still had a significant time to run. They then took advantage of the Scotland Excel contracts on renewal. All 32 councils have been part of Scotland Excel for some time now and there are about 45 current contracts—I do not have the exact figures to hand; forgive me for that—and all councils use all of them most of the time. The average penetration of contract use is in the high 80 per cents and it is growing year on year.

The approach, of course, is to try to ensure that the contracts that are let across Scotland are flexible enough to deal with a country that is quite diverse in its aspirations and the ability to play into those. That goes back to the points that Ashley Gould and Mr McDonald made earlier. We have refined our approach, which has led to the lotting of contracts so that different parts of Scotland can take advantage of them, and we have tried to strike the balance between price and quality, which was mentioned earlier. I reassure members that quality is uppermost in most of the contracts that Scotland Excel lets.

It is important to stress that Scotland Excel tries to pool activities in areas that all local authorities deal with consistently and commonly. Even when all those contracts are aggregated, the figure is currently something between 10 and 20 per cent of total influenceable spend. Most of Scotland's procurement expenditure through councils is done locally on commodities and things that are delivered locally, which is right and proper. There

is a hierarchy in our approach. In Scotland Excel, we try to ensure that we maximise sustainable procurement and community benefits in the way that the committee has heard about this morning from contracts on which there are significant chunks of spend. There are often more opportunities to try to crystallise community benefits in bigger contracts than there are in some of the smaller ones that were mentioned earlier. That is essentially what Scotland Excel is doing.

Finally, we are getting more involved in some of the slightly more complex areas, such as social care, health and construction activity, and we will fly information with the work that is being done by the public procurement reform board, the health service, and further and higher education in those areas. We are working closely with the Scottish Futures Trust in that regard.

John Wilson: The committee has certainly heard in previous evidence sessions about Scotland Excel's role in the delivery and procurement of care services in local authorities.

In last week's evidence session, we had a discussion with witnesses about procurement versus commissioning. I know that we may be discussing semantics in asking whether a local authority is commissioning or procuring something, but I picked up from some of the witnesses last week that they felt that local authorities could commission work in some areas of service delivery rather than go out to the procurement process. Do members of the panel have any views on commissioning versus procuring?

David Martin: I thank you for that question, which is important.

Language matters. My view—it is a strongly personal one—is that strategic commissioning and strategic procurement are the same thing and I do not believe that the tug-of-war that we sometimes hear about is particularly helpful.

To characterise the way in which the debate is sometimes put, procurement is the bit between advertising and contract letting, and commissioning is the whole approach, but strategic procurement is the same as strategic commissioning. Ashley Gould mentioned the importance of the issue. It is about understanding what the problem that we are trying to sort is, having a clear view of how to go from A to B and having a clear understanding of when we have to monitor appropriately. I think that we could make a lot more progress more rapidly if we agreed that that is the process that we are trying to go through, regardless of what it is called, and took forward the agenda on that basis. However, I recognise that that is not where everybody is.

I will give a local example, if that would be helpful. We are talking to a number of suppliers about renewing those care at home services in Renfrewshire that are provided outwith the council. I am the first to acknowledge that the dialogue this time round is not how it was five years ago. It is about how we tackle the high quality and managing effective risk services that care in the home services have to address, how we tackle a number of other issues such as the living wage and the inappropriate use of zero-hours contracts, and having a detailed conversation with the suppliers about what we need to do in commissioning—or strategically procuring—those services to achieve all those goals. We have not bottomed out that discussion yet, but I am confident that we will end up with a far greater penetration of issues such as the living wage and appropriate contracting terms for people who do not work for the council as a result of our strategic commissioning activity. It is about working closely with the market and trying to influence it.

The market is telling us that if contracts were bundled in a certain way, and if a greater sense of duration of those contracts was given, it might be able to support those issues and give good quality care at home services. If that approach is taken across the services that we are involved in, we will achieve the spirit of the procurement reform bill.

The Convener: Two more folk want to ask questions and I want to get them in, so please keep your answer to John Wilson brief, Ms Murray.

Elma Murray: If you do not mind, convener, I will not add anything, because David Martin answered the question very well.

The Convener: Does Fraser McKinlay want to come in?

Fraser McKinlay: I agree absolutely with David Martin's position.

The Convener: Okay. Grand stuff.

Stuart McMillan: We heard an example from the first panel of an estimated 40 per cent of local authority contracts going to businesses within that area. Does SOLACE have any tables of what percentage of contracts each of the 32 local authorities gives to businesses in their local authority boundaries? Is that information available?

David Martin: Scotland Excel has information for contracts that are managed within its ambit, because that data can be supplied. In the 32 local authorities the majority of spend takes place locally, as I mentioned, so the information would be much harder to get hold of.

It depends where you are. We are part of the Glasgow city region. Because of their scale and

size, North Lanarkshire Council and Glasgow City Council spend more money on most of our businesses than we do. It is a city region, so it is important to get a degree of granularity. The issue is not simply about what goes on in a local authority, because sometimes that is an administrative fiction for the purposes of the economy. However, that information is available across the 43 or so contracts that I mentioned, and we would be happy to try to provide that to the committee, if it would be helpful.

The Convener: That would be useful, thank you.

Stuart McMillan: The bill is going through the parliamentary process and it is estimated that there might be a process lasting about two years to bring EU procurement directives into law here. Will that adversely affect the full implementation of the bill, or will there be very little effect?

David Martin: I do not believe that it need affect the implementation. There is nothing to stop the issuing of guidance while the legislation is being introduced in stages.

Stuart McMillan: We heard about thresholds earlier. Mr Howat said that he would prefer to have a percentage, rather than the £50,000. Would giving a percentage be a beneficial way forward?

The Convener: That is, a percentage compared to the £4 million.

Stuart McMillan: Yes—sorry. Would a percentage be more beneficial for smaller local authorities across Scotland or are the figures in the bill a good starting point to build on?

Elma Murray: The £4 million is a starting point, but there needs to be more recognition of Scotland's diversity and the size of contracting authorities, which you have discussed extensively today. It would be helpful to give a bit more flexibility to the contracting authorities and if a percentage is a way to do that, that would be good for local authorities.

Fraser McKinlay: I will do the audit thing and not comment on the specifics of the number.

It seems that there is a risk. The committee has talked about language a lot today. There is an issue about community benefit with a capital C and a capital B, which is what the bill is talking about, and I agree that there needs to be a degree of flexibility that recognises the diversity of different communities.

Most lay people would say that there should be some benefit to the community from procurement—with a small b and a small c. If there is going to be a specific threshold regarding community benefit clauses, we will need to manage the risk that people might therefore think

that there does not need to be any community benefit for anything else.

That is my one note of caution. The discussion about whether there should be a number or a proportion will be usefully explored as the bill progresses.

David Martin: I agree with both those points. Flexibility is quite important. Community benefit is often more easily realised with higher-value contracts. Paradoxically, community engagement and active involvement might be best at the lower end. It is important that setting either a percentage or a threshold does not have the unintended consequence of taking our eye off the ball with some of the microcontracts that start communities involving themselves in procurement activity.

The Convener: Mark McDonald is the final person on my list.

Mark McDonald: I will be very helpful to you, convener: Stuart McMillan's last question was the question that I intended to ask.

The Convener: Ah, well; there we go.

I thank witnesses very much for their evidence.

12:30

Meeting continued in private until 13:08.

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