



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 6 November 2013

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
28th 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)

*Stuart McMillan (West Scotland) (SNP)

*Anne McTaggart (Glasgow) (Lab)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Annie Gunner Logan (Coalition of Care and Support Providers in Scotland)

Andy Milne (SURF)

Francis Stuart (Oxfam Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 6 November 2013

[The Convener opened the meeting at 10:00]

Procurement Reform (Public Services and Community Regeneration)

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee's 28th meeting in 2013. I ask everyone to switch off mobile phones and other electronic devices, please.

Agenda item 1 is an oral evidence session on the implications of procurement reform for public services and community regeneration. Throughout our recent inquiries into public service reform and regeneration, a number of issues that relate to procurement have been raised. The committee has therefore agreed to take evidence on those issues as they relate to the Procurement Reform (Scotland) Bill. In due course, we will report our findings to the Infrastructure and Capital Investment Committee, which is the lead committee on the bill.

I welcome our panel: Andy Milne, the chief executive of SURF—Scotland's independent regeneration network; Francis Stuart, research and policy adviser at Oxfam Scotland; and Annie Gunner Logan, the director of the Coalition of Care and Support Providers in Scotland. Does anyone have an opening statement?

Annie Gunner Logan (Coalition of Care and Support Providers in Scotland): I will say one or two things quickly. As I have come to the session at fairly short notice, I have not made a written submission, so I should explain why I am here. I would be happy to make a written submission after the session, with the convener's permission.

I am sure that the committee is aware of the three biggest areas of public procurement spend in Scotland, which are construction, information technology and social care. Social care is my bit of that.

My organisation's membership comprises the most substantial social care providers in the third sector. We estimate that, between them, they account for about £750 million to £800 million of public money in delivering public services in social care. If we add to that third sector organisations that are not in our membership and the private

sector, two thirds of total social care spend in Scotland is outsourced and subject to various procurement exercises.

The key issue for us is that we are dealing with different and potentially conflicting policy imperatives. The policy imperative for social care concerns personalisation, self-directed support, empowerment, and choice and control for individuals, whereas the policy imperative for public procurement sees social care as contract opportunities that are to be competed for and advertised, in which delivery vehicles are determined not by individuals' choice but by the outcome of public procurement exercises.

The committee's predecessor was the first committee to look in depth at the subject, in 2009. It looked at electronic auctions for social care, whereby providers were asked to bid down online—it was like a reverse eBay auction—for home care for older people. The recommendations of the committee's predecessor led to the production of clear guidance on the procurement of social care. Our concern is about the extent to which that guidance is being adhered to and observed and about what the bill can do to raise the profile of the guidance and ensure that it is implemented more successfully.

Francis Stuart (Oxfam Scotland): Thank you for the opportunity to come along. Oxfam Scotland is one of a range of civil society organisations that have come together to produce a document that sets out our 10 priorities for the bill. Those organisations include the Scottish Council for Voluntary Organisations, the Scottish Trades Union Congress and the Scottish living wage campaign. I do not know whether members have seen that document; if they have not, I am sure that they will see it in the near future.

Perhaps of more relevance to the committee is our work in Scotland. Oxfam Scotland has had a domestic poverty programme since 1996. We work with a range of community groups in Scotland to support them to tackle poverty in their areas.

Our interest in the Procurement Reform (Scotland) Bill is two-fold: first, ensuring that public services and their procurement processes work better and for the benefit of the poorest in our communities; and, secondly, ensuring that the economy works better for those people and using public procurement leverage to stimulate that kind of change.

Andy Milne (SURF): I do not want to be left out, so I will make some brief remarks.

As members might know, SURF brings together the different sectors involved in regeneration. I am really pleased that the committee is looking at procurement; indeed, I was grateful for the

opportunity to contribute to a previous discussion with the committee about community empowerment and a review of regeneration. Much of that discussion focused on what in all honesty are quite small resources that are devoted to community empowerment through the people and communities fund and even the £50 million joint European support for sustainable investment in city areas—or JESSICA—fund. SURF has fairly consistently made it clear that the £9,000 million procurement budget is where the real business lies with regard to regeneration, and I commend the committee for making the link between regeneration and procurement.

I hope that I get the opportunity later to discuss the links between the Procurement Reform (Scotland) Bill and the community empowerment and renewal bill, which I think is being launched today, the aspirations of the Christie commission and the important work on developing an action plan on the back of the town centre review. Those things are fundamentally connected and if we can make those connections meaningful and substantial we will have a real opportunity to make progress on regeneration in Scotland.

The Convener: With regard to Ms Gunner Logan's comments about the conflicts that sometimes arise between the person-centred approach in social work and the requirement for best value in procurement, do some local authorities handle those procurements better than others? Has any best practice been exported or is the same old same old simply continuing?

Annie Gunner Logan: No. We have been on this journey for some time now. After all, the pressure that local authorities feel themselves to be under stems from the Public Contracts (Scotland) Regulations 2006. I do not want to get too anoraky about this—

The Convener: Please be as anoraky as you like. I like anoraky.

Annie Gunner Logan: The legal advice that is given to many local authorities is that, in order to comply with those regulations and the European Union directives that drove them in the first place, they have to put social care contracts out to tender. That is almost regardless of any performance issues that might have arisen; once the contract expires, it needs to be put out to tender.

Local authorities have handled that situation in different ways. Some of them have carried out very basic tender exercises in which individuals have not been informed that their care is about to be put back on the market. In such cases, there is a straight restricted tender process in which people make bids. Our fundamental issue with that approach is that a paper-based exercise is

structurally incapable of determining or assessing service quality or a provider's capacity to deliver. As a result, in 2008 and 2009 there was mayhem in the social care market as large-value contracts and large numbers of staff and service users were transferred between providers, with all the accompanying managerial difficulties that arose with regard to Transfer of Undertakings (Protection of Employment) Regulations and so on.

When we highlighted what was going on, a number of local authorities took a different approach and started to introduce framework agreements, which is also allowed under the public contracts regulations. The advantage of such agreements is that they do not destabilise the market in quite the same way, and can be seen as a positive change on the part of many local authorities. However, we are now seeing some of the framework agreement's unintended consequences. For a start, it is, in effect, a very large zero-hours contract, and that has driven some of the behaviours in provider organisations that I think have justifiably drawn criticism as they have sought to transfer that model to their own ways of working and their own staff.

We have also discovered that framework agreements have led to prices being driven down without any negotiation, for example through capping. People are told, "You can bid for a place on this framework agreement but we won't accept any bids that are above an £X hourly rate" and there is simply no negotiation about that.

Other authorities have taken advantage of some of the scope that is provided in the 2010 guidance not to tender at all. The guidance says that if after applying best value tests, confirming that the service users are happy with the service and ensuring that the price and quality are reasonable, you can make a strong business case for a provider retaining the business, you can extend the contract and roll it forward instead of putting it back on the market.

We have seen all those practices in different parts of Scotland and, in the bill, we have an opportunity to tighten up on some of that. We have two asks of this bill. The first is that social care contracts are taken out of the scope of section 8 of the Procurement Reform (Scotland) Bill, which is the requirement to advertise a contract and put it out to competition when it has expired. Social care contracts should by all means be put back out to tender if there are performance issues or if service users want their provider to be changed, but that must be driven by performance and choice rather than routine expiry.

Our second ask of the bill is that it make it clear that, where a local authority decides to advertise a contract and put it out to competition of its own

volition—not because someone else is telling it to—it should follow the guidance.

The Convener: What are your experiences, Mr Milne? Is there good practice out there already?

Andy Milne: Yes—and there is also not-so-good practice. A lot of this comes back to the Government's continuation of the community planning framework and the current review of community planning. Although there are opportunities in the bill to change how procurement is carried out, there are, as Annie Gunner Logan has made clear, considerable economic and other short-term pressures on local authorities that tend to drive decision-making processes into the hands of the authorities' finance and legal departments while other departments are concerned with creating conditions for greater sustainability in disadvantaged communities and more innovation and enterprise in particular areas of concern.

At present, the debate is greatly constrained. One of my concerns about how the bill has been framed is the continuing focus on economic growth and a business-friendly approach. Economic growth is a good thing, but it is not an end in itself. It is a route to achieving sustainable communities, a state of wellbeing and increasing health equality but those things have not been experienced in the unilateral drive for economic growth that we have seen in recent decades. If the bill's ultimate concern is to deliver sustainability across the whole of society by rebalancing some of the current imbalances, economic growth is not the main driver that we should be looking at. It is a tool for achieving an end, but it should not be the top headline of the bill's purpose.

The Convener: I will play devil's advocate a bit. We have heard quite a lot about local authority finance and legal departments taking on certain areas of responsibility but I know from my experience that legal departments, in particular, get blamed for procurement issues when all they have done is give advice and it has been up to the council department in question to decide what to do. In short, it seems quite easy to blame finance and legal departments for these things. Have you come across that?

Andy Milne: Not specifically, but I accept your general point that authorities arrive at their conclusions as a result of a range of influences and factors. Of course, political factors inevitably come into play.

To be honest, I think that this goes wider than the present bill. In 2007, the incoming Scottish Government set out a purpose for Government, which it reiterated in 2011. That purpose was about achieving a flourishing Scotland that provided opportunities for all, but it identified

economic growth as the driving force that would achieve that end. From the experience that we have had over the past 20 years, I am just not convinced that we will get to a position in which Scotland is flourishing and there are greater opportunities for all through the single driver of economic growth.

10:15

The Convener: Anne McTaggart has a supplementary.

Anne McTaggart (Glasgow) (Lab): It is about community planning partnerships, which Mr Milne mentioned. Where do you see community planning partnerships fitting into the new duties that the bill establishes?

Andy Milne: Yesterday, I was involved in a discussion about the relationship between the third sector and community planning, which is the subject of a review. There is a legacy of difficulty with community planning, which was originally described as a process for putting the community at the heart of decision making. That mantra was repeated by many ministers for communities, and the repeated message that communities would be at the heart of decision-making processes was heard and understood by communities.

In reality, we have been dealing with a high-level, managerial, strategic view of public service delivery. That is an important function. If we could get that important function right, that would be great, but if we drive that at a high strategic level while saying that we will engage with communities at the grass-roots level, we set up a dual purpose. It seems to me that the main resource and the main driver are at the high strategic level. That is important.

I have talked to the committee previously about methods by which communities might be more engaged, might be consulted, might be empowered or might achieve ownership. My present view is that the community planning process is not the way to do that, but I accept that it provides opportunities to engage the third sector generally—voluntary organisations—more effectively in the procurement process. The bill makes some moves to that end, which is to be welcomed. However, what gets lost in the argument is that the third sector often presents itself as a co-ordinated, homogenous group when, in fact, the same contradictions apply as far as its representative functions and its service delivery functions are concerned. It is often the case that very big players—I am talking about international players with huge budgets and huge infrastructure—are playing to secure contracts for themselves that may or may not provide the best value or the most sustainable outcome for

communities. There is a level of complexity in that regard.

As Annie Gunner Logan said, we need to sort out those services that we think are suitable for a business model and to which a business approach should be taken from those that perform much wider social purposes, which need to be delivered in a way that is better connected with communities and voluntary organisations. Such services need to be more in touch with local circumstances and players, and need to be able to build a genuine framework of capability and capacity at the community level. I do not think that we have sorted out those two groups of services yet.

I am sorry that my answer is so long but, in summary, my answer to the question would be that I think that, if we can redefine community planning as the high-level strategic management of mainstream public services and then devote specific related resources to the building of community empowerment, community connections and community ownership, we might get a bit further forward on the sustainable chain of procurement and delivery.

Annie Gunner Logan: I would like to add to that. It seems to me that the bill has the potential to bring together those two things. The ambitions of a community planning partnership as expressed through a single outcome agreement include things such as, “We want to increase levels of wellbeing in the area,” and “We want to increase economic growth in the area.” Issues such as the living wage are not unrelated to such ambitions. Other examples of the ambitions of CPPs are a desire to increase the quality of public services locally or to reduce the crime rate. Up to this point, the ambitions associated with procurement reform have been to do with the level of savings that can be made, the amount of spend that can be got on contract formally and how much e-procurement can be driven.

Those indicators for success in procurement do not marry up very well with the measures of success for a community planning partnership. Section 9 of the bill introduces the sustainable procurement duty. If we could get that duty right, it could bring together those two things so that the procurement activity was seen to be supporting our ambitions for public services, economic growth and everything else rather than being seen as just a mechanistic way of tidying up various aspects of spend.

Section 9 is the key to some of this—what is currently missing from it is a duty to assess the impact of the services that are the subject of the procurement exercises on the individual people who receive those services. It includes something about how procurement can serve the interests of the wellbeing of the community and the local area,

but there is a need to drill right down to the impact on individuals—certainly in relation to social care. Section 9 would be the key part of the bill to address that question.

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

Francis Stuart: Yes. I agree with a lot of what has been said. On Andy Milne’s point about economic growth, I think that Oxfam would agree with much of that analysis. Even before the financial crisis, although we saw growth rates of about 2 per cent per year for 30 years, within that, about a quarter of the Scottish population were still living in poverty—the economy was not working for people at the bottom even then.

We are seeing increasing recognition of in-work poverty as an issue, but we still seem to be continuing to prioritise the same model of economic development that has been followed for the past 30 years. I read a statistic the other day that 80 per cent of the jobs that have been created since 2009 pay less than £7.95 an hour. If that is the model of economic development that the Government and the private sector are prioritising, we will not address poverty.

The Procurement Reform (Scotland) Bill could help in that regard, but serious movement is needed on a host of issues. The living wage, for example, is not mentioned at all in the bill—we would like to see much more focus on that.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Some of what has been said has been a useful introduction to a couple of points that I would like to pursue in relation to local procurement in particular. Against the background of what Ms Gunner Logan referred to—the 2006 regulations and EU rules—how difficult or easy is it in practice for small providers to get into the system? Also—perhaps related to that—is there evidence that local government is overapplying rules, to the detriment of allowing small providers to enter the system in a way that is proportionate to their ability to bid?

Annie Gunner Logan: There is certainly something in that point about procurement. We have found that whether a provider is large or small, their capacity to enter a market or to win a contract is essentially determined by how well they can write a tender submission. Contracts tend to be awarded to the people who write the best tender rather than to the organisations that are best at delivering. That is not just an issue with regard to local authorities; it is because of the set-up that we have.

By implication, the larger organisations may be better placed to have tender teams and so on. We hear that some of the larger private contractors—not just in social care but outside it—outsource the

writing of their tenders to specialists, which leads us through the looking-glass in a sense as regards where we can end up with this kind of thing. So, your point was a fair one to make.

To get round that issue with procurement, social care contracts should be taken out of scope for advertising and competing and we should look at some alternative models. Andy Milne's submission mentions public social partnerships—that is one interesting model to follow. However, the way in which the system is set up can definitely exclude smaller providers from the market—there is no question about that.

Stuart McMillan (West Scotland) (SNP): Are you aware of anything that would prevent smaller companies and organisations from coming together to contract out the writing of their tenders? You mentioned only larger organisations contracting out.

Annie Gunner Logan: I am not sure that the contracting out of writing tender submissions is something that we should encourage, although it may well be possible. It depends on the extent to which the procurement exercise encourages collaboration. Some procurement exercises in social care have specifically encouraged organisations to form consortia in order to bid, but not many of them have won any business. I do not know what the blockage is but, in theory, there is nothing to prevent it. The question is whether it is a good thing to do.

Stewart Stevenson: I have a lot of sympathy with many of the things that have been said. I used to be a buyer and spent about £200 million a year. Occasionally, I got bids that were more than 3,000 pages, so I can relate to what has been said.

Does the bill enable priority to be given to the examination of the quality of delivery by a particular organisation over the assessment of the paper document? It would be all too easy to exclude a bid early in the process because the first thing that the procurer—the procuring organisation—examines is the paper that they have received.

To go back to the context of the smaller bidders, I am not convinced by consortia, by the way, because it is in the nature of things that there are bound to be imperfections in a consortium of small bidders who are working together for the first time.

Does the bill adequately create the window of opportunity to get the bids to the point at which the quality of service might be considered and for procurers to decide that that is the approach that they will take, or is there anything in it that would inhibit that?

The Convener: Mr Stuart, do you want to go first on that?

Francis Stuart: I was hoping to come in on Mr Stevenson's previous point, if that is possible.

The Convener: Please do.

Francis Stuart: I preface my remarks by saying that Oxfam is not an expert in procurement processes.

I can give an example of the imperfections in the system. A couple of the committee members visited some of our partners in Govan earlier this year. One of those partners was approached before the tendering process about a £120,000 contract for community health and capacity building in communities that was coming up in the national health service. The group was encouraged to take an interest, which it did. It was then told that it would have to register on the public contracts Scotland website. It looked at that and had some difficulties with how to do that—it did not have the skills or expertise.

The next stage was that it was told that, out of the £120,000 contract, £100,000 would have to be a TUPE transfer—four staff with pension liabilities and so on would come across and the group would have to manage them. We are talking about a community group that probably has a few thousand pounds of income to its name, so it was never a goer. The statutory body was probably trying to do good by encouraging interest, but it was never a theoretical possibility for the group.

We need to consider not only alternative mechanisms and grants for organisations that are more suitable and are used to the process but other alternatives. An example in which Oxfam was involved was a participatory budgeting exercise in Govanhill, in which £200,000 was gifted to community groups to disperse, which they did. By all means and evaluations, that was a good process. A wide range of community groups had access to the funding and benefited from it.

10:30

Stewart Stevenson: I have a wee question on the back of that. Would it be legal and possible for the organisation that is procuring a service or whatever to fund bidders? Would that help small organisations?

The Convener: Does anyone want to have a go at that one?

Andy Milne: Do you mean fund bidders in order to bid more successfully?

Stewart Stevenson: Yes. I should say that that is not a novel experience—I have done it in the past.

Annie Gunner Logan: Some of it happens already. Local authorities will have programmes of supplier engagement, which may include some element of training and development in how to write bids and submit tenders. Whether an organisation can point to one supplier in particular and give them money to the exclusion of others, I do not know. We might get into state aid difficulties at that point.

Stewart Stevenson: Is the panel's reaction such that my suggestion is frighteningly novel? *[Laughter.]*

Andy Milne: I am often frightened by novelty.

It is an interesting concept, which makes my mind drift towards asking what it is we are trying to do here. What is the point? Is the point that small voluntary organisations can become small businesses and compete in a competitive market more successfully? There might be some advantages in that, but there might also be some perversions with regard to what local community groups actually are, what their values are and what it is they are trying to achieve—particularly when those community organisations rely on, drive and use the voluntary efforts of people, who volunteer because they think that it is a good thing that adds to their community, makes them feel good and adds to their broader wellbeing. If we set that alongside a competitive model and business partners, there will clearly be difficulties.

I hope that I am not being too glib here. When SURF gave input to the consultation on the proposed community empowerment and renewal bill, we urged the Government to give some thought to what kind of services we need in order to set down a framework for a civilised society that has a reasonable chance of promoting wellbeing and enhancing equality. What kind of services are essential and what is the best way to provide them?

I would submit that, in the past quarter of a century, we have drifted into a conception that almost everything—probation services in England, for example—can be run by private companies somehow more successfully, and that the process of taking things into the arena of competitive tendering and short-term turnover with an eye to cost savings is the way to go. A Government that has a very broad understanding of the importance of the outcomes of wellbeing, sustainability and community empowerment should be capable of identifying some of the building blocks that deliver those things, alongside the enterprise and drive that we get from more private sector models.

The Convener: As we have gone around the country, visiting various places on inquiries into regeneration and public service reform, we have found a frustration among small organisations in

particular, who themselves are procuring from public money. They have to jump through a huge number of hoops with some local authorities, due to immensely risk-averse regulations.

I am talking about very small procurements. If I remember rightly, on a visit to South Ayrshire, the hassle of trying to get a wheelbarrow was talked about. It would have been quite easy to get a wheelbarrow from B&Q, which would probably have been the cheapest wheelbarrow that you could get.

Does that risk-averse scenario cause you a huge amount of grief?

Annie Gunner Logan: Yes.

The Convener: Is it a case of some organisations strengthening their own regulations to a huge and unnecessary degree?

Annie Gunner Logan: The principal risk that contracting authorities consider is the risk to themselves of litigation if they do not follow the procurement regulations and a disgruntled provider wants to challenge the contract award. That is the primary risk that is on the minds of a lot of contracting authorities. You might take the view that that is not the key risk that should be in their minds; it should be the risk to the ambitions that they have set out with partners in, for example, a single outcome agreement.

I want to come back briefly on Mr Stevenson's point about how to evaluate quality. The social care 2010 guidance is quite good on that. Our issue is that no one looks at it—or, at least, when they look at it, it becomes too daunting—which is why we want to give it a bit more welly in the context of the Procurement Reform (Scotland) Bill.

As an example of that, it has been the case once or twice that procurement officers have said in all seriousness that, if a bid contains independent evidence of the quality of the service—if the service has been independently evaluated by a third party and it can demonstrate its credentials—that cannot be taken into account during a tender exercise because not every bidder can produce something similar and that breaches the non-discrimination principle. That seems to be utterly bonkers, and it is the kind of thing that we need to get around in evaluating quality.

The fundamental question in social care is: whose quality is it anyway? As I said earlier, the imperative is user choice—which is about the servicer users' determination of what will meet their needs, who is to provide their support, and what that package of support will look like—but once an authority starts a procurement exercise, it is bound to award the contract to whoever comes out with the best score at the bottom; it cannot do it any other way. The really tricky bit is the degree

to which the people who are using the services and will benefit from them have an input into the process.

We worked with the Government to put an amendment into the Public Services Reform (Scotland) Act 2010, which was the one that tidied up the scrutiny landscape. By that point, we had become aware that many local authorities were not taking into account in any way the Scottish Commission for the Regulation of Care gradings for services in their contract award decisions. We had a national body that was set up specifically to assess the quality of social care service and its deliberations, judgments and quality assessments were not always being taken into account in contract awards. That seemed to us to be bizarre.

Those are the kinds of hurdle that we have had to overcome. Section 9 of the bill has the potential to resolve some of those difficulties, if we get it right.

John Wilson (Central Scotland) (SNP): The convener was right to open by saying that we are looking at the bill in the context of community empowerment and how we get community organisations engaged in a process of delivering services at a local level, not the community planning partnership level. This committee has had the debate about how community planning partnerships operate and how the size of some of them means that they ignore what is happening at the local level.

What can the Scottish Government do to ensure that we have communities that genuinely want to engage in the procurement process to deliver care services at a local level? That might be at a village or scheme level. How do we get to the stage at which communities can engage in that process and be successful in bidding?

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

Andy Milne: I would like to broaden out the question from the care issue, if that is okay. Annie Gunner Logan makes a great case for that in a non-anoraky way, so I will leave that to her.

At the moment, SURF—supported by the Scottish Government—is doing a piece of work on the broader issues of community empowerment, community capacity and the ability of communities to drive futures within their own areas. The project is called alliance for action, and we are doing the work on the back of the recent work that has been done towards the community empowerment and renewal bill, as well as work that we did for the Joseph Rowntree Foundation to analyse the impact of the recession on disadvantaged communities and how they are responding.

We are trying to find out what is possible when we connect national organisations that have resources and policies to support community empowerment with local organisations that have knowledge, experience and active initiatives. We want to make that resource connection and see what happens as a result. In particular, we want to look at what happens when we connect the different factors—physical and care factors, and enterprise at a local level—in terms of change in a community and in its ability to determine its own future.

We are nearly a year into that process, and some interesting connections are coming out of it. It is a developmental process of identifying where the resources and assets are. There has been substantial—and welcome—talk, which has emanated initially from the chief medical officer, Harry Burns, about asset approaches to regeneration and health.

That raises the question of whether we know what and where those assets and their capabilities are. We would argue that, in the review of community planning, it should be possible for local authorities, as the leads in that area, to undertake a process—either by themselves or through a third-sector interface or another suitable organisation—to map out which assets exist in certain areas. That should be done in a way that can inform and open up the possibilities for developing the type of connected routes for assets and sustainable procurement that elude us at present.

I am enthused by some of the innovations from the public service partnerships that are being developed on the back of some modest investment from the third sector division of the Scottish Government. They are being done in a way that reaches into communities, understands where the capacity and experience lie, and, through a consultative process, builds a model for delivering a particular service. Rather than standing back and trying to make legal objections in a risk-averse way, and simply putting out a contract for the delivery of a very discrete piece of work, the partnerships are looking beyond that at what we are trying to achieve in a community and what its potential is.

I am sorry if that is a little vague and unfocused, but we need to think about the direction of travel and what we are ultimately trying to achieve. If it is okay, I will bring in one other element—

The Convener: Very briefly.

Andy Milne: Okay—I will be brief.

With regard to physical regeneration, SURF is disappointed that the bill makes no reference to the hubco model of delivering regeneration at a national level. We have talked about that since

2006, when the model was first introduced under a previous regime. Many of our members indicate that the model of corralling procurement for physical regeneration into five 1-million population centres has sucked expertise and opportunities out of smaller population centres and delivered them to large—and often multinational—organisations.

The fact that the hubco model is not in the bill is a matter of concern. There is a separate paper on public sector procurement in construction, which has been developed in recent months and is—I understand—now with the Cabinet Secretary for Infrastructure, Investment and Cities, Nicola Sturgeon. I would welcome some consideration by the committee—if not in this meeting—on the connections between the bill and the “Review of Scottish Public Sector Procurement in Construction”. There is a lot in the review about local jobs, thriving town centres and local employment.

Annie Gunner Logan: I want to give an example of the difference between a procurement approach and a commissioning approach in this respect.

If you identify that there is an issue in an area with older people who are having difficulty in preparing meals, the stock response is meals on wheels: the preparation of meals for someone and delivery to them. The procurement discussion becomes a question of how you can procure frozen meals in bulk at best cost through a procurement exercise.

A community commissioning approach—a more Christie commission-type response—would be to ask whether the delivery of seven days’ worth of frozen meals to a lonely older person who is struggling at home is the best response anyway. You would then undertake a process with older people in the area and their carers to work out what might be the best response. It might not be the delivery of frozen meals at all—it could involve putting money into the third sector to stimulate some lunch-club activity, or any number of other responses. If elements that come out of that process are amenable to being pre-specified, you should by all means go out and procure them, but it should not necessarily be a procurement discussion from the outset.

10:45

We need to enable the designing of services to take place outwith the procurement process and bring in that process only when we have co-designed or co-produced—or whatever particular word people want to use. The difficulty that authorities have is how they select their partners and who they can draw in. That is where the legal

advice keeps coming in about, for example, ensuring that people are treated equally and that suppliers are not discriminated against.

I think that that is what is driving the idea that the authority should pre-specify everything before going out to the market. I would like to see a bit more latitude for authorities in picking who they work with and in consulting communities and service users to design whatever they are going to procure, if that is what they are going to do.

John Wilson: I want to expand on the issue of commissioning versus procurement. It is an interesting concept that, rather than say to local authorities that they must put out a tender for a procurement service, they should be told to commission. What is the difference? If the health board or local authority were to commission instead of procure services, would that provide an opportunity for local community organisations that run community cafes, for example, to deliver the type of services to which you referred without having to go through a tendering process?

Annie Gunner Logan: The definition of commissioning has now been set out by the national steering group on joint strategic commissioning. However, that is all in the context of health and social care integration, so it does not cross over into all the areas that colleagues are interested in.

The commissioning process starts with the analysis of needs in an area; it then considers what outcomes are to be achieved in the area and starts to design what needs to be put in place. Only after all that work is done is it decided what will be the subject of a procurement exercise.

I think that that is where some of the legal juries are still out on the difference between commissioning and procurement. It would seem to me perfectly legitimate in a commissioning strategy to decide that things would be done differently. An organisation could say, “Here’s what we will put out to tender in the market, but we will set up arrangements for other service responses in entirely different ways.” I would like the bill to nail once and for all what latitude there is for doing things differently instead of going out to the market.

John Wilson: I have a final question on the living wage and how we incorporate it into any procurement legislation going through the Parliament. We have received advice that applying the living wage to any commissioning contract might be contrary to EU guidance. Are there any ideas about how to get the living wage into commissioning contracts? Are there any ideas about how to build into the contracts terms and conditions that would allow, as Mr Stuart said, real economic development for individuals who are

given job opportunities through contracts that arise from the tendering process?

The Convener: Mr Stuart, how do we deal with the eternal question of Rüffert versus Land Niedersachsen?

Francis Stuart: My understanding is that there is other legal advice that suggests that it would be possible to include the living wage as an award criterion on the face of the bill or to include it in guidance or as a contract performance clause. The committee might hear from a range of organisations that are doing a lot of work on that. For example, the STUC, many trade unions, the Poverty Alliance and others have expertise on the issue that suggests to us that what I referred to is possible.

The point about how we might go beyond the living wage is a good one, and it perhaps takes us back to Ms Gunner Logan's points about the sustainable procurement duty and strategies. If we do that right and nail the issue, there is an opportunity to look at the local area—that is what that duty is about. To get that right, it would have to be a consultative and participative process and, for us, that is where the bill falls down.

In a previous evidence session, the head of Oxfam Scotland told the committee that the relationship between local government and communities, particularly the poorest communities, is often not a partnership but a war. I do not think that the bill will change that, but it falls down on community engagement. Too often, the relationship in the bill is between the contracting authority and an economic operator and there is no capacity or space within that for the community or for people and users to be part of the process.

Oxfam is concerned about the extent of socioeconomic poverty and inequality in Scotland. Too often, there is no recognition of the real barriers that people in poverty face in accessing public services. They are not on a level playing field with those in the rest of society, because they have additional constraints and difficulties in accessing public services. There is increasing academic literature on the issue of middle-class advantage in relation to public services, even with things as basic as street cleaning or street lighting.

Therefore, Oxfam would like a lot more focus on socioeconomic disadvantage. In the past, we have proposed placing a socioeconomic duty on all public bodies. It would be helpful if more of a focus on that could be incorporated into the sustainable procurement duty or if a separate duty could be introduced. Oxfam has also proposed a poverty commissioner to enforce that duty, and we have discussed that with the committee. Such a commissioner should have the ability and flexibility to consider the extent to which procurement

processes benefit the poorest people, and he or she could hear from those people about how it impacts on them.

John Wilson: Thank you.

The Convener: We are getting pushed for time, so I ask for briefer answers and briefer questions if possible, folks.

Richard Baker (North East Scotland) (Lab): I will try to oblige, convener.

Given that the committee has a focus on regeneration and sustainability, Mr Stuart's comments on the living wage are interesting and we should look into them. However, my question is for Mr Milne—at least in the first instance.

You said that regeneration is undermined by the hub contracts approach. I am sure that all members have heard from businesses that employ people that they are squeezed out by that process, which involves lumping contracts together. You say that the issue is not addressed by the bill, but how should it be addressed to ensure that smaller businesses get a better chance, which will provide jobs?

Andy Milne: There has to be a fundamental challenge of whether the hubco model works in the interests of regeneration at local level. A separate analysis is carried out of what the Scottish Futures Trust is doing and the outputs in terms of overall cost savings at national level, and there are questions about that. The bill could help us to consider some of the detrimental impacts of that model, which seems to go back to a short-term view about cash-only savings without consideration of the loss of jobs, infrastructure, confidence and connections. Increasing the length of supply lines also takes us into the territory of carbon use and climate and ecological challenges.

SURF has had a long-term debate on the issue with the Scottish Futures Trust, which is adept at making a good case for what it is trying to achieve. However, for a considerable period, there has been a bit of a blind spot on the impact at local level. We are hearing from our members at local level about two issues. One is the issue that Mr Baker raises about how the general scaling-up reduces opportunities at local level. The second issue, which is addressed in the consultation document "Review of Scottish Public Sector Procurement in Construction"—I understand that Nicola Sturgeon now has a copy—is the promptness of payment under the hub model. Big organisations can hang around and wait for their money for much longer than smaller organisations, which can easily go to the wall when payments are delayed, particularly in the current economic climate. That situation is particularly worrying when the payments are coming through a Government model of procurement.

Richard Baker: That is interesting. We should pursue that with ministers. Could that be addressed by reviewing the thresholds that are set for contracts? Under the bill, the proposed threshold for regulated contracts is £50,000 for supplies or services contracts and £2 million for work contracts. Are those thresholds correct?

Andy Milne: The early criticism of the hub model as it emerged around 2006-07, led to subsequent adjustment of the thresholds. That was helpful, but there is much further to go.

Richard Baker: It seems that there is quite a big push to promote the hub model, but the model does not encourage retendering of contracts in construction when it comes to social provision. As Annie Gunner Logan mentioned, there seems to be risk aversion to having such framework agreements when it comes to the social and third sectors.

The bill was originally going to be called the sustainable procurement bill, but it is now the Procurement Reform (Scotland) Bill. Are you confident that sustainability remains at the heart of the bill and will be improved if the bill is passed in its current form?

Annie Gunner Logan: What the bill is called is less important than what is in it. At the risk of repeating myself, I say that section 9 is the key to that.

I want to return to John Wilson's question, because the matter links up with the living wage issue. If the purpose is sustainable economic growth through procurement, that will not be achieved if the contracted workforce is impoverished. The legal advice may well be that that cannot be addressed in the award criteria for contracts. If that is the case, why not address that in the selection criteria for contracts? Section 24 has enormous potential in that regard. I have drawn stars and squiggles all over that section in my copy of the bill because that is where that matter can be addressed.

The biggest challenge is not in getting the legal issues right, but in finding the money. In home care, for example, a substantial proportion of the workforce is paid below the living wage. The challenge for authority will not be about whether the legal niceties can be tied up, but about finding the extra £0.5 million, or whatever is needed, to pay their contractors so that they pay the living wage.

Richard Baker: Thank you. That is very helpful.

The Convener: Before we move off community benefit and the size of contracts, section 20 talks about community benefit and the

"procurement in relation to which the estimated value of the contract is equal to or greater than £4,000,000."

What is the panel's view on that?

Francis Stuart: That is an option for economic operators; we want it to become a requirement.

It is right that training, skills and opportunities are included as part of a community benefit requirement, but more is needed. The community needs to be asked what benefit it wants.

Oxfam carried out a large participative process two years ago, through which we developed the humankind index. We went out and spoke to about 3,000 people across Scotland and asked them what they need to live well in their communities. Although that was a large process, it was not a particularly difficult one to manage. We went out to where people were and we had street stalls and focus groups. All that is needed is that we go where people are and resource that process. That means that it might be necessary to pay people to come, or to provide childcare. There are a range of factors around how to involve people in the process.

There is a bit of a gap in section 20—as is the case in other parts of the bill—in respect of how community engagement is to be resourced, particularly for the poorest communities.

11:00

Stuart McMillan: Going back to hubcos, when I asked Ms Gunner Logan earlier whether there are impediments to smaller organisations getting together, she said that she is not aware of any. The focus then was on community healthcare, but the same question can be applied to a range of operations, including construction. Local authorities across Scotland are building new schools, some of the agreements for which cross local authority boundaries in an attempt to make savings. If the hubco model was not available, how many smaller organisations would have to be involved in building new schools and what difficulties or issues would local authorities face in bringing those smaller companies together and getting them to make proposals and then carry out the work?

The Convener: Who wants to take a crack at that?

Andy Milne: That is clearly a challenge. The hubco model comes out of a much broader direction of travel towards larger multinational organisations delivering not just services on a very large scale but services right down to local level through homogenised models. As far as community empowerment is concerned, I suggest that such models are likely to miss the opportunity to connect with local resources, talents, skills and trades that have been built up.

However, Stuart McMillan is absolutely right; if local authorities and others are to deliver large projects, they will need to rely on supply chains that deliver at the right cost, in the right timeframe and to the required specification. My concern about the hubco model is that it seems to be driven solely on the basis of achieving economies of scale and evening out supply lines with a view to saving money in the shorter term. There has been a lack of consideration in and around hubco of the impact of that short-term saving on the longer-term sustainability of local companies, local jobs, short supply lines, vibrant high streets and successful town centres.

It is for the Scottish Government to take a broad view of its balance of priorities, and to weigh the achievement of shorter-term savings through economies of scale against its statement in the purpose of Government and this draft of the bill that consideration of wellbeing and addressing inequalities are in the mix. It is all about degrees—in this case, the degree to which our focus is on economic growth as a singular model or on balancing our investments towards supporting broader wellbeing outcomes.

The hubco model has been very powerful and has successfully been driven through to achieve the aims that it has set for itself—at least in its structure, if not in its outcomes. The result has been a change in the local environment with regard to where capacities and companies are; the bill provides an opportunity to pause and reflect on that direction of travel, and to consider whether there are alternative methods of procurement in physical construction that might sustain local suppliers.

However, all our efforts are contextualised within much wider and larger forces of which we have to take account. We are looking for opportunities to do things better and more imaginatively.

Stuart McMillan: I have a tremendous amount of sympathy with many of your comments, but as far as my example about schools is concerned, I have to wonder how many of the smaller companies in the areas that we represent could go ahead and build them. I have spoken to many small to medium-sized companies about this and they have raised that point with me. However, we can continue that discussion some other time.

In a paragraph headed

“The Tactical Approach is Ineffective”

in your submission, you say:

“Current Scottish Government led experiments in fostering Public Social Partnerships are beginning to show how more cooperative processes can meet preventative Christie Commission strategies”.

Can you provide examples?

Andy Milne: Discussions are going on with Turning Point Scotland and other organisations about providing services for people who are coming out of prison and who may have, for example, severe drugs and alcohol misuse issues. The process that is in train looks not just at housing and whether a person who comes out of prison has a house, but at whether they have opportunities to connect with other services in a way that enables them to sustain that house and a lifestyle that will bring them closer to employment and other such opportunities, and which connects them with local voluntary organisations that provide support services, skills development and so on. That more consultative and collaborative approach is more likely to meet the varied needs of such individuals as they emerge than is an approach that is focused solely on housing, employment or skills.

It all comes back to my earlier point about knowing where the local assets and support mechanisms are and how they might be connected to meet the needs of individuals in a more flexible way, instead of having a single packaged contract that covers only one aspect of service delivery, which is largely the model that we have at the moment.

Annie Gunner Logan: The crucial point about the public social partnership model is that its primary expectation is that the organisations that are involved will collaborate rather than compete with each other. As a result, they bring to bear all their different skills to meet particular needs, which in our case relate to social care.

The current really big PSP activity has been focused on the reducing reoffending change fund. We are now in phase 2 of the fund, and all the money was accessible to the third sector on condition that organisations collaborated in public social partnerships. There was no pre-specified contract that was put out to competition on the market. Some of the models that have been designed might well be the subject of procurement exercises further down the road, but the point is that everyone has had their chance to co-design a model. In that way, the approach differs very significantly from the kind of bog-standard competitive tendering that we have seen up to now.

Andy Milne: Yes. This method has allowed us to understand better where other opportunities lie. In the conventional procurement method, everyone shuts down and hides their books and workings in a way that precludes the possibility of understanding the alternatives that might exist.

Annie Gunner Logan: We also get very large and very small organisations collaborating in

partnerships to meet individuals' needs. The model is not perfect—the rules change from one PSP to the next, and we are still working our way towards understanding its potential—but there is certainly more enthusiasm for it than for simply bunging stuff on the market.

Cameron Buchanan (Lothian) (Con): I have one question about the difference between commissioning and procurement. Do you give feedback to the companies that have not been successful so that they can try again the next time? I presume that they have been unsuccessful not just on the basis of price but because of how they presented their bids and so on.

Annie Gunner Logan: We are the contracted, rather than the contractors.

Cameron Buchanan: What I mean is, do you get any feedback from local authorities?

Annie Gunner Logan: Yes and no. Another really good aspect of the bill is that it will tighten that up and specify what, and under what circumstances, feedback should be given. The current system is not that open. Indeed, in our submission to the consultation on the bill, we highlight the fact that some disgruntled contractors are starting to make freedom of information requests to authorities to find out what was so great about the bid that won the contract in question.

Cameron Buchanan: That is what I was getting at.

Annie Gunner Logan: That leads to all kinds of complications with regard to commercial sensitivity, redaction and all the rest of it, and I think that the bill's provisions in that respect are really positive.

Stewart Stevenson: Would it be proper to have a requirement to tell bidders whether any omissions or issues of presentation in their bid excluded them from the process, without having to refer to what might have been contained in other bids? In other words, the issue is not that they were beaten by another bid but that their bid omitted or included certain things that prevented its being successful. Given that such an approach does not relate to competition, should the bill take the opportunity to embed that point about feedback?

The Convener: I think that a lot of those matters are usually picked up at the pre-qualification stage, but do witnesses have any comments on that question?

Annie Gunner Logan: I think that the suggestion sounds entirely reasonable.

Andy Milne: It is clearly desirable to have that better understanding. It also provides an

opportunity to send messages and encourage things in particular areas. This is beyond my specific area of knowledge, but I guess that there might be some concern about comebacks or challenges with regard to the fairness of the process.

Annie Gunner Logan: Some of the feedback that social care providers have received has highlighted some of the absurdities of the process. For example, providers might be told, "If this or that information had been contained in your answer to question 2 rather than question 5, we would have been able to score it." Such an approach might help to expose some of that.

The Convener: I thank the witnesses for their evidence and suspend the meeting for a few minutes to allow them to vacate their seats.

11:12

Meeting suspended.

11:14

On resuming—

Petition

Public Sector Staff (Talents) (PE1423)

The Convener: Item 2 is consideration of petition PE1423, in the name of Gordon Hall, on harnessing the undoubted talent of public sector staff. I think that the issues that are raised in the petition have been gone over in some depth in our public service reform inquiry—in particular, our work on strand 3. We are obviously keen to continue to harness that talent and, indeed, it will be a focus in everything that we do.

I propose, therefore, that we close the petition. Are we agreed?

Members *indicated agreement.*

The Convener: Thank you very much. We now move into private session.

11:15

Meeting continued in private until 11:36.

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e-format first available
ISBN 978-1-78392-040-2

Revised e-format available
ISBN 978-1-78392-054-9

Printed in Scotland by APS Group Scotland
