

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

PROCUREMENT REFORM

SUBMISSION FROM Scottish Council for Voluntary Organisations (SCVO)

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[Procurement Reform \(Scotland\) Act \(2014\)](#)

Post-legislative scrutiny

Sustainable procurement duty

Questions

1. **Has the sustainable procurement duty helped to improve social, environmental and economic wellbeing and to reduce inequality?**

The vital role of the voluntary sector in relation to sustainable procurement was specifically recognised in the Procurement Reform (Scotland) Act 2014. Since then the sector has continued to be a significant partner in the delivery of critical public services across the country, striving towards increasing wellbeing and tackling inequality.

Involving the sector ensures a much wider range of skills, expertise, local knowledge and experience are brought into the process. A key strength of the voluntary sector comes from its diversity, driving forward innovation and bringing fresh thinking to key challenges. In addition, it has long championed improving social, environmental and economic wellbeing and tackling inequality as key outcomes of public services. Alongside this, the sector also provides key capacity support including, for example, employing 28% of Scotland's social care workforce.

SCVO carried out two surveys, in 2013 and then 2019 respectively, of members to capture experiences of procurement processes. The latter results showed a small improvement in members experiencing good practice, and a likewise drop in encountering bad practice. By good practice we are referring to favourable contract arrangements, such as inclusion of minimum wage or inflationary uplift, multi-year funding and full cost recovery. The agreement between Scottish Government and COSLA to award a 3.3% increase to cover living wage increases in all social care contracts from April 2020 was very much welcomed by many in the sector.

Members have also highlighted to us numerous and varied examples of successful cross-sector partnership working, aimed at enhancing outcomes from commissioning and procurement and the Partnership for Procurement (p4p) programme has enabled some smaller voluntary sector organisations to form joint bids for contracts. In addition, the voluntary sector has warmly welcomed the instances where competitive tendering has been suspended in response to the Covid-19 pandemic, not least due to the reduction in costs helping to make finances more sustainable. This should be part of a wider process of procurement reform, detailed in later answers, which we believe is vital for enhancing the conditions for improving wellbeing and reducing inequalities.

This reform is badly needed as SCVO believes there are significant factors in current procurement processes which not only negatively impact the voluntary sector, but in turn continue to frustrate the achievement of the sustainable procurement duty. These include the perpetuation of poor terms and conditions, such as lack of full cost recovery and support to cover uplifts, single year funding, and the continuance of non-committal frameworks. Research commissioned by the Coalition of Care and Support Providers (CCPS) in 2019 identified how unsustainable funding is resulting in many voluntary sector organisations handing back contracts¹ and others are running at a deficit, reliant on reserves. In addition, despite some members seeing a halt to competitive tendering during the pandemic, others have reported being pushed even further for savings by the NHS and local authorities, concomitant with even more rigid compliance on adherence to the contractual agreements.

More fundamentally, the current process of competitive tendering encourages competition at the expense of collaboration. Not only is this practice placing undue strain and uncertainty on the voluntary sector and its workforce, but it has also resulted in a fixation on inputs and outputs at the expense of outcomes. Current procurement practices have therefore created a service led approach, instead of the rights-based, person centred model which we believe to be essential to tackling inequality and improving wellbeing. Self-directed support is a prime example of this where the intentions of increased choice and freedom are not being realised due to the procurement process already precluding these and undermining relationship building through provider changeover.

2. What are the barriers to the successful application of the sustainable procurement duty, and what changes could be made to improve its impact?

Voluntary sector organisations across Scotland continue to feel constrained, pressured and undervalued by current procurement processes. This has resulted in, amongst other consequences, severe financial pressure on organisations, negative outcomes for staff, and contracts being handed back.

¹ http://www.ccpscotland.org/wp-content/uploads/2019/05/Handing_Back_report_CCPS.pdf

Central to this has been the continuance of poor contracting. Our 2019 survey revealed members not only find the process needlessly difficult to navigate but are on the receiving end of some terms and conditions which we believe to be unacceptable and which hinder the duty's successful application. The persistence of one year contracts makes it extremely difficult for organisations to forward plan and often results in the need to initiate redundancy processes on a not infrequent basis, which are costly in terms of finance, staff recruitment and morale. Other expensive contract issues are around a lack of full cost recovery, insufficient support to cover increases to the living wage and a trend of the voluntary sector being asked to take on more work with reduced financial support. As mentioned previously the 2019 report published by the University of Strathclyde and commissioned by CCPS, for example, provides in-depth analysis of the reasons behind 47 organisations handing back public sector contracts.²

There is now the factor of additional pandemic-related costs that will continue to fall on voluntary sector services needing to deliver services in new ways. We believe these should be covered through procurement arrangements, especially given the financial strain on voluntary sector providers. Traditional procurement models also do not take account of the capacity issues felt by many specialist organisations who are otherwise well placed to deliver these services due to the grouping of people into 'lots', against the backdrop of a process which tends to favour larger providers. Local Equality Impact Assessments on procurement must take this into serious consideration.

SCVO agrees with the recommendation of the Fair Work Convention that non-committal frameworks should no longer be included in procurement contracts. This arrangement creates significant uncertainty for voluntary sector organisations, resulting in a precarious and disempowering situation for staff. Many workers are recruited on contracts with only a handful of hours per week guaranteed, but can often be asked to work 40 hours plus a week, sometimes at short notice, to ensure contracts are fulfilled. Given the few hours guaranteed for staff, the vast majority of whom are female and on a low wage, many often sign up for more than one provider to ensure they have enough hours to earn a regular living. This, combined with a general staffing shortage in the care sector, creates serious challenges for the delivery of procured services due to a lack of available workers, and can put unfair pressure on the existing workforce to plug gaps.

One clear disparity between health and social care in Scotland is in the job security and employment conditions enjoyed by both workforces. The in-house provision of health services has ensured, by and large, better wages, terms and conditions for staff compared with those working in the commissioned care sector. If social care is to be regarded as of equal value to health care, then organisations need to be given the funding and support to enable enhanced job security, pay and conditions for all social care staff.

² http://www.ccpsscotland.org/wp-content/uploads/2019/05/Handing_Back_report_CCPS.pdf

SCVO agrees with the call from the Fair Work Convention's 2019 review of Social Care that key stakeholders should develop and agree appropriate minimum contract standards for the provision of publicly funded social care services, consistent with the Fair Work Framework and the Scottish Government's Fair Work First initiative. This should not only cover pay and income stability, but also include measures for appropriate supervision, training and development. For the voluntary sector in particular this should mean staff are given the same training opportunities as colleagues in the public sector, as well as similar job security and conditions.

SCVO believes the successful application of the duty requires a fundamental reform of procurement. Existing models encourage competition and discourage collaboration, by pitching organisations against each other. Instead, SCVO advocates for a shift to person-centred procurement models that put the needs of beneficiaries of services ahead of driving down costs through competition. A relationship-based approach is vital in service delivery, and the contracting body and the service provider must be able to work with an individual to establish what is needed to achieve the best outcomes.

The current client/contractor model reduces services to a transactional contract that values numbers more than people. Payment by results processes in relation to employability services, for example, measure success by the number of people getting jobs, regardless of the quality or sustainability of that employment with little to no regard for the person's journey in terms of self-esteem or mental health. This type of approach is in direct opposition to the 'wellbeing economy' future proposed by the recent Advisory Group on Economic Recovery's (AGER) report. Longer term models of funding and reformed procurement models are required should Scotland wish to build the wellbeing economy cited in AGER's report and truly implement a phase of recovery and renewal. This means greater cross-sector partnership working, centred on joint goals and the sharing of risks.

SCVO has long advocated that organisations who want government support must offer proper contracts, end the inappropriate use of minimal hours contracts, pay the living wage and tackle gender-based inequality to help Scotland create a more inclusive society in which everyone can share the benefits of an inclusive and sustainable economy. We also believe that procurement processes should only be open to those who want to make a meaningful contribution to the fair work agenda and create a more equal society. However, to make this a reality across the board, the contracting authority must ensure that the right financial support and training opportunities are in place for organisations to realise these goals.

3. How can the impact of the sustainable procurement duty be measured?

The ultimate success or failure of the duty will be in the outcomes delivered for individuals and communities. As noted above, current procurement practices such as payment by

results can skew the focus away from what should be the overall aim of commissioning, in terms of improving wellbeing and reducing inequality, to component parts which might appear easier to quantify but which are not in themselves an overall measure of impact. Current models also focus success on the lowest cost of service delivery, even though this can run counter to the achievement of the outcomes of the National Performance Framework, as well as the Fair Work principles.

A useful marker within the system would be how the organisations involved in procurement, and their respective workforces, experience the delivery of the duty. As noted above, there are fundamental flaws within current procurement practices, causing serious challenges for the voluntary sector, and leaving staff feeling disempowered and in an insecure position.

Fair work –

Questions

1. What impact has the 2014 Act had on promoting fair work as part of public procurement contracts?

SCVO is very committed to supporting the Fair Work agenda but believes that though the 2014 Act has the potential to drive this forward, this is not being realised in practice. Our 2019 survey of members reveals a small increase in good practice experienced during procurement compared with our 2013 results. By good practice we are referring to favourable contract arrangements, such as inclusion of minimum wage or inflationary uplift, multi-year funding and full cost recovery. However, as outlined above, SCVO believes current procurement practices continue to seriously challenge the ability of the voluntary sector to promote the principals of fair work and that a fundamental reform is needed.

Workforce costs are a substantial amount of procured services, in some cases this can be as much as 80% of a non-residential service in social care, and therefore the process clearly sets competitive tendering at odds with delivering the fair work principles. As Annie Gunnar Logan from the Coalition of Care and Support Providers Scotland (CCPS) identified at a recent meeting of the Scottish Parliament's Health and Sport Committee, the procurement system is a monopsony where the public authority is the only buyer in town.³ As such, competition drives down costs which in turn leads to some providers pulling out, and in some cases handing back contracts which are undeliverable.

Voluntary sector organisations are often forced to issue redundancy notices on a frequent basis, and at times feel forced to accept poor terms and conditions for contracts. This includes non-committal frameworks which can create a disempowering and precarious situation for a low-paid and predominantly female workforce. Despite examples of positive cross-sector partnership working, many voluntary organisations continue to feel they are not offered the same training opportunities for their staff as public sector employees performing the same roles.

³ <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=12880&mode=pdf>

SCVO agrees with the Fair Work conventions call for workers in social care to be treated in the same way as those in health, and voluntary sector organisations need to be given the financial support to achieve this. The inconsistent support for the sector in payment of the real living wage, for example, is indicative of this.

We believe a radical overhaul of procurement and commissioning practices is needed, as outlined previously, in order to deliver fair work and ensure the sustainability of the social care sector. At the centre of this must be a responsibility placed on commissioners to provide the right support to ensure the fair work principles can be realised.

2. How measurable is that impact?

From surveys of our own members SCVO has seen a small increase in good practice. More telling, however, is the continued poor practice and fundamental flaws of current approaches to procurement which our members raise with us.

A University of Strathclyde report from 2019, commissioned by CCPS, provides an excellent source for why 47 organisations handed back contracts.⁴

The 2019 paper on Social Care by the Fair Work Convention is very illuminating on the disempowering and precarious situation facing many workers due to poor procurement practices.

3. How has the 2014 Act promoted the payment of the real Living Wage?

As mentioned previously, many voluntary sector organisations have faced significant financial challenges in paying the living wage as many procurement contracts from health and social care partnerships have not covered uprating, despite public sector partners receiving this for their staff.

4. What more could be done through procurement activity to promote the real Living Wage and other fair work practices?

SCVO believes the promotion of fair work practices requires a fundamental reform of procurement, seeing a decisive shift to a model based on collaboration, not competition. We advocate for a shift to person-centred procurement models that put the needs of beneficiaries of services ahead of driving down costs through competition.

This should be centred on nurturing genuine cross-sector partnership working cross the voluntary, public and private public sector, meaning access to training and good terms and conditions for all workers. This would include the embedding of uprating of costs for

⁴ http://www.ccpscotland.org/wp-content/uploads/2019/05/Handing_Back_report_CCPS.pdf

payment of the real living wage, a better understanding amongst partners of the challenges facing the voluntary sector, greater involvement of the voluntary sector in strategic planning and commissioning.

SCVO agrees with the Fair Work Convention's 2019 Social Care report calling for key stakeholders to agree appropriate minimum contract standards for the provision of publicly-funded social care services, consistent with the Fair Work Framework and the Scottish Government's Fair Work First initiative.⁵

Process and guidance

- 1. What steps is the Scottish Government taking to ensure that procurement manuals and guidance are adhered to?**
- 2. How can long-term value be promoted through the public procurement process (rather than lowest cost)?**

Public sector procurement should be reformed to move to a genuinely risk-based, values-led approach that values people and relationships and promotes a wellbeing economy, with the best outcomes for people and communities.

Within this the voluntary sector must be valued as an equal partner, with full costs covered and guarantees of multi-year funding, alongside a greater role in strategic planning and shaping services. Genuine partnership working must be at the heart of this with organisations encouraged to work together rather than compete with each other. This must include a duty on commissioners to ensure the right support is embedded into procurement contracts to ensure the Fair Work principles can be realised.

⁵ <https://www.fairworkconvention.scot/wp-content/uploads/2018/11/Fair-Work-in-Scotland%E2%80%99s-Social-Care-Sector-2019.pdf>