

**ECONOMY, ENERGY & FAIR WORK COMMITTEE: PROCUREMENT REFORM (SCOTLAND) ACT
2014 - POST-LEGISLATIVE SCRUTINY**

SCOTTISH CARE INQUIRY SUBMISSION – JANUARY 2021

Scottish Care welcomes this opportunity to contribute to the Economy, Energy & Fair Work Committee's post-legislative scrutiny inquiry in relation to the Procurement Reform (Scotland) Act 2014.

Scottish Care has been supportive of the Procurement Reform (Scotland) Act 2014 throughout its development and implementation given its potential to improve procurement processes related to social care and provide the necessary principles and approach to enable the development and sustainability of high quality support options. There are many positive elements of the procurement legislation and associated [Guidance](#) which emphasise personalisation, human rights, partnership and engagement. However, the reality experienced by social care providers is that these principles are being largely ignored in procurement practice. We hope this submission provides some context in relation to ongoing procurement challenges faced by this critical sector and the ways in which we believe the legislation needs to be strengthened in order to realise the changes required. We have only responded to questions we believe to be relevant or useful for Scottish Care to provide further context and information in relation to.

However we are happy to provide further information and evidence at any stage in the Committee's inquiry should this be helpful, and for our response to be published in full.

Sustainable procurement duty

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

We do not believe that procurement practice has improved wellbeing or reduced inequalities, either in relation to the social care workforce or the citizens they support across Scotland.

Commissioning and procurement processes have a responsibility to facilitate the existence and sustainability of quality services through the provision of suitable resource. However, the experience of social care providers is that commissioning and procurement has continued to prioritise cost over people. The failure to adopt a person-led approach to commissioning and procurement has resulted in people 'fitting in' to existing structures, services and categories of care provision without sufficient support or resource. It has also seen the sustained and disproportionate offloading of financial risk on to care providers who, as a direct result of becoming unsustainable through these practices, are forced to close their services. This not only detracts from employment opportunities in an area but diminishes meaningful choice of support options for people who require it.

The increasing use of electronic call monitoring systems is also having an adverse effect on providers' ability to deliver person-led care. Whilst such systems can offer benefits in terms of staff safety and real time monitoring, the inappropriate use of them to dictate payment of provision based on minute-by-minute visit billing is extremely problematic and has again caused some providers to close their services.

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

The competitive model currently in place for social care commissioning in homecare has driven prices down and in care homes, has resulted in a failed Cost of Care Model where local authorities end up spending twice

as much for in-house services. Both result in waste by creating an unstable market and disrupting continuity of care and support.

Changes that would improve the impact of the sustainable procurement duty include greater scoring in tender exercises for aspects of social, environmental and economic wellbeing. At present, areas such as environmental sustainability tend to be limited given the costs involved, with price of service delivery being attributed a higher score. Scottish Care also believes it is crucial that a human rights-based approach to commissioning is introduced within social care, the details of which we outline in [‘Putting Human Rights into the Commissioning Cycle’ \(2019\)](#).

We also believe there is a need to upskill commissioning and procurement staff to understand that their resource is not limited to statutory services, but also includes what they purchase. In an integrated health and social care system, they require the ability to conceptualise the potential of the sum of all parts and the risks of losing parts due to under-resourcing.

Finally, there requires to be a more consistent, national approach to social care charging rather than the diversity and inconsistency of models across the country which create a postcode lottery, unnecessary bureaucracy and over-complexity. The current variation detracts from the ability and ambition to achieve sustainable procurement which promotes wellbeing and reduces inequality.

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

Measurement has to take into account the strength of diversity in business and delivery models in social care, within the development of a framework which promotes and provides assurance of transparency, fairness and citizen benefit.

The adult social care sector in Scotland contributes £3.4 billion to the economy, directly through the value of goods and services it provides and purchases as well as through the indirect and induced impact it has, for example in enabling unpaid or informal carers and relatives to remain in employment. Its direct economic impact, measured in terms of Gross Value Added (GVA) at £2.3 billion, makes it a larger contributor to Scotland’s economy than sectors such as agriculture, forestry, fishing, the Arts, entertainment, recreation and waste management.

What’s more, the adult social care sector employs more citizens than sectors including transport and administrative and support services. This amounts to it being the eighth largest employment sector and totals 6% of all workers in Scotland.

In order to truly be a country that cares about its vulnerable and older citizens, there must be considerable investment of time, energy and resource into social care development and a radical shift towards viewing it as an economic benefit rather than a cost burden. There needs to be urgent investment not only to ensure survival and sustainability but to foster growth and innovation. Social care must become an economic priority and be measured as such.

Fair work

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

In line with Fair Work Convention’s [‘Fair Work in Scotland’ report \(2020\)](#), many of the negative experiences of social care staff highlight ongoing systemic issues in the commissioning and procurement of services. The general lack of systemic value experienced by those who work within social care is at complete contrast with the highly skilled and professional work that is carried out every day by this sector.

Much of the risk and burden is carried by the workforce. This is partly due to the way that social care services are commissioned and procured, resulting in concerns and lack of service autonomy around elements such as sick pay and PPE. This has been highlighted during the Coronavirus pandemic. Fair work is imperative and must urgently become the basis of social care procurement but hasn’t thus far, showing that the 2014 Act has had limited impact.

In a sector where 83% of the workforce is female, there has not been sufficient progress made in addressing the gendered nature of social care and the resulting inequalities for women.

2. How measurable is that impact?

Work undertaken by the [Fair Work Convention](#) as well as by membership bodies including [Scottish Care](#) and [CCPS](#) have shown the ongoing detrimental impacts on the workforce and the ways in which pay, terms and conditions within social care are negatively affecting recruitment, retention and wellbeing of workers within the sector.

Work by the United Kingdom Homecare Association on '[The Minimum Price for Care](#)' (2021) also evidences what levels of resource are required to meet minimum statutory duties and the Scottish Living Wage alongside other associated costs which contribute to enabling fair work. It remains extremely disappointing that very few public authorities pay for procured services from the independent and third sectors at even these minimum levels, yet many continue to promote themselves as being Fair Work Employers.

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

In a sector where workers need to travel to work including during antisocial hours and holiday periods, to pay for their own registration and often qualifications, and require to maintain their learning and development whilst often juggling personal caring responsibilities too, it is not inconceivable that for many, the Scottish Living Wage will mean a reality of in-work poverty. The fact that travel time is often not accounted for within procurement also adds to this burden. This is not good enough for the care of our citizens or the value placed on our social care workforce and shows that far more work is needed to implement a real Living Wage in social care that is not eroded by procurement practice.

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

There requires to be realistic and transparent costings for fair work which include paid travel time. Tolerances for Electronic Call Monitoring should be removed and replaced with a rights-based approach to delivery.

Supporting SMEs and local supply chains

1. How is the 2014 Act supporting SMEs and local supply chains since it came into force in 2016? Are there any changes that would promote increased involvement of SMEs and local supply chains in public procurement contracts?

It is important to note the inherent tensions that still exist within procurement processes in the current social care system, which we believe to be limiting the ability to deliver person-centredness and equity within the sector. This is especially apparent in the many instances whereby local authorities act as both purchasers and providers of social care services without being subjected to the same degree of scrutiny and financial rigour for its own provision as those delivered by the independent and third sectors. This inequity fails to put the person at the centre of care provision and instead represents a hierarchical approach to support based on sector rather than quality or outcomes. It discriminates against independent and third sector providers, the majority of which are SMEs.

This is also true in the competitive tendering exercises which prevail in terms of care at home service procurement, whereby providers are forced to adopt a 'drive to the bottom' approach to costs, time and tasks in order to deliver social care within a partnership area, as result leading to unsustainable support services. This drive to the bottom means that only larger organisations can achieve the economies of scale required, which is causing smaller providers to exit the market. This destabilising of the sector flies in the face of person-led commissioning and procurement given the negative impact it has on workforce recruitment and retention, continuity and flexibility of support. Conversely where true partnership takes place, positive and innovative approaches can be developed which sustain and enhance local support choices and quality.

Prompt payment

1. What has been the impact of this prompt payment policy requirement?

Feedback from social care providers would suggest that there has not been a positive, consistent impact on prompt payment as a result of this requirement.

2. Are businesses experiencing improved prompt payment as a result of this policy?

In some parts of Scotland the 3.3% Scottish Living Wage uplift announced by Ministers in March 2020 was not passed on from Health & Social Care Partnerships to employers until August 2020, meaning that social care workers would not receive it until their September pay. This is completely unacceptable not least at a time when social care workers deserve far greater value and recognition for their working during the COVID-19 pandemic, as well as before it and beyond it. Unfortunately instances of such delays continue to be reported to Scottish Care by members, which directly impact organisational sustainability as well as the social care workforce.

Process and guidance

2. How can long-term value be promoted through the public procurement process (rather than lowest cost)?

Social care cannot be procured in the same way as other systems, services and products might be. Indeed, we know that early intervention and a preventative approach are critical not only in offering long term value, but in improving people's lives. This is evidenced through work such as the ADL Lifecurve™, which is outlined in Scottish Care's '[Bringing Home Care](#)' report (2017). It highlighted that good preventative support can foster and enable self-management and by commissioning and providing services in ways that encourage identification of ability against the identified 15 tasks, individuals can be supported in less intensive ways to remain capable and to minimize decline. More information can be found at:

<https://www.adlsmartcare.com/Home/LifeCurve>

3. How can the Scottish Government ensure that SMEs are supported in their efforts to bid for public sector work?

Support could be offered by ensuring that a fair minimum price is paid for social care services which does not require the economies of scale that only a large organisation may offer and allows for workforce value, fair work, sustainability and innovation. The availability of free local workshops to support providers in collaborative procurement exercises would also be welcomed.

4. How can the Scottish Government ensure that procuring public authorities have access to the necessary skills to support bidders?

There needs to be a revised approach which both assesses for need and delivers on personal outcomes, within a human rights framework, for instance by applying human rights PANEL principles to the commissioning cycle (see: <https://scottishcare.org/wp-content/uploads/2020/02/Human-Rights-Commissioning-May-19.pdf>)

There must also be additional powers provided to regulatory bodies to monitor and report commissioning and procurement processes and their impact on the availability, quality, sustainability and person-centredness of care provision in a more consistent, regular and substantial way.

There also needs to be a clear understanding of the terms 'commissioning' and 'procurement', which are often conflated or used interchangeably when in fact they refer to quite different processes. Commissioning refers to a broader and ongoing process of strategic planning, reviewing and monitoring service provision and is therefore largely within the responsibilities of Integrated Joint Boards. Procurement is the process of

purchasing goods and services and is largely handled in terms of social care by local authorities. As a result of this blurring of definitions, there risks a knowledge and skills gap within national and local teams responsible for these exercises. There needs to be processes of assurance and accountability for those responsible for commissioning and/or procurement to ensure they have the necessary skills and understanding of the complexity of the sector when making decisions about it. This should include Integrated Joint Board members.

Essential elements for review within procurement legislation, guidance and practice are:

- Best value across health and social care, in terms of what services, supports, sectors and ways of working can ensure quality care and positive and personalised outcomes for people whilst maximising what will continue to be a limited resource pot;
- Funding of health and social care and how funding models can be made equitable, sustainable and transparent for the future. This includes how external services are commissioned and procured;
- The success or otherwise of existing policies including Self-Directed Support and the implementation of the Scottish Living Wage as means of driving equity and sustainability in the social care sector.

About Scottish Care

Scottish Care is a membership organisation and the representative body for independent sector social care services in Scotland, covering private, charitable, not for profit and employee-owned social care organisations delivering residential care, nursing care, day care, care at home and housing support services. Our membership includes organisations of varying types and sizes, amongst them single providers, small and medium sized groups, national providers and family run services. Our members deliver a wide range of registered services for older people as well as those with long term conditions, learning disabilities, physical disabilities, dementia or mental health problems.

In Scotland, the independent adult social care sector contributes to:

- The employment of over 104,000 people
- The provision of 90% of care home places for adults
- The delivery of over 55% of home care hours for older people

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