

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

PROCUREMENT REFORM

SUBMISSION FROM Health and Social Care Alliance Scotland (the ALLIANCE)

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to the Committee's inquiry. A significant number of the ALLIANCE's third and independent sector members engage in public procurement processes to provide social care support. They have long highlighted difficulties in engaging with local and integration authorities' commissioning processes. In addition, the ALLIANCE has direct experience of the procurement process from delivering the Links Worker Programme in more than 30 GP practices across Glasgow¹.

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

Post-legislative scrutiny

Fair work –

Questions

1. **What impact has the 2014 Act had on promoting fair work as part of public procurement contracts?**
2. **How measurable is that impact?**

The Fair Work Convention² reports that fair work is not being consistently delivered in Scotland's social care sector and that this is often driven by funding and commissioning systems. Meanwhile, recent statistics show that issues related to the social care workforce are highly gendered, with 83% of the workforce identifying as female³.

There are ongoing concerns about the differential pay and conditions for third and independent sector workers compared to those employed by local authorities. Research for the Scottish Government and COSLA notes, "the main reason why people leave the workforce is for better terms and conditions, particularly pay levels and another driver is to do a less demanding job for similar or better rates of pay."⁴

The Fair Work Convention have highlighted that failure to address these issues will have broader consequences, for example "voice deficit" (e.g. having no appropriate

¹ <https://www.alliance-scotland.org.uk/in-the-community/national-link-programme/about-the-programme/#expanded>

² <https://www.fairworkconvention.scot/wp-content/uploads/2018/11/Fair-Work-inScotland%E2%80%99s-Social-Care-Sector-2019.pdf>.

³ <https://data.sssc.uk.com/images/WDR/WDR2019.pdf>

⁴ <https://www.gov.scot/publications/implications-national-local-labour-markets-social-care-workforce-report-scottish-government-cosla/>.

spokesperson on behalf of the care workforce) and low pay will significantly contribute to inequality in women's working conditions and Scotland's gender pay gap.

During our consultations to inform the Independent Review of Adult Social Care, ALLIANCE members recognised that people receiving care and workers providing care have rights, and those rights do not have to be in conflict⁵. Ensuring paid carers receive a good wage for every hour worked remains the right thing to do. To achieve the best quality care, priority must be placed on paying social care staff better and must avoid rolling back to the institutionalised settings of the past to meet the financial challenges of today. At the core of issues related to fair work are the rights of people who access support and services and unpaid carers, as well as the rights of people who provide them.

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

In 2016, the First Minister announced that social care staff in Scotland would receive the Scottish living wage (then £8.25) for all daytime hours worked from 1 October 2016. In one move, this increased the level of public spending per capita in adult social care in Scotland to above any other area of the UK. This was, however, limited initially to daytime hours worked – and did not recognise that many social care providers support people overnight, often referred to as “sleepover shifts”.

Announcements later followed from Ministers that Health and Social Care Partnerships would work with care providers to deliver the Living Wage for overnight support. As yet, it is our understanding that full implementation of this policy has not been achieved. A survey of Coalition of Care and Support Providers in Scotland (CCPS) members in August 2019 highlighted that 54% of the rates offered for sleepovers by local authorities were considered insufficient to cover the full cost of implementation.

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

In the ALLIANCE's view, ensuring paid carers receive the Scottish living wage for every hour worked remains the right thing to do. To achieve the best social care, we must prioritise paying social care staff better and must avoid rolling back to the institutionalised settings of the past to meet the financial challenges of today.

It is also important that the funding available is sufficient to promote Fair Work practices, beyond payment of the Real Living Wage. In a number of roles, such as Community Links Practitioners, the Real Living Wage would be inappropriately low for the work delivered, and there are often no measures in place to account for cost of living pay increases, pay progression or promotions. Additionally, the use of short term contracts acts as a barrier to

⁵ <https://www.alliance-scotland.org.uk/blog/resources/alliance-briefing-paper-independent-review-of-adult-social-care/>

Fair Work, as they cause insecurity and stress, and can deny access to employment tribunals, statutory redundancy rights, and pension payments.

The ALLIANCE believes that at the core of issues related to fair work, the living wage and overnight pay are the rights of people who access support and services, as well as the rights of people who provide them.

Supporting SMEs and local supply chains - background

Questions

Process and guidance

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

Third and independent sector providers have long highlighted difficulties in engaging with local and integration authorities' commissioning processes. Some of the issues raised with the competitive tendering is that it hinders, rather than helps, partnership working and can contradict the values of personal choice and control embedded in Self-directed Support (SDS) and social care legislation.⁶

In the view of participants in the ALLIANCE's engagement activity to inform the Independent Review of Adult Social Care⁷, there needs to be an increased involvement of communities in commissioning; with the encouragement of community partnerships and a shift towards an enhanced asset based approach. It was described that by involving communities more in the commissioning of services and support that it would be possible to make better use of the range of resources available to support a person to live their life.

It was shared that participants felt that the role of the third sector is one of the biggest strengths of our social care system – its ethos of rights based and person centred support provides high quality, diverse support. Those who took part felt “totally different” services could be procured if the third sector had an earlier and meaningful input to the commissioning process. It was suggested that an opportunity and additional duty for third sector organisations could be to get involved in collaborative commissioning, taking shared ownership of the commissioning process. Increasing the role of the third sector and local communities could help to change the narrative of social care if the current commissioning processes were overhauled.

⁶ <https://storage.googleapis.com/scvo-cms/wp-content/uploads/2020/03/The-Future-Delivery-of-Social-Care-in-Scotland.pdf>.

⁷ https://www.alliance-scotland.org.uk/wp-content/uploads/2020/12/SCR_report_WEB-compressed.pdf

Participants felt that if the third sector was properly resourced and valued, it could spend less time on locating and competing for funding, concentrating on working better collaboratively, ‘pulling together a synergy of specialisms’ which could be commissioned.

In the 2019 CCPS Business Resilience Survey, just under 50% of respondents (third sector providers) stated that they had abstained or withdrawn from a procurement process in the 12 months preceding the survey.⁸ Respondents reported that “financial sustainability of services was a primary consideration [...] when considering whether to bid for a service”, especially when competing against private companies for contracts. More broadly, CCPS warned that for two years running an increasing number of providers “required additional funding to be sustainable [...] using reserves and cross-subsidising to fund service deficits and maintain services.”

They concluded the report as follows:

“Providers are well aware of the financial difficulties that Local Authorities and Integrated Joint Boards (IJBs) face. However, it is not sustainable to continue to expect social care providers to pick up this cost for unsustainably funded services. [...] The recent Accounts Commission report that local authorities and IJBs are facing similar challenges with their own funding suggests that this situation is unlikely to improve without intervention.”⁹

The nature of short term contracts, even for services and programmes that are to be delivered on a long term basis, makes delivering long term value difficult. Short term contracts result in job insecurity, which leads to higher staff turnover and the need for organisations to spend time on recruitment, training and building relationships instead of maintaining and developing them. It also results in time being spent on re-tendering in the last year of the contract, rather than focussing on long term value.

To promote long term value, rather than short term contracts the ALLIANCE would recommend a move to longer term contracts of five years or more as standard, with appropriate performance breach clauses.

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

During the pandemic, Scotland’s third sector organisations have responded rapidly and flexibly; reorienting and refocusing their efforts to meet the challenge. We know that the stark financial impact of COVID-19 has also come at a time when many third sector organisations face increased levels of demand for their services. The longer-term survival of third sector health and social care organisations is at stake, and the unique services and

⁸ <http://www.ccpscotland.org/wp-content/uploads/2018/12/Business-Resilience-Survey-2019.pdf>.

⁹ <http://www.ccpscotland.org/wp-content/uploads/2018/12/Business-Resilience-Survey-2019.pdf>.

support they deliver will remain just as vital – if not more so – as we continue through COVID-19 recovery.¹⁰

COSLA's 'Guidance for Commissioned Services during COVID-19 Response'¹¹ demonstrates that public bodies can take a more flexible approach to commissioning, particularly in comparison to models that reduce care to 'time and task' calculations. Other examples of positive changes are highlighted by iHub's 'COVID-19: Health and Social Care Learning in Scotland' initiative,¹² and substantial information and guidance about what good social care commissioning looks like is available from CCPS.¹³

A reduction in bureaucratic requirements would be extremely helpful and make it easier for third sector organisations to bid for public sector work. Practical examples of where this could be done include: reducing the length and complexity of forms; asking the right questions; not requiring unnecessary accreditation (e.g. ISO Certification); and providing feedback on the assessment of bids.

Sustainable, ongoing, adequate funding and flexible approaches that avoid onerous and bureaucratic commissioning, focused on equalities, human rights and personal outcomes – and designed to encourage innovative practice – are never more needed. Longer term partnership relationships with providers should be embedded into a collaborative commissioning methodology, underpinned by a fresh approach to improvement, development and progressive service redesign.

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

The ALLIANCE believes we need to apply a human rights based approach to social care across all parts of the system, including service design, procurement, delivery, fiscal and regulatory frameworks, at the national and local levels. This will help achieve a fairer, more sustainable and transparent system that works for those who access and deliver services. The current plan to reform adult social care is a timely opportunity to start this work.

Commissioners of social care services, care providers and regulators must understand their human rights duties and promote accountability for human rights in social care. Rights strengthen accountability by ensuring that the practices and procedures of commissioners and providers are grounded in human rights law, and regulators use rights in inspections.

¹⁰ <https://www.alliance-scotland.org.uk/blog/news/leading-health-and-care-charities-urge-first-minister-to-help-safeguard-future-of-the-sector/>.

¹¹

https://www.cosla.gov.uk/_data/assets/pdf_file/0026/15569/cosla-guidance-for-commissioned-services-170420.pdf.

¹² <https://ihub.scot/project-toolkits/covid-19-health-and-social-care-learning-in-scotland/hscp-learning/applying-strategic-planning-and-commissioning-guidance/>.

¹³ <http://www.ccpsscotland.org/hot-topics/improve-commissioning/commissioning/>.

Rights should be monitored, and a good starting point to be built upon is the Care Inspectorate's use of the rights based Health and Social Care Standards¹⁴ to frame an independent evaluation of SDS implementation in six Health and Social Care Partnerships.¹⁵

More could be done to improve the awareness and understanding amongst public sector commissioning teams of the challenges facing third sector organisations. Some of these challenges directly arise from commissioning practices, such as frequent changes in points of contact, insufficient or short term funding being offered, excessive reporting requirements, short bidding timescales, and payment in arrears. The ALLIANCE would suggest this might be done through training, research on the impact of funding schemes on communities and organisations, and by seconding staff to third sector organisations to gain a better understanding of how they operate and the impact of these challenges.

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of nearly 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces, Libraries and Access Panels are also members.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

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¹⁴ <https://www.gov.scot/publications/health-social-care-standards-support-life/>.

¹⁵ <https://hub.careinspectorate.com/media/3676/thematic-review-of-self-directed-support-in-scotland-transforming-lives.pdf>.