HOUSE OF LORDS

Select Committee on Public Services

Uncorrected oral evidence: Procurement and public services

Wednesday 20 January 2021

3.15 pm

[Watch the meeting]

Members present: Baroness Armstrong of Hill Top (The Chair); Lord Bichard; Lord Bourne of Aberystwyth; Lord Davies of Gower; Lord Filkin; Lord Hogan-Howe; Lord Hunt of Kings Heath; Baroness Pinnock; Baroness Pitkeathley; Baroness Tyler of Enfield; Baroness Wyld; Lord Young of Cookham.

Evidence Session No. 1 Virtual Proceeding Questions 1 – 14

Witnesses

I: Charles Nancarrow, Director, Regulation, National Audit Office; Joshua Reddaway, Director, Work and Pensions Value for Money, National Audit Office.

II: Tom Thackray, Director of Infrastructure, Confederation of British Industry; Kathy Evans, Chief Executive, Children England; Paul Streets, Chief Executive, Lloyds Bank Foundation for England and Wales.

Examination of Witnesses

Charles Nancarrow and Joshua Reddaway.

Q1 **The Chair:** Welcome, everyone, to this meeting, which arises from the first report of the Public Services Committee. Today, the committee is holding public hearings on procurement and public services. Procurement came up as an issue in different ways during our first inquiry and we thought it would be useful to have a specific meeting just looking at it, because various things have been happening. The NAO produced its report last year, and the first half of our session will be with two people from the National Audit Office. The Government also produced a Green Paper last December on procurement, and the second part of our session will be with people who are looking to do work with the public sector, from both business and the voluntary sector, as to what their experience of procurement is and what can be improved.

Welcome in particular to our two witnesses in this first session. We have Charles and Joshua, and I will ask you each, as you come in to answer the first question, to say who you are, what your role in the National Audit Office is, and anything that we ought to know about the NAO today.

I will ask the first question, as is usual in these events. It comes from your report into government procurement during Covid-19, in which you suggested that "there are standards that the public sector will always need to apply if it is to maintain public trust". What are these standards, and how well did the Government do in meeting them? What skills will be needed in the future by those awarding public contracts to avoid mistakes that you highlight during the pandemic?

Charles Nancarrow: I am director of regulation at the National Audit Office. I was the main director on the investigation into government procurement during the pandemic.

In answer to your question on the standards that we were looking at, there are broad standards that underpin public procurement. You can think of these as sitting under the key headings of fairness and transparency. Fairness includes things such as treating suppliers fairly, and transparency is about being clear on how the public procurement authorities are using public money. That means setting out what contracts have been let and at what value, and other contract information, in a timely fashion.

The pandemic report focused on emergency procurement, which is quite a narrow aspect of government procurement. The NAO has done a lot of work over the years on all aspects of public procurement, and Joshua will be bringing examples and insights from that. The backdrop for the emergency procurement focus was that the risks of doing procurement are increased because there is an emergency going on, but the capacity to deal with those risks has potentially gone down because of the need to respond to the emergency.

We made a number of observations in the report on the standards that are necessary to maintain public trust and confidence in the procurement process. First, on transparency, there are legal and recommended timescales and requirements for publishing contract details, which are dependent on the nature and size of the contract. We produced the report in November and looked at contracts from January to July. We found that only around 55% of contracts had been published on Contracts Finder, which is the government website where the contracts are published. There is also a requirement to publish the contract award notices under the Official Journal of the European Union, where, in November, the rate was quite a bit higher, at 89%. Only 55% of basic control details had been published at that stage, so we felt that there had not really been enough transparency on the publication of contracts.

Secondly, we found that the standards of documentation on some of the contracts that we looked at were not at the level that they needed to be. Keeping good records of key decisions taken, such as choice of supplier or the reasons behind using emergency procurement, is vital, possibly more so in emergency procurement, given that transparency is already reduced from having no requirements for a competition and no need to advertise.

While we found good documentation for some of the contracts we looked at, we also found examples where departments failed to document fully consideration and management of procurement risks. These are things such as justification for using emergency procurement procedures, why particular suppliers have been chosen, and how potential conflicts of interest have been identified and managed. Our work was also particularly around the adequacy of the audit trail. The Government Internal Audit Agency also did some work, and its findings were quite consistent with ours in that respect.

We found that some contracts had been awarded retrospectively, after work had been carried out. This can increase risks such as the possibility of legal challenge later on, if other suppliers felt that they were not able to bid but could have done in the first place. When procuring at pace, it is a particular challenge to get these processes in place at the right time, at the beginning. We also found that, in some of the early contracts, there was retrospective due diligence. These are examples of where the pace of procurement meant it was very difficult to comply with those procedures.

In the PPE sector, government had received over 15,000 offers from suppliers of PPE, so it was naturally keen to prioritise those offers that it saw as more credible. It created a mechanism for doing that, but we felt that it needed to be clearer and more transparent in the way that its prioritisation was working. Again, a lot of our work against the standards was about being clearer and more transparent about what government was doing during the pandemic procurement.

Joshua Reddaway: I am another director at the NAO. I have two roles. I have a client-facing role, which is with the Department for Work and Pensions, but you have invited me today because I am a technical specialist on the commercial side and I head up our commercial practice. I was a peer reviewer and technical support for Charles in his study.

Charles has set out our specific findings. What I want to add is, "So what?" We have seen a lot of public concern about the integrity of the system at the moment. It is quite important to say that we did not find, nor is it the role of auditors to find, the sorts of problems about which accusations have been thrown. There are ongoing judicial reviews and so on, which look at that. This is not the first time there have been questions about the integrity of the system. It is, however, the first time we have seen questions on this scale about the integrity of the system at this level.

The deficit we found is that the system was not demonstrating that it has that integrity. When you talk about the quality of documentation, it could just be that they literally did not have enough time to write out that documentation. Why does that matter? You need the system to prove to the public that it is clean, that it is safe, and that these decisions are being made properly. Unfortunately, they were not in a position to show to us that they had met that standard.

The Chair: Both of you have talked about speed. When questions are asked in Parliament, the normal answer is, "It was an emergency. We had to do things in different ways". What now needs to be put in place for how government ought to handle procurement in an emergency? Is the law sufficient? Are the regulations sufficient? Do we need to change them? What do we and government need to have learned from this to make sure that, in future emergencies, we get things better?

Charles Nancarrow: The Government have been quite quick to learn from this. The Cabinet Office has commissioned the Boardman review, which, albeit that it is focused on a specific bit of the Cabinet Office work, has some very interesting lessons for wider government procurement. As I say, the Government Internal Audit Agency has been doing some work as well. Then, of course, there is the NAO report.

The Government had a legal framework to do this. The regulations for emergency procurement allowed them to operate in the way they did. The learning that we identified is about just being better at the things we were talking about earlier: being more transparent in contract publication; and the importance of meeting the legal timescale as well as the recommended timescale of 90 days from Cabinet Office, which is very important.

The Cabinet Office issued a lot of technical guidance and was meeting government to talk about how different departments could implement it, but now, having learned about how risks can be managed and can materialise, it is important to look at the implementation and how you deal with these risks practically, so that, in the future, government has learned from this process.

Thinking about documentation and audit trail, what are the minimum standards here? Can we think about what they are, so that it is very clear what standards different departments are working to? This was the first time that emergency procurement has been used on this scale. There are a number of areas where there is learning, but a lot of it is to do with learning from the processes that were created, how well they worked, and making sure that they are in place for the next time this has to be done.

Joshua Reddaway: Those are the specific things coming out of this. I will try to give a wider context. On the transparency issue, there has been a problem with compliance against transparency for some time. Charles said that there is much higher compliance against disclosure that there has been an award against the tender evaluation daily, which was a requirement up until 1 January. That is the EU scheme. That is quite a low level of disclosure.

Under UK law, you have to publish the contract and publish a lot more information than that. The drive has been for ever greater transparency and to provide ever greater public confidence in the government procurement system, which has to be a good thing. The law has been, for some time, and certainly since the 2015 regulations, that the contracts get published, and we have seen fairly low compliance with that over time, where we have done work. We have tried to raise this in our work as well. We raised it, for example, when we looked at consultancy contracts used for Brexit preparation. That was a quite big issue and quite a few contracts there were not published in the right timeframe.

Why is that happening? It is a capacity issue. Partly, it is to do with the infrastructure that is supporting procurement behind the scenes. We come across incidences where these are escalated to a very senior level, and that person is not moving it on from their desk. That is a bit frustrating; why on earth would they not do it? Perhaps that is their capacity. Moreover, when we ask, "Where are they?", there is this constant refrain from the Government: "Hang on. Do you not know we are dealing with a crisis? We are trying to buy stuff. To do that is a big manual task". I do not doubt that it is a big manual task to upload these. That is a problem. Why is it a big manual task when, ostensibly, we have digital systems and it should be just about pressing a button and it goes?

It is a manual task for two reasons. First, the Government have a tendency to redact quite heavily, and we would probably say more heavily than they need to for data protection reasons and so on. Secondly, they do not really have those digital systems. They have compliance with a set of EU directives that wrap up compliance with digitalisation over time to bring in e-invoicing and e-bidding systems, but these have been on the periphery. It is about how people engage with the system. There is no digital data system behind it.

For example, when doing the study, we first had to try to find out how much had been bought. You would think that we would just go to a database and download that. That survey was a big piece of work. There are private providers out there that are trying to gather this information and sell it back, but they do not have complete visibility of it and are trying to pick up a lot of it, frankly, by rumours and press releases. They do not have a single database that they can draw on.

That is because there has been a lack of investment on the contracting side in digitalisation, and because there is a difference between the accounting systems and the digital system. They are accountants, as are we, so I guess we know what we are talking about. They are not interested in how the money relates to the contract; they are interested only in how it relates to a purchase order in these purchase-to-pay systems, making sure the accounts are fed correctly. That does not translate across.

All these challenges mean that it is neither digital by default nor transparent by default. When I read the Green Paper, and we have been talking about this with the Cabinet Office, the level of ambition for transparency in there is really interesting. It is very welcome indeed. We have been calling for that for a long time. For the first time, it envisions that investment in infrastructure, which we have not seen before. The NAO has recommended it before but the Government have just said, "We are not doing it".

Q2 **Lord Hunt of Kings Heath:** I must declare an interest as president of the Health Care Supply Association and GS1, the barcoding association, both very involved in procurement. I wanted to ask a question, rather related to this, about the skills needed in future. I had the impression at times that the skill procurement people were being bypassed by the processes, certainly in the health service. I wondered if you could reflect on that. In particular, what do we need to do to upskill and give more status or credibility to procurement professionals, so that, when faced with these kinds of challenges, they can step up to the plate?

Joshua Reddaway: The skills agenda on commercial is something that we have been engaged in for some time and commenting on for many years. There is a lot of evidence that the skills on commercial in central government right now are much better than they were five, six or seven years ago. We looked at a couple of scandals in 2012 and 2013 about contract management, in particular the electronic monitoring contract, which is, I believe, still in the court. They read the charges last summer. That led to this realisation that these contracts had not been managed, one reason for which is that there were just not the skills, capacity or capability within the Civil Service.

If you roll forward to Carillion, the fallout from that was much better handled by the Government. They had foreseen what was going on, and made sure they had the right preparations in place. That still left, I am afraid, a couple of hospitals in the lurch, half way through being built, but the skills and capability that we saw, both at the centre of government and within the central department, were much better.

That is because they have invested in it. They have introduced this idea of functional leadership, so that it is a profession. They have had an assessment centre for senior management and they have been interested in commercial awareness. I am afraid that commercial awareness was not a big part of being a procurement person before. Procurement was always seen as an administrative task, and now there is this idea that you need commercial awareness and that this is a business. You have to understand how businesses work and to engage with them across all their levers, not just procurement.

That is much better, so why are you seeing what you are seeing? Why might you be sceptical about that? First, there is still a capacity issue. There has been some investment, but you are talking about hundreds, not thousands, of people. That capacity was massively strained during the Covid response. Secondly, it is about where that was. The NHS is one of the places which that function has not got to and which has not had the transformation from a procurement approach to a commercial approach.

That is not to say that there are not pockets of excellent practice in the NHS. There are. It is spread out, but it is in pockets. The big teaching hospitals will have much better procurement teams than the smaller ones, rather than there being capacity and capability across the piece. There was not that much within the central functions that were doing the buying.

What we saw during the pandemic, which was very good, was a lot of expertise and support being pulled in from other parts of government to support the NHS in order to do that. That was only possible with this idea of functional leadership, but I would not say that the NHS had the capacity on its own or that tradition of commercial awareness. I cannot speak to the specifics of whether they were bypassed, but that is the dynamic as we saw it.

Q3 **Baroness Pinnock:** You have talked about transparency in emergency procurement. I guess you have said that transparency has decreased during the pandemic. Could you talk about that? Then could you pinpoint which areas of public procurement would benefit from greater transparency? Picking up on comments you have made, an apparent or real lack of transparency has led to a growing public concern, which has led to a growing lack of confidence in procurement by government, and hence, unfortunately, in the Government as a whole. A lack of transparency in public procurement has consequences. It would be interesting to hear what you thought about that, whether it is recognised as an issue and how it could be tackled.

Charles Nancarrow: You have noticed that transparency was central to the report. Transparency has been quite a long-term issue. We have commented on it in previous work on procurement, so it is difficult to say whether it has improved or diminished during the pandemic. It was certainly an issue.

One of the reasons for doing this report was the strength of public interest in the procurement that was going on during the pandemic. We got a lot of correspondence and MPs writing in. There was just a lot of interest and a feeling that those correspondents writing in did not really know what was happening. That is why we did this report. As Joshua said, one of the very burdensome things, which we put a lot of effort into, was doing a census of government departments and their arm's-length bodies to find out what they had spent on Covid procurement, using which routes, and just how much emergency procurement there had been.

Hopefully, our own report brought a bit of transparency to the arena as well, but transparency has definitely been an issue. Government was talking about the capacity constraints to putting contracts on the public systems, for example. There are definitely some capacity constraints. Whether they have diminished, I cannot say within this report, but they have certainly been of concern.

Joshua Reddaway: What is this transparency over? There is the legal requirement to publish, in most instances, that you will procure something and the way that you will procure it. Then there are the emergency powers, which say that you do not have to do that in certain conditions, and that is quite right and proper, but you must then publicise what you have done, so that the public can see that and people can challenge it. This is a system that requires the right to challenge and to monitor it, because there is nobody else who will monitor it. The NAO does not monitor every single transaction, and nor does anybody else, so transparency is vital for the system to work.

That is only part of what transparency is. We have been recommending, since what we said at the time was a crisis of confidence, similar in a way to those contracting scandals in 2013 and 2014, that there needed to be greater transparency. We were talking about transparency over the pipeline, so what bidding is coming up, the particular opportunities and the awards, which is all well understood, but also how much is being spent on these contracts and how they are changing over time. What is the actual agreement that you have signed? What is the specification that you have signed up to? What you are buying, how much have you agreed to pay them and under what pricing mechanism? There is no excuse for having a lack of transparency over any of that.

It is perfectly reasonable, in the public domain, to say how much you are paying for something and how you have agreed to do that, unless it is intellectual property, future investment plans or pricing mechanisms that are inherent to your business, which is very rare indeed. Those are the three things that are generally agreed as being exempt.

What is in the contract and how much are you spending on it? What is the performance of that contract? The Government have recently signed up to that. They have tried to go in gradually and have suggested publishing the top three KPIs. I am fairly sceptical about that, because I do not know of any contract that can be summarised in three KPIs; there are normally more than that. If you specified 17 KPIs in your contract, why not tell us? To be honest, they are telling me but why are they not telling you and the public generally what the performance is across all those?

You can see the overall life cycle of a contract and you have complete transparency around that, over which you then need to overlay assurance mechanisms such as open-book accounting where appropriate, whistleblowing policies and complaint procedures. It has always been embedded in *Managing Public Money* that it is the responsibility of a department to ensure that the system of public control that it has within it is extended throughout the supply chain, and that it is essential to make that happen. To be honest, we are a bit away from doing that, and I was delighted to see steps in that direction set out in the Green Paper, along the lines that the NAO has been recommending for some time.

Baroness Pinnock: That was a really comprehensive response, thank you. The only area that I continue to be concerned with, as well as all the things you have raised, is how services are held to account for procurement decisions. Most of it is post hoc, when audits take place, but what happens if there have been significant and substantial breaches of what would be a normal process, either in normal times or in emergency times? In other words, who takes the rap for it?

Joshua Reddaway: The system is meant to work in a number of ways. The first is the remedies and challenge system, and this idea that any other economic entity can challenge whether something has worked. Because there is nobody who has a role in reviewing absolutely everything, that is an integral part of the system. That is also one of the things that you might want to ask questions about in the Green Paper: that it makes some fairly fundamental changes to the remedy system. The Government would argue that that system is not working. It is not encouraging people to challenge and the set of challenges is not encouraging best practice all the time.

All the normal systems of accountability that should prevail over any public service should also be in place over a contracted-out service or a contract for goods. The NAO will look at it to the extent that it is material to the accounts or we decide that there is something so specific, a risk or such, that we need to do a report in it.

We do roughly 16 reports a year, or a bit more if you include the investigations and all the other stuff, but the best way of thinking about that is that we are trying to bring to your attention the 16 most important things at any one time. There is a long list of other things that we could have looked at. You cannot rely on external assurance to look at everything, but you can rely on the fact that you also have internal assurance and internal audits, whistleblowing, the right of complaint and the ombudsman.

It is a really good question about who ensures the integrity of all this. We are trying to tell you what is going on with the system. When it comes to the individual bits, that remedies system and whether it works is essential.

Charles Nancarrow: That is another reason why we have been talking about transparency and openness so much. The judiciary, which is relevant at the moment, is another very important route if anybody has concerns about the way that government has let the contracts. It is an appropriate route under certain circumstances, but knowing what contracts the Government have let and how they have been operating is really important to support that process as well.

Q4 **The Chair:** Your questions, Baroness Pinnock, are another part of holding them accountable, I hope. We talked in our report about a focus on the outcomes, including social value. How can we have a focus on the economic, social and environmental outcomes of public procurement in a way that still brings value for money? Social value was ruled out a few years ago. There is a will to bring it back, but we need to do that without compromising value for money.

Joshua Reddaway: There is absolutely no tension between value for money and social value. As Charles and I are both value-for-money auditors, the definition of value for money that we use is whichever entity you are auditing achieving its aims in the best value-for-money way, with the most optimal use of resources. The question is how you define your aims. If you have a wider purpose than simply wishing to buy a good, such as contributing towards apprenticeships or armed services reserves, or having an environmental standard, the question is about what you are buying, how you are buying it and how you are implementing that focus within your work.

It has been the law since 2012 that those wider social purposes are considered in all procurement. You are implying that there was some pushback on that. It is certainly the case that we have not seen much reference to the social value Act 2012 in central government procurement; it has been much more of a local government thing. The Government have been compliant, essentially, by doing Green Book analysis in their business case. They will take this into account in deciding that they wish to buy it, rather than in including anything in the specification or evaluation criteria that they use to select whom they are buying from.

Having said that there is no conflict and it is merely a matter of choosing what you want to buy, it is interesting how you might take that into account. There are three ways of doing that. One is fairly hard: you can add it to your specification. You can be quite clear: "I want to buy this and I want to buy it with these additional benefits". Secondly, you can say, "I want to buy this and, by the way, when I am choosing to buy this, I will take this into account in this way", so you can add it into your evaluation criteria. The third is the softest version, where you say, "I want to buy this. These are my standard evaluation criteria but, by the way, I am also interested in all these things, so can you tell me how you will do that?” There are trade-offs and costs to those three ways of doing things.

If you put it into a specification, the challenge, psychologically, is that many bidders will price it in. They will say, “That is additional. I will charge you more”. If you do that badly, without having properly consulted with the market, and we would always recommend market testing, which means talking to the market before you start to buy stuff, you can box in the possibilities. People might come up with something a bit more innovative and better.

You might think, “In that case, why do you not add it to the evaluation criteria?” You can do, but that can also have perverse outcomes. People normally assume that, if you say it is 10% of the weighting, it is 10% of the decision, but that is not mathematically how it works. It is how much variation you are expecting against that criteria multiplied by the weighting that you get. If you have 80% on quality, 10% on price and 10% on social value, but everyone comes forward with the same thing, they will all score exactly the same amount in the 80% and it all comes down to price and social value. Were you expecting that? You might end up paying quite a lot for it.

In our recommendations for this, we say that they should scenario test it. Just try it out with different scores and see whether you are happy with that outcome. Is that what you want? My nervousness with some of the proposals here is that they are quite rigid. They are forcing people to do stuff that does not take into account those trade-offs. They ought to think about it, evaluate it, keep an eye on what is happening, and come back to check that those policies are achieving what they want.

I have done work with both buyers and sellers on how to put systems of assurance in place that go down the supply chain. A lot of people selling to government are very keen to provide social value. They see it not necessarily as something that they wish to add to the price, but as an essential way of them managing their business. It goes back to the debate about corporate responsibility and the way that some organisations choose to manage themselves in a corporate responsible way. It can be hugely motivational for their staff.

As a good example of that, Interserve provided services to the MoD on its defence training estate. It talked about how it really wanted to work with MoD to build up Army reservists, and how important it was for the people who maintained the estate to feel like they were part of the system for which they were providing the service. Your job may be putting up fences in the outer reaches of Scotland, but you are also contributing in this way and that way. It talked about how that was not just an additional thing, and it demonstrated how that was built into its HR and appraisal systems, its methods of promotion, and the way it managed meetings. It was endemic throughout its organisation in how it was managing that contract.

Q5 **Baroness Tyler of Enfield:** I wanted to ask how public procurement procedures can encourage those providing public services to innovate and collaborate. In our previous inquiry, we heard quite a lot of evidence from health and social care providers, as well as others, about the need for both commissioning and procurement that encouraged people on the ground to collaborate and join up in a more placed-based approach. I would be really interested in your reflections on that.

Joshua Reddaway: You say "innovate". Can I ask for what and why?

Baroness Tyler of Enfield: They might innovate to do things differently in order to get a better result.

The Chair: Innovate for improved service to the public.

Joshua Reddaway: I ask, because we sometimes see this quite bold statement, "We want innovation", without specifying what sort of innovation. It is innovation for innovation's sake. That is generally the answer to how not to go about improving public services. We have seen issues where there are black box approaches and the assumption that the private sector, left to its own devices, would innovate within that black box. DWP certainly tried a few of these with the Work Programme and some payment by results systems. We are very sceptical that you can come up with a financial or commercial construct that leads to public service improvement or innovation like that in and of itself.

I am afraid our scepticism runs as far as saying that the only way you can get this is through good leadership and good management. That includes those doing the buying knowing very clearly what sort of innovation they want to do. It does not mean that it has to come from them. As part of that leadership, they have to be open to engaging with and talking to the market about the possibilities, both before they procure and during the contract. That is where we see it work, but, from the work we have done, nothing can take away from the emphasis that must be placed on who is doing the procurement, who is leading it and the way they engage with all the stakeholders to do that. It is a complete myth that, if you say, "Here is the specification. Go off and do it", it will happen.

DWP hoped that, by paying people a certain amount to achieve an outcome, it would get innovation. There was a lot of talk about how people would pay for things that you would not do under normal constraints. But it still had a lot of those constraints built into the contract, just not the service standard. Over time, it found parking and creaming. Essentially, it had passed to the private sector not the innovation challenge but a resourcing allocation to work out the best way to maximise profit within that financial construct, which the private sector took on with relish, because that is what it was motivated to do.

Over time, DWP has had to bring back those ideas of what a minimum service standard is and how to do that, which means that it cannot get the innovation within the commercial construct. It has to come around the minimum floors that it has, because it tried to go about it in that black box way.

Baroness Tyler of Enfield: Charles, I am particularly interested in the point about how you can encourage collaboration in commissioning and procurement.

Charles Nancarrow: I have a lot of background in regulatory approaches. Thinking about the holistic set of tools that you can use, with procurement alongside regulatory frameworks and so on, to deliver a service is often a good way of thinking about how you might innovate and find different approaches. Looking into government, procurement officials are often quite separate from people who look after the regulatory frameworks. In a place-based approach, bringing together professionals from those different areas is often a good way of thinking about the tools that you can use to deliver public policy.

Joshua Reddaway: An example of where it has worked really well recently is ventilators. I did a report on ventilator procurement last September. This was the ventilator challenge and how the UK ensured that it had enough ventilators to get through the second wave. It turns out, I hope, that we have many more ventilators than we need, because the science changed a bit, and the medical practice in using them changed.

Back in February last year, the UK believed that it needed something like 70,000 ventilators, and it had 7,000. It thought that it needed to buy lots and to buy many more than could be produced through existing supply chains. The Cabinet Office and the government chief commercial officer, Gareth Rhys Williams, came up with this model of the ventilator challenge and working with British industry to develop systems very quickly. That is exactly what I am talking about: you need a very clear understanding of what you are buying, and then what skills and expertise you are getting from the private sector to work on that.

For example, the Penlon ESO 2 was developed with a very small company that had the medical expertise but not the capacity, in a very regulated environment, to build the factory space and the supply chains to do that. They worked with companies that had that expertise, including McLaren, Ford and Airbus, to do that. They drew on that expertise and worked in exactly that collaborative way that you were talking about, bringing the right skills to the table.

They worked very closely with the regulator, so they had the experts in the room at the beginning, which is something that we often do not see. They had medical experts in the room testing these. They had the best people in the country to test that they were safe and to specify at the beginning the requirement to get through the regulator. That is one of the reasons why the UK probably got through buying the stuff so quickly: by working with the regulator and the experts up front to do all that. It is about good management and leadership, and it is really difficult, but it can be done.

Q6 **Lord Hogan-Howe:** I declare an interest as a non-exec with the Cabinet Office. This question has nothing to do with that, but has an awful lot to do with my experience of public service procurement generally before that. As a chief exec, in my experience of procurement, I was always testing it to see whether it produced the right quality of product at a good price, but also how long it took to make that decision. I would say that European procurement routes take longer to make a worse decision. I would be interested in your views about how we can speed up good decision-making of procurement in the future.

Contrary to what Joshua said about weighted decision-making, where he gave an example of perhaps 80% on quality, it seems that, on public service, we buy 80% on price and then we regret it two years later, when the thing breaks. I wonder, on both counts, whether you can give us some thoughts about how it should be better in the future. How can we make decisions more quickly and better on procurement? How can we embed more quality decisions in public service procurement, and not concentrate solely on price?

Joshua Reddaway: Whether it is price or quality varies organisation by organisation. There has been a general trend towards giving quality a higher score. I share your concern, and lots of people have had that concern, so they have said, "You should put more weighting on quality". That does not necessarily work if people all come in with the same thing and do not know how to assess quality. You can give it an 80% weighting, but my point is that the decision can still all be about price, if you are at 80%, you do not know how to evaluate and assess quality, and you do not know quality when you see it.

I would always say, "Scenario test that, think through what you are doing, and make sure that you have experts who really understand what quality is in helping you make that decision". That is the standard audit book, if you like: what are you looking for there? Those are the questions that you would ask. Unfortunately, you are right; it will continue to be a difficult problem.

As for streamlining the procurement process, the administrative burden of good procurement is necessary to an extent. We have seen that, when they are rushing, they are not maintaining the integrity of the system and public faith in it. Most of the EU rules will be translated because they are not that dissimilar to the World Trade Organization rules that we are, essentially, adopting and going forward with, but that is not the only way in which you do procurement. Those are generally for the larger one-off things. All that really requires is that you give appropriate notice and time to the market, so that it can react.

It has become abundantly clear over the last year that the capacity, flexibility and agility of those supply chains was lacking as we entered the pandemic. There was no way that our existing supply chain on PPE, ventilators or various other necessary things could keep up with the surge in demand. You saw a surge in pricing and demand, on a global scale, not just in the UK.

Lord Hogan-Howe: I would challenge one thing that you said. It seems to me that commerce makes quicker, better decisions. It has shareholders and others who are interested in the integrity of that process. I do not understand why commerce can do that when public service struggles.

Joshua Reddaway: Professional associations such as the International Association for Contract and Commercial Management and CIPS, which work on both sides, would say that there is quite a lot of similarity with the blue chip company approach. Things are different if you are working in a small entrepreneurial environment, because an entrepreneur is closer to the decisions and the management.

Not everything has to go through the "Let's start from the beginning". That is when it takes a long time. If you are starting to buy something from the beginning, you have to go through the full process. The other things that are there are frameworks and dynamic purchasing systems. Those are the future, particularly dynamic purchasing systems, for doing this. I raised this point about capacity and agility of the existing supply chain, because it was not just that those providers could not meet the surge in demand but that the contractual mechanisms the Government had in place could not adapt quickly to allow quick decision-making.

A dynamic purchasing system is where you set out the specification and the rules of the game up front, but anyone can come along, at any point, and say that they wish to play this game. If you had had that in place for PPE, instead of coming up with something bespoke that we found wanting, you would have had specified, "This is what we do and we are normally expecting a certain volume of business to go through this. We have this surge but we already have the contractual mechanism in place, so anyone can come and interface into that". The Cabinet Office is excited about this. The technology is not quite there but it is within reach. We just need to set it up and try it. That may help in some of the issues that you are talking about.

I would caution that these rules are really important, because I am an auditor, but that does not mean that I do not think there can be faster, better decision-making.

The Chair: Many thanks to Joshua and Charles. We have interrogated you. We have pushed for clarity, but you have given us that, as well as some ideas for the future, so thank you very much indeed. Keep producing these reports; we all enjoy NAO reports. Thank you very much for spending the time with us today. We are really grateful. This is just a one-off session, but I am sure that we will be coming back to you in the future on other things.

Examination of Witnesses

Tom Thackray, Kathy Evans and Paul Streets.

Q7 **The Chair:** Good afternoon, everyone, and welcome to this second part of the Public Services Committee examination of procurement and public services. I am pleased to welcome three witnesses representing organisations in both the private and the voluntary sector, whose members are commissioned to work with the public sector on a huge range of issues. We are looking this time at people's experience of public service procurement and at what ideas they have for changing and improving it.

Welcome to Tom, Paul and Kathy. When you are answering the first question, if you can introduce yourself and the organisation you represent, that will save me having to come back and do that formally. We are really interested in what you have to say this afternoon. This issue has been much more interesting than many of us thought it would be.

Q8 **Baroness Wyld:** Good afternoon to the witnesses. I have to start by declaring my interests. I am a non-exec at the Department for Digital, Culture, Media and Sport and a non-exec at Ofsted.

I wanted to ask you about the Government's Green Paper on procurement, which you will know they have recently published. In your evidence to our last Committee, all of you said that, when the Cabinet Office altered the guidance in light of the pandemic, you found, in many ways, the ability to be more flexible in tailoring procurement to local needs. I wonder whether you might reflect on that. Does the Green Paper, as it stands, open up opportunities for more of that?

Kathy Evans: I am chief executive of Children England, which is a membership body for children's charities. I also chair a group across voluntary sector organisations and infrastructure bodies concerned with contracting, so I hope to bring perspectives more widely than from the children's sector.

You are absolutely right. We welcomed the PPNs that happened and were issued during the coronavirus epidemic in March and then in June. We welcomed them so much that, when the last one reached its end at the end of October, the 17 different infrastructure bodies in our collective wrote to Michael Gove and asked, because it had been so useful to flexible partnership working, whether we could have an extension of that PPN guidance on flexibility.

Interestingly, we got a reply from Lord Agnew, where he explained, "Yes, they have expired. However, departments remain able to provide contractual relief and seek approval from HM Treasury for spend in emergency". This connects to my main point. He is not wrong. We wanted to see an extension to that because, in many parts of our public sector and procurement culture, there is reliance on going back to the rules. He is also right to say that those flexibilities always existed. The PPNs did not change what was possible with procurement; they just highlighted that it is possible and advisable to have a mutual relationship based on what each organisation, the commissioner and the commissioned organisation, needs.

It is salutary to think that that flexibility already existed. There are examples around the country of areas where we are particularly concerned. Most charities, if they are commissioned, are commissioned locally. There are council areas that recognised all the flexibility that sits within existing procurement regulations under the EU regs. It would remain the case that a creative, collaborative partnership approach can be created under the new, proposed rules of the procurement paper, but the problem is that we have a procurement culture that does not understand that flexibility and that approach to partnership. It is rule-driven.

There was a real opportunity to say, "Because we are leaving the EU regulation system, let us really grapple with what we want and need in public service commissioning". Unfortunately, this procurement Green Paper loses the distinction entirely between services delivered by people, for people, funded by people collectively through our taxes, and buying things. Both of those are really important. I am not here to comment on the appropriateness of the procurement regulations or reforms for supplies of IT or innovations in medical supplies, but there is a very important difference between the employment, the skills, the nurturing, the management and the training of brilliant social workers or nurses, and getting best value for money in the supply of bandages and medication.

In this, we do not have a sense that public services in the round are, first and foremost, for the people who need them. Nothing should be developed about us without us. The priority should be to work out what people need, where they need it, how they need it and who they want it from. If procurement is then necessary, that comes in afterwards. Unfortunately, this is reinforcing the idea that procurement regulations will make things better.

There are things within this paper that we welcome, and I hope I will get a chance to say a bit more about them. This is one of my favourite quotes: "If you are doing the wrong thing, doing it better makes you wronger, not righter. If you start doing the right thing wrong, every step in the right direction is a step to improve". Unfortunately, this is reinforcing the wrong starting point. It starts with procurement rules and, with public services, we need to start with the people who need them.

Baroness Wyld: You have certainly opened up the conversation, Kathy. I think I followed your rights and wrongs.

Tom Thackray: I am the director for infrastructure and energy policy at the CBI. The CBI speaks for 190,000 businesses across the economy, small, medium and large, in all sectors and all parts of the UK.

Like the previous witness, we were very welcoming of the flexibility that emerged through the pandemic response. It was really necessary and it is amazing to see what was achieved by the private sector, the third sector and the public sector in partnership over that period. It is important that we recognise that it was achieved in exceptional circumstances, but there are lessons that can be learned and brought forward in a future procurement system.

One that jumps out to me is how simplified procurement procedures can lead to delivery at pace. Wates had a great project with the Royal London Hospital when it delivered two floors of Covid wards within five weeks. That probably could not have been delivered without that flexibility being shown. They did not lose any transparency or accountability in that process. The pandemic has also shown, as in the provision of ventilators, how it is incumbent on the private sector and the third sector to come together and innovate to solve challenges. The way the public sector has set those challenges is really worth thinking about. It has all been underpinned by strong relationships.

Your original question was about the Green Paper and the extent to which the rules within it might help embed the positive changes that we have seen. I would be slightly more positive than Kathy was. A reduction in the number of procurement routes that a public contracting organisation can go down brings certainty to businesses. Previously, with the proliferation of procurement routes, sometimes the wrong decision was taken and it was very difficult, particularly for smaller businesses, to engage with that amount of optionality. That will be really important. The shift to dynamic purchasing systems will be crucial, particularly for smaller businesses, to understand what opportunities there are in public sector markets and to engage with those effectively.

It is also important to note that not everything has gone swimmingly with procurement in the pandemic. There were issues of transparency. If you look at the data collected on procurement decisions in the second half of 2020, at the moment it is really patchy and speaks to a backlog of information that is not yet in the public domain about how spending decisions have been made. There are good moves in the Green Paper to help address that, particularly with the advent of a new central digital system, which will be really important to changing behaviour.

Paul Streets: I run the Lloyds Bank Foundation for England and Wales. We are funded by but independent of Lloyds Bank. We fund about 800 small, local charities around England and Wales. That is our interest here, because many of those organisations are very dependent on public sector contracting and commissioning. Without that, they would collapse, so it is fundamental to their existence. These organisations have been right at the front end of supporting people during Covid, providing very flexible support, as we have seen in the media. That has been welcomed, including by Rishi Sunak in the announcement he made to support them late last year.

Looking at the Green Paper, the aspirations were laudable. The Government’s intent was sincere in this. They wanted to create a set of regulations that were simple to use and covered everything. Therein lies the problem. In the foreword that Lord Agnew wrote, he talked about a historic opportunity post Brexit and post Covid to look at a permissive approach, hinting that we may have more of what we saw in the approach we took during Covid. He references charities and social enterprises significantly, so it is clear that it is meant for them too.

There is a lot that we should welcome: the principles, public good, transparency, fairness, the ability to challenge, the focus on innovation, flexibility and longer procurement pipelines. But it feels like an enormous opportunity lost. What we have here is something that deals with £290 billion worth of public sector procurement, of which £11 billion lands with charities, largely through local government but also through central government. That £11 billion is crucial to literally thousands of small, local organisations across the country that rely on it.

For them, this is about buying pencils and battleships, not about buying services for people, as Kathy quite rightly said. It is about competition over collaboration and partnership. In Covid, we have seen partnerships between local authorities and charities in the same business of wanting to support people. This is not asking an organisation to produce something that it cannot; it is asking it to do what it does well better. It needs a partnership approach. It is not about competition.

This is a triumph of process over purpose. It has diluted, and in some ways destroyed, the idea of social value, because it has commercialised it by talking about in terms of climate change and apprenticeships. These are really important and, for Tom's members, they are crucial. We can see how this would work for many of Tom's members, but it does not deal with social value in the way that Newcastle Council has, which is about the local economy, local jobs, the local economic footprint, local volunteering opportunities and what it can mean to local people.

Tom has referenced the dynamic purchasing system. We have seen that now in operation. The MOJ has just used it in its probation commissioning. The feedback that we get from Clinks, one of our partners, which reaches hundreds of organisations that work in this area, is that it is a disaster. It is a nightmare unfolding, because they are being tied in knots around contracting.

Sadly, in spite of the aspirations and, I am sure, the sincere intent of government, this puts everything in one place. It deals centrally with procurement over commissioning, which is what we should be talking about in public services for people. It fails in its aspirations, and the danger is that it makes it worse than it was before. As Kathy said, we had flexibility before. We had a light-touch regime, although it was not always properly used. In spite of us talking about OJEU as a problem, there was flexibility.

In these regulations, we need permission for commissioners to take a flexible approach that is reliant on engagement with local people around local services. If you know procurement well, this is a fairly conservative body. They will look to these regulations and follow them by the line. Unless it is permissive, this will not allow the degree of flexibility that local charities and social enterprises will need to provide tens of thousands of services to local people, working with local government and with central government on areas such as justice.

Baroness Wyld: I was going to ask again about collaboration, but you have opened up the debate on that. Tom, a lot of your members work with social enterprises or charities, so perhaps you have another perspective on collaboration and partnership.

Tom Thackray: The biggest complaint from members is that procurement tends to be driven by a race to the bottom on cost. A benefit of the approach put forward in the Green Paper is that the rules that did not give commissioning and contracting authorities the confidence to have dialogue with the private sector and the third sector might be addressed. Streamlining the number of procedures, assessing based on most advantageous tender rather than most economically advantageous tender, or opportunities to enter into that dialogue and prioritise social value in a way that they did not feel able to in the past, will help. There are opportunities that we should grasp with the Green Paper to change the culture that we have seen in procurement so far, particularly that race to the bottom on cost.

Kathy Evans: I listened to your previous session and Joshua’s answers on innovation and partnership. It is vastly quicker and already possible to simply use grant funding to support partnerships without going near a procurement reg. I have always been bewildered that the idea that discretionary grants, which are still at the discretion of public commissioners, can make partnerships and matched funding happen really quickly is so out of vogue. There are quicker ways of working, undoubtedly.

Q9 **Lord Young of Cookham:** We have already heard some very useful advice on the procurement Green Paper and how we must take the opportunities that lie in front of us. We now have the freedom post Brexit to be more flexible. I want to take a specific example. Quite recently, the House of Commons had to renew its crockery and put out a tender. It was subject to the EU directives. A lot of the successful bids came from overseas and there was an outcry from the Potteries, understandably. Why was the House of Commons buying crockery from Poland or wherever it was? This was the answer: “We have to do this because of the EU but, once we are out of the EU, we will not have to”.

I see all the benefits, but are there not some downsides of protectionism and of not getting best value for money if we overuse the argument about apprenticeships in Stoke and the social value of reducing unemployment? How do you get the balance right on a macro scale and not misuse the freedom that we have to prop up industries that may simply be uncompetitive?

Tom Thackray: It is about balance. Our members would say that the balance currently, where price seems to trump everything, is not correct, but neither should we swing completely to a situation where we are just considering the apprenticeships that are delivered or a business’s payment performance, things that might not be directly related to the contract. That is really important.

You have to choose the right metrics and models when you are considering social value. They have to be proportionate to that contract and be scalable. It is right, for example, to expect larger businesses to deliver more social value compared with smaller businesses. It has to be transparent, and you have to make sure that the criteria of social value that you are measuring are tracked through the duration of the contract, in how it is managed, as well as the procurement decision.

That speaks to a point you covered in the last session about the skills, capabilities and capacities within contracting authorities to do that. What is proposed in the procurement Green Paper is a much more flexible system. That will enable commissioning and contracting authorities with good skills to provide excellent procurement. However, if you do not have that basic skill level, there are dangers that it turns into a bit of a mess and is not delivered effectively. The ability to embed social value in contracts and to recognise local value is positive. It is right that you can use public procurement to realise government objectives such as levelling up. There are good examples, particularly in infrastructure, of how that is possible.

Our members have some worries about when local becomes parochial. There is a danger of politicisation of procurement when you get down to the very local area. For example, if you are a small business with a small footprint and you do not have an employment base within a contracting authority's area, but it has set a very tight geographic area for what it is looking at, that will restrict competition and your appetite for bidding for that contract.

Lord Young of Cookham: Kathy, your body language indicated concern at the direction of my question. Do you have a response?

Kathy Evans: My concern was that I am not in the business of crockery supplies or particularly representing those interests. What you have described is a really strong illustration of why we ought, at the very least, to have different regimes addressing the appropriate manner, issues and procedures for procuring public services to people in Stoke versus the question of supplying crockery to Parliament. Those are different exercises, and it is impossible to ask a single set of rules to give the right weighting and balance to each of those. There is an international market for crockery but there is no market for local befriending services for the elderly. It is not a market.

There is a case for saying that our new procurement regulations should structurally separate public services that need to be commissioned from supplies that need to be well purchased. There is also the possibility of taking certain things out of scope of public competition rules. From my interaction with the Cabinet Office prior to the Green Paper, it did not have an appetite for doing that, but there are examples of it. The DfE took special school high-needs placements out of PCR in 2018 because it is not a market. You cannot compete to do that business outside the state needing to pay for it, and that logic applies more widely. I would like to see an appetite for revisiting what falls in scope of the regulations, as well as thinking differentially about how things such as social value would apply to the difference between crockery and local services.

I would be less concerned about a social value weighting on the place of origin of supply for crockery determining the eventual decision for a 20% or 30% weighting on the contract relative to the concerns we have about discretionary direct awards that lack some scrutiny over the reasons for choosing particular suppliers at all.

Lord Young of Cookham: Paul, do you accept the distinction that Kathy makes between services and goods?

Paul Streets: Essentially, the focus needs to be on quality, not value or cost, when we are talking about services. Your crockery example is a really good example of why this is a problem. As Kathy said, we are talking about a set of guidance here in this Green Paper that effectively covers crockery as well as, for example, domestic abuse services, homeless services and mental health services.

There is an important distinction in the nature of the organisations that we are talking about procuring here. I am with Kathy; there is a question about whether we should take public service out of procurement altogether, if it will be effective. We are talking about organisations whose core business is domestic abuse, homelessness and mental health, which are already working in that local economy, which are already attracting funding from people such as us into that area, and which already have a strong local footprint and presence.

What they want with a commissioner is a partnership approach that says, "We are in this business together. We are dedicated to supporting homeless people in Stoke", if we use that example. "Let us work together on thinking about how we can best do that, bringing the resources that we already provide as a charity working in Stoke alongside what you can do with us as a commissioner, in partnership and collaboration". That is absolutely right. What works for crockery will simply not work for domestic abuse in Stoke. That is the problem with the Green Paper as it stands.

It is a laudable attempt to put it all in one place, but there is a lot of collateral damage here. That is an unintended consequence, perhaps, given the scale of procurement right across government. But, as I said earlier, we are still talking about £11 billion, a lot of it going to charities and affecting tens of thousands of local organisations around the country. For them, this is really material. These are organisations whose turnover might be, for the ones we fund, £500,000 a year, of which half comes from a local authority. They are reliant on a local authority that is looking to this Green Paper for guidance on how it goes about procurement, as opposed to commissioning in partnership.

Lord Young of Cookham: That has been really helpful.

Q10 **Lord Bourne of Aberystwyth:** Thanks to our witnesses for some very useful evidence. The ambitions of the procurement Green Paper are welcome, particularly the greater focus on social value. The pandemic has shown how important that is, and there is a public appetite for that. Paradoxically, there will be an even greater pressure on public finances, with local authorities no doubt being hindered, because of funding pressures, in giving social value a greater prominence. I wonder how our witnesses think we can tackle that. Perhaps it would be useful to hear from Paul first, because he finished on that point.

Paul Streets: Local authority funding is hugely significant for the organisations that we are talking about, for the reasons I outlined. It is a broader issue that threatens the ability of people to access the support they need, unless we address this properly. This is not really about procurement. Going back to Kathy's point, it ought to be about public service commissioning, working hand in hand with local authorities and commissioners. An issue with local authority funding is that the most deprived areas are those that face the highest needs. They probably have the least ability to generate income, so what happens to public finances, particularly local public finances, will be critical to the survival of these organisations, as we hear, from March.

If we play this forward into 2021-22, a lot of these organisations will have received short-term funding, and lost long-term, two or three-year commitments. The funding settlement for local government becomes critical in enabling them to secure longer-term resources that will take them through to 2022-23, at a time when the big shift has been towards short-term funding.

Linked to that is Kathy's point about grant funding. We are an advocate of grant funding and would ask why we always need to take a procurement approach, when a grant funding approach may well be much more appropriate for the types of organisations and services that we are talking about.

Kathy Evans: I do not have a single member who does not appreciate the value of social value being recognised and promoted by government, as far as possible, within the commissioning context that they operate in. I cannot help separating in my mind how it applies to public services and to the procurement of goods and things. There is a valid public interest in this. If you are looking at 20 bidders for IT supplies, one of which is a social enterprise that devotes its profit to public benefit and meets all sorts of social value criteria, it is perfectly relevant for a public authority to think that that is extra value for money on top of the contract value.

Looking at it in relation to public duty and public benefit for people, if you are small charity that has 80% volunteers, a very small staff and volunteer governors, with everyone rooted in their local community, you are social value. Social value is not what you add in a tick box down the side. Many members tell me that they are completely supportive of social value, but what they are usually asked for is added value. That means they are being asked, "How will you reduce the cost of our contract? Can you tell us how much your volunteers' time would be worth if you paid them? Can you bring in some grant funding from another funder? Can you lever some of your reserves against the true costs of this contract?"

That is not everywhere, but it is rendering the inherent social value of the public benefit sector irrelevant in the level playing field and then asking us to add it on top. It requires a bit of deeper thought in public services, but it could be given if we had two different regimes for service commissioning and for procurement of goods.

Tom Thackray: I will speak about businesses' experience. Since 2010, where we have seen local authority spending power reduce by 18%, the capacity and capability in commercial teams at a local level has diminished and has not seen the same level of improvement in recent years as we have seen in national contracting authorities. That is a real problem, because, as I said at the start, it does not matter what rules and regulations you change; if you do not have the capacity and capability to embed those changes and make sure that they are rolled out effectively, they are not worth the paper they are written on.

It is right that there is more of a focus on commercial capability, and that focus extends to local contracting authorities. The new unit to oversee commercial performance that is envisaged in the Green Paper is a positive step. Businesses recognise that they have a role to play, in spreading best practice and doing commercial secondments. The Cabinet Office has been pioneering knowledge drops, which are workshops where businesses can share experiences with public sector bodies. Extending those into the future is what I would advise.

Q11 **Baroness Pitkeathley:** I should declare an interest as president of the National Council for Voluntary Organisations.

I want to pursue the issue of grant funding with Paul and Kathy, who are both such excellent advocates for it. Can grant funding sit happily with funding that comes via procurement or commissioning? Is it possible to move between the two? If you have examples of where that is happening, say grant funding being used as seed corn money to move into well-procured services, could you give the committee some examples?

Paul Streets: We are advocates of grant funding, because it can sit alongside funding from other sources, including local government and central government. For probably half the organisations we fund, it does. It is part of a mix. If they are working in justice, they will probably be receiving some money from the MoJ, alongside grant funding from people such as us. If they are working in domestic abuse, they may be receiving money from a local authority, alongside money from us and potentially money from the Home Office. It is the mixed economy that they have. That is very typical of small, local charities, very few of which do a lot of local fundraising in a way that a big national charity would do. It is a very different economic model for local organisations.

There are very good examples of where grant funding has been used to lead into better public procurement. I will give you one with respect to my own organisation. We funded innovative work that the public sector would have regarded, quite rightly, as too risky to fund, working with perpetrators of domestic abuse. Ultimately, if we will stop domestic abuse, we need to work with perpetrators. It is contentious; it is expensive; it is difficult to do. As a grant-maker, we were able to fund that and create the evidence base to prove that public services could then pick up that work, and they have done. Local authorities, police and crime commissioners and the Home Office have picked up that work.

The sector is replete with grant-makers that have used seedbed money to prove an idea as possible, and then the public sector has picked it up. As the grant-maker in this particular case, we were able to commission a Bristol University study to prove there was an economic case for the investment, because we recognise that from a value-for-money perspective we need to be looking at that.

The answer to your question is yes. They can sit and co-exist side by side, and there are benefits to the charities, to government and to grant-makers such as us. More importantly, there are huge benefits to services for people, which can improve with that virtual relationship between us, as grant-makers, and central and local government, working hand in hand as co-funders, as we so often do in almost all the charities that we fund.

Kathy Evans: It is a favourite subject, as you have said. I believe in the value and creativity of grants for charitable work, but, as we have seen during the pandemic and recently with the post-Christmas announcement of grant programmes for local businesses affected by shutdown, grants work in an important distinctive way. They pay forward rather than paying in arrears. For many organisations, particularly charities that have started their work locally without any kind of public money and developed into something that is really valued locally, you can give them a grant, respect their continuing ability to function and contribute to it.

When you turn it into a contract, they have to be ready to take on a contractual liability and think about things such as VAT, but, quite critically, you take control of the product. You commandeer something that they originated. Over the years of changing from grant funding to contracts, a lot of organisations that originated work locally saw it put out to tender and awarded to others.

The Green Paper does not address the origin of valuable work that the public want to fund. Not only is grant funding the only appropriate way to do that, but it is the only real way to fund innovation. I heard conversations about contracting before. Contracting for innovation is like dancing to architecture. It is the wrong verb for the noun. Contracting is underpinned by knowing what you want already, pinning it down and then expecting delivery of it. Grants are the way you can fund the potential to try new things and to invest in them. Yes, it is vital. It is particularly vital for small organisations that have no interest or capacity to think about the liabilities of contracting.

I have had small examples of parts of the public service going way past tendering, straight past "go", to spot purchasing. Even a lot of what is in the regulations now would not address the chaos of spot purchasing in the care system, for example. Some councils realised that it is not a very smart way of spending money to spot purchase care placements one by one, week by week. If we know we will use you for a whole quarter, why do we not just give you a grant up front? Settle the amount. That takes all the negotiation out of the amount. It takes the potential for you to push us up on price out of the amount.

There is a realisation that single grants paid in advance could be a smarter way to make sure that the public gets value for money from vital services that they rely on, but it is bizarrely not nearly as widespread as it should be.

Paul Streets: I want to draw a distinction between the crockery example and the work we fund. It is an interesting parallel. If we think about crockery, Lord Young, you and I probably have agreement on what makes decent crockery. We can assess what we think is a good pot and what is not, and we will probably be half right.

When we are talking about complex services such as domestic abuse, frankly I do not have a clue what a woman facing domestic abuse really wants coming through the door. Yet if I am running a local authority I have to procure it. How on earth do I do that without properly talking to the people who are closest to the issue? Those are the people running the local charities, who set them up because they wanted to address the issue locally. The procurement paradigm turns the purchaser into somebody who knows more about the service than the person delivering it. That is probably true when we are talking about crockery; it is not true when we are talking about domestic abuse.

Fundamentally, we need to listen to these organisations and the service users who come through their door to decide what we will procure. This procurement mentality is the opposite of that. We have moved towards unrestricted funding as a grant-maker, because we recognise that the charities we fund, even though we are relatively close to them, know far more about the services they are providing than we do.

The best thing we can do, in the same way you would as a venture capitalist, is to look at the people running the organisation and its governance, say whether it is competent and back it to do its work properly with unrestricted funding. That is not procurement; that is a grant. It is backing somebody who is good at what they do to do it better. It is a fundamentally different approach.

Q12 **Lord Hunt of Kings Heath:** It has been a very interesting discussion. I want to slightly widen it to the health service, because listening to the conversation I thought of hospices, where I have had some interest. My understanding is that hospices get some money from the health service. Often it is by way of an annual contract, which is often agreed not by the beginning of the financial year, but some way through.

If one were to move to what I am sure hospices would like, a three-year rolling grant so that they always know three years in advance what they are likely to get, would there be enough bite in that arrangement to ensure that, first, it was being well spent and, secondly, they were responding to change? I love hospices, but some of them had to be pushed into giving more community care as opposed to residential care. If we have the kind of regime Kathy and Paul are asking for, it still needs to have bite. I would be interested in your views about how you would get it.

Kathy Evans: I recognise the fear in that, but that would be a fear in current procurement culture. We have this idea that, if the specification is right, we run the competition right and the contract is detailed enough, we hand it over and that will make sure that they do what we wanted. It is not a very collaborative partnership approach to the relationship between the public funder and the delivery of service. There are some interesting examples around the country, which are even bolder than what you have just described. In Plymouth, there is a 10-year alliance contract between 26 providers. That includes health and social care specialisms, with private, voluntary and public services, all in one. They have co-produced it together. It is a contract; it is binding. They have commitments to deliver it collectively.

That means that they have to keep interacting on whether they are doing the right thing, whether they need to adapt and whether more resources are needed in different parts of the partnership and less in others. There is a possibility of reviewing that if one of the partners is not working collaboratively. It involves open book accounting commitments, so it is not about putting in a bid, getting the money and walking away. Everyone is being scrutinised for what they actually spend and then being paid recovery for it.

There are ways in which you can get round the fear that, having made a decision and committed to a medium to long-term funding partnership, you might be entrusting to something that ossifies. I recognise that fear. In some ways, that was where competitive tendering started: to try to shake up some very self-satisfied and inflexible established partnerships. You can definitely create the behaviours within partnerships that would prevent that risk with grant funding.

Lord Hunt of Kings Heath: Paul, do you share that view?

Paul Streets: It is a good question. We work with charities, and I find that they have a real thirst for learning and improvement. We do a lot of organisational development support and it is very universally liked by the organisations we provide it to, because they recognise that they need to innovate and think forward.

This is not an either/or. A good commissioning approach brings commissioners together with providers. I will give you an example, which the Green Paper effectively rules out. We have seen this through the innovation partnerships that were permissible under the old regulations. It is a health example in Oldham, on social prescribing. It is not about hospices specifically, but we have seen local GPs work alongside Action Together, Age UK, Positive Steps, Mind and Altogether Better, all charities working in the area, to reduce GP referrals and attendances, and have a significant impact on A&E attendances.

The innovation partnership approach allowed that to be developed by, in this case, GPs, with the knowledge of their client group, and charities, with a different kind of knowledge of their client group, thinking about what they could best do together. That is a much more effective way to commission local services for health, with local people working alongside local providers. In health, you often do have an expert purchaser, if GPs are in control rather than commissioners. It is not either/or.

You are right to ask the question, but from our experience there is a real thirst for improvement at these organisations. Often, commissioning and contracting is the opposite of that, because it overspecifies and ties people down in knots. To my earlier point, it means that they look upward to commissioners in providing data, rather than outwards to the people they serve, and that is the crucial thing. We want them to focus on the people coming through the door, who can decide with their feet whether they want a decent service. This is a key demand for us as a grant-maker: demonstrate to us how you are connected to and listening to the local people you are providing this service to, and how you are measuring your service in a way that matters to them. That turns it on its head and puts them in control, which ultimately is where this kind of commissioning should be.

Tom Thackray: The existing approach to procurement has led to transactional relationships. What the private sector would benefit from, as much as the third sector, is early engagement with the market, understanding what the capabilities are, ongoing dialogue throughout the award of the contract, and for commissioning and contracting authorities to be confident to do that in a way it has not been done previously. We are on a journey of improving procurement capability and capacity in the public sector. There have been some really good moves on that in the last year or so, particularly with the outsourcing playbook, as far as the private sector is concerned. I hope that the Green Paper can embed that further and move the culture on from the race to the bottom.

Q13 **Lord Bichard:** I was wondering whether Paul and Kathy felt that the issues we have been talking about this afternoon could not be addressed if we started talking about commissioning outcomes rather than procuring and commissioning services. When you start talking about commissioning outcomes, there is a much greater chance of encouraging collaboration and innovation, and of dealing with what Lord Hunt was talking about: that is, being very clear about exactly what you are expecting to be delivered.

It is a very different way of approaching this issue. Does the Green Paper acknowledge that sufficiently? Do you think approaching it in that way produces yet more problems, or is that the way we should be moving?

Paul Streets: No, it does not, but that is primarily because the Green Paper is focused on products, where I guess this probably works, not people. We would agree with you that outcomes are the best way to start with that, but the question then is whose outcomes. It should not be the outcomes of the commissioners; it should be the outcomes of the people who come through the front door, hence my response to Lord Hunt earlier.

The critical bit is to ask organisations how they are assessing the needs of the people who come through their front door in the way they want outcomes to be achieved, delivering them and then demonstrating that. To your point, an approach towards outcomes would definitely be beneficial, provided that those outcomes are defined, as they would be in a consumer market, by the person coming through the door.

Kathy Evans: I disagree. The Children Act 2004 embedded a set of outcomes for children that became the framework for joint commissioning for children. Whether done well or not, it has certainly been the dominant language through which commissioning and procurement has been done for children since. There is a lot of learning. There is a lot of evidence not only from here, but from America, of a long history of trying to procure and manage services to outcomes.

I used to be a huge advocate of it. The reason why it does not work, even though it sounds like it should, is because outcomes are a real thing, but you will only learn how they were achieved after they have been achieved. The NHS diagram of how obesity is caused and tackled looks like an old-fashioned medieval map: "There be beasties here", and so on. There are so many factors at play in any person's life that affect both what they need from you and how they can engage with it. It is different for every person.

It is right that organisations should be tracking, measuring and accounting for what they do and how well they do it, but if you say, "I'll achieve this outcome for you", two years ahead of time, it has perverse effects. We see these things in the system, particularly with payment by results, such as creaming and parking, targeting particular people and working out whether you can achieve the outcome, and if you cannot it will make your performance management look bad. We end up with overspecialisation and with people passed around.

While I certainly agree that we should be focused on the real lives of service users and making them better, you still need to engage with their present and follow that where it needs to go, rather than saying, "I'm here for that outcome".

Lord Bichard: Are the two in contradiction? Paul is talking about involving users in defining the outcomes. The danger of not doing that is that you continue to purchase services that become increasingly irrelevant to clients.

Kathy Evans: You do. This is why it is important to move away from the idea that it is purchasing the service that achieves an outcome in any way, shape or form. The job of good commissioning is to know what is needed to meet a wide range and diversity of need, and to understand that level of need really well. You can understand that by speaking directly to the people in the community, and the people who are already close to them and providing services.

One effect of thinking that everything is about commissioning for outcomes, for example in the children's care and mental health sectors, is that, for nearly 20 years, we have been talking about a crisis of not enough care. Commissioners have said, "We do not commission beds. We commission outcomes". It has ended up with a massive shortage of beds. When you look at each child, you say, "I'd like better outcomes for them", but we have not invested in the capacity for that to be available when they need it.

No one would argue for commissioning to product outputs or technocratic targets, but real-life outcomes are slowly achieved. They are achieved through your personal life as well as what you get from a public service. A child may be helped by their school, their care provider, their foster carer and their faith group all at the same time, and all of them may want to claim, "We achieved that outcome", but it is not science. It is being involved in their life that really matters.

Q14 **Lord Davies of Gower:** Good afternoon, everybody. It has been fascinating, and thank you for all your answers.

Tom, you are the target of this question, I am afraid. It is basically about the private sector organisations that had been contracted by the Government and perhaps failed miserably during the pandemic to deliver. I wonder whether you think that the procurement Green Paper goes far enough. Is it radical enough to address these poor outsourcing practices?

Tom Thackray: It is right, when public services and contracts fail to deliver for citizens, that there is accountability for that. Scrutinising failures is the only way that change happens, and you get a better outcome in the future. The process we have gone through since the collapse of Carillion, for example, and some of the procurement and behavioural reforms that we have seen since then, is testament to that process of understanding what went wrong and what we needed to change in the future.

There is a danger that, in focusing on things that have gone wrong, you forget about all the partnerships that have been successful. To give you a sense of scale, there have been 52 investigations into partnerships between 2016 and 2019, juxtaposed against a situation when the public sector is awarding around 40,000 contracts every single year, so we are talking about a relatively small proportion of contracts that are failing. None the less, it is really important to learn the lessons from those and understand what we can do better.

There are some things in the Green Paper that help us with that and some things that we would argue are slightly counterproductive. On the positive side, enhancing the requirement for transparency for contracting authorities and suppliers is really important and something that we need to get on with quickly. The requirement to publish contract amendments online and in good time is really important. Services, contracts and requirements can change, but if you have no visibility of what has happened, there is no means by which the public can judge whether services are being provided to the appropriate level.

However, there are worries among our members, as you might imagine, about this idea of a disbarment register, where companies where there has been poor performance will not be able to compete for contracts in the future.

There are three elements to the concern that we hear from members. First, it feels rather one-sided, in that poor performance is taken into account, but good performance is not. They can deliver exceptionally for 20 contracts, but if one contract goes badly, does that mean they are excluded from competing in the future?

Secondly, it fails to acknowledge that, in the corporate world, companies can change pretty quickly with changes in leadership. You disincentivise that change by imposing those restrictions on accessing public sector markets in the future.

Thirdly, what signals does that give to potential market entrants in the private sector, small businesses perhaps, which may look at the reputational risks associated with engaging with the public sector and decide it is not for them?

Kathy Evans: There is a related question about the idea that the more delivery you can demonstrate as valid for a tendering exercise, the greater advantage you should have. If all you have ever done and aim to do is to deliver locally, and this is your first contracting exercise, you appear to be at a disadvantage for not wanting to go for other work, when it should be perfectly valid to want to sustain your one service.

The Chair: Thank you to Kathy, Tom and Paul. We appreciate you coming along and we are sorry that we have all had to miss the inauguration for this, but we have had a very interesting session. You have given us lots to think about and discuss. We are very grateful to you.