

Delivering Healthy, Safe and Fair Work

***- public procurement actions for
healthier, safer and fairer work***



SCOTTISH HAZARDS

January 2022

What can to be done?

Trade union recognition as well as awareness of the benefits this brings to trade union members is greatest in public sector workplaces. In marked contrast non-unionised or even worse anti trade union workplaces, many of whom will be in receipt of publicly funded contracts and their share of over £13 billion of the annual public procurement spend. Trade unions have influence and power in workplaces where they are recognised, delivering superior working conditions for their members. However, far too many members are disenfranchised from unions and the collective strength they bring to the workplace and this includes organisations in receipt of public contracts.

Having a greater awareness of the public procurement system and how it can be influenced by trade unions and others to the benefit of workers throughout the supply chain is vital to creating healthier, safer and, ultimately fairer work for all.

From buying office supplies, electronic equipment to occupational health services the purchasing decisions taken by public bodies in Scotland have a direct impact on their employees and trade union members.

Trade unions influencing procurement outcomes

The [Scottish Government's Procurement Journey](#) is an online procurement tool developed to ensure best practice and consistency is central to Scotland's public procurement decisions.

Depending on the value of the contract there are three different routes into the procurement journey.

Route 1 for lower value contracts under £50k

Route 2 for contracts above £50k but below the Government Procurement Agreement (GPA) thresholds

Route 3 for contracts above the GPA limits.

Up to date GPA limits can be found [here](#)

There is guidance available for public bodies tendering for contracts within each of the routes. Route 3 has a webpage devoted [to identification and engagement with stakeholders](#) this contains a definition of a stakeholder as being someone *“who has in interest or concern in something e.g an activity or a business”*.

If we use an example of a local authority tendering for a new occupational health provider.

Under the threshold for Schedule 1 organisations any tender for a contract value above £122,976 would result in the purchaser having to follow Route 3 of the procurement journey. If, however the provision of services falls within the Light touch regime for services then the threshold is £663, 540.

If the latter is true then we would imagine most contracts for provision of occupational health services would follow Route 2, following this route does not require consultation with stakeholders. Scottish Hazards would be concerned the higher threshold would result in purchasers believing there is no need for consultation on tenders for occupational health services other than in the largest public bodies. However, there is nothing to prevent public bodies applying the principle of stakeholder engagement required in Route 3 to procurement exercises undertaken through Route 2 even although they are not required to do so.

Why is consultation in these tenders important?

The role of trade unions in protect the health and safety of their members and delivering fair work should not be underestimated. Scottish Hazards believes the arguments in Route 3 of the procurement journey for ensuring stakeholder engagement in procurement also holds true for trade unions, who have to be a key stakeholder as their members will be using the services or goods being purchased.

Returning to our occupational health services example, why should trade unions be involved in the procurement exercise.

1. Trade unions have **expertise** in occupational health and safety and have been at the forefront of raising the profile of the occupational ill health agenda, their **feedback** on proposed tenders,
2. Occupational health services have become a victim of the free market, providers change due to the tendering process and those having to use the services have little say in the quality or quantity of the provision. The procurement journey suggests purchasers should **meet** with trade unions as stakeholders and **manage** their expectations that occupational health services are fair and accessible to all.
3. Dialogue between purchasers and trade union stakeholders should be subject to **ongoing two way communications**. This is crucial to ensure that trade union stakeholders have the opportunity to influence employers

thinking on the range of occupational health services to be included and how they should be delivered.

4. Purchasers should seek to get trade union stakeholder **buy-in** throughout all stages of the process. Ensuring this support would help to build confidence in occupational health services, something that has been eroded over many years of employers ignoring trade union concerns regarding occupational health services.
5. Employers have tended to use occupational health services as a sanction rather than health interventions to ensure workers can continue to work or return to work after absence. Occupational health referrals can lead to capability dismissals and will influence decision on whether the sick employee receives partial or full ill-health retiral or nothing. With so much at stake for their members far more needs to be done through procurement to ensure trade union stakeholders can **support** occupational health service provision after the contract has been awarded.

The words in bold and underlined are key words in the Scottish Government's Procurement Journey to support stakeholder engagement at all stages of the process through Route 3. Scottish Hazards believes it should also be compulsory for stakeholder engagement in Route 2 procurement processes or, at the very least where trade unions have an interest in the goods or services being purchased.

The supply chain

If procurement is to deliver safer, healthier and fairer workplace public bodies will have to develop procurement policies and practices that encourage supply chain companies to go beyond their legal obligations in respect of both employment and health and safety law.

At the moment it is not clear how prospective suppliers are supported to meet the demands of purchasers or indeed if there is any monitoring to ensure their commitments to health and safety and fair work are actually being delivered.

The [Supplier Development Programme](#) provides support to SMEs and third sector organisations to help them win public contracts. Their website indicates the work across all Scottish Local Authorities and the level of support varies between local authorities. Their website also indicates both health and safety and fair work feature in the package of support they provide but to what extent it is hard to say as this information is available to members only.

SDP organises meet the buyer events across Scotland where SMEs but, again it cannot be ascertained what advice is being given to SMEs on, for example trade unions being the most effective platform for employee voice or, in the case of health and safety the need to consult with staff on health and safety matters including the preparation and implementation of suitable and sufficient risk assessments.

Using the definition of an SME as an employing organisation with less than 250 employees then there has to be opportunities for organising through procurement and for Scottish Hazards to continue supporting workers employed in the smaller SMEs and identifying opportunities for STUC affiliates to seek recognition in employers where they have an interest.

The Supplier Development Programme would seem the most obvious body to ensure employers know what is expected of them regarding fair work but little is known about the organisation but is hard to access information on how fair work and health and safety demands are being communicated through their meet the buyer events.

Workers Safety Advisers

Scottish Hazards believes all organisations should have to prove their commitment to health and safety and fair work at every stage of the procurement journey. This means more than providing evidence of the mere existence of policies and procedures but also that they practice what is in these policies.

Furthermore in the same way as commitment to providing fair work requires employers beyond their legal obligations we would encourage employers to do likewise in their health and safety management practices.

While employers have a legal duty to consult with workers on health and safety matters including their workplace risk assessments how they manage their health and safety is pretty much at their own discretion including engagement with workers.

In 2005 the STUC received funding through the HSE's Worker Safety Adviser Challenge Fund¹ to work with 3rd sector organisation to improve worker engagement in health and safety.

¹ [Workers' Safety Advisers \(WSA\) Challenge Fund Evaluation](#), Greenstreet Berman Ltd for the Health and Safety Executive 2007, pp 204-208

An experienced trade union health and safety representative was employed to develop worker engagement in 25 voluntary sector organisations across various sectors including care and recycling.

Organisations signing up to participate were a mix of unionised and non-unionised workplaces and the WSA worked with the employer and their workers to develop health and safety structures or review and improve existing arrangements.

Work included;

1. Identifying key influencers in the organisations who would go on to be the main contact for the WSA, these individuals could either be managers or workers.
2. Setting up health and safety consultation arrangements including accessible health and safety committees, one organisation supporting deaf people provided BSL interpreters for health and safety meetings.
3. Review and updating of health and safety policies.
4. Working with management and workers to identify health and safety priorities.
5. Assisting organisations to prepare suitable and sufficient risk assessments and implement control measures to mitigate risk.
6. Providing support, mentoring and online training over a 12 month period to ensure sustainable improvements.

The scheme rated highly in the WSA evaluation² and participating organisations notice a real difference in their management of health and safety including improved dialogue, an improvement that extended to other areas of industrial relations such as the joint management, worker online education provided by TUC Education.

Scottish Hazards believes the possibility of using the Workers Safety Adviser model to help companies seeking public contracts improve health and safety standards including worker engagement and would welcome discussions with the STUC to look at how this could be taken forward.

It may also be that this model could be transferrable to fair work, encouraging worker engagement as the model to raise awareness of fair work and its

² [Workers' Safety Advisers \(WSA\) Challenge Fund Evaluation](#), Greenstreet Berman Ltd for the Health and Safety Executive 2007, p 110

dimensions in non-unionised workplaces as well as assisting in its implementation.

Fair Work Watch

Scottish Hazards believes there is a need for independent monitoring of fair work and its implementation across every business sector and in every business in Scotland and this would include how effective Fair Work First will be in driving fair work improvements through public procurement.

Our own COVID casework has included a number of incidences where companies who do not recognise trade unions, or worse oppose any notion of doing so. These non-unionised employers create significant threat to the success of fair work as effective voice, the most crucial fair work dimension is often absent, the voice mechanism is ineffective because the views of workers are ignored in decision making processes.

Employer have a duty to put in place arrangements to consult with workers in good time on health and safety matters³. This includes when carrying out assessments to the risk to worker's health and safety arising from their business activity and of course, encompasses the risk arising from COVID. Unfortunately, in our experience consultation in non-unionised workplaces is haphazard at best and non-existent in many cases, employees do not know who their elected representatives are (if they exist) and the process is one of communication rather than consultation through constructive dialogue.

Even where legislation exists placing legal obligations on employers to consult with workers, failure to do so is unlikely ever to be enforced. Fair work is asking employers to do beyond legal obligations so an alternative approach is required to monitor fair work performance in companies tendering for, and securing public sector contracts.

Electronics Watch is an independent monitoring organisation, bringing together public sector buyers and civil society organisations in electronics production regions, with experts in human rights and global supply chains.

A number of public bodies in the United Kingdom are affiliates of electronic watch demonstrating how responsible public procurement can be used to improve working conditions of workers in the electronics industry across the

³ The Health and Safety Consultation with Employees Regulations (1996)
<https://www.legislation.gov.uk/uksi/1996/1513/contents/made>

world. Monitoring of working conditions is worker driven and supported by civic society organisations.

Electronics Watch has developed a network of independent monitoring partners⁴ to gather information locally on employment issues in the electronics industry such as pay, health and safety, consultation, collective bargaining etc. The aim of the organisation is to ensure the rights of workers in the electronic supply chain are respected, workers voice are heard and working conditions are safe and decent, aims entirely compatible with fair work and its dimensions.

Scottish Hazards has dealt with cases involving private and third sector supply chain employers whose treatment of their workers has been anything but fair as outlined earlier and there has to be a case for developing a fair work monitoring system to oversee the fair work commitments of Scotland's public sector supply chain companies.

Conclusion

Scottish Hazards is committed to fair work but would echo recent comments for the STUC and some affiliated trade unions that it should not be accepted that the current model is perfect. We remain unconvinced the message of fair work is reaching many non-unionised workplaces and the leverage public procurement could provide in creating a fair work economy is not being exploited to the maximum advantage.

We believe the Procurement Journey provides public sector buyers with a clear set of guidelines about their legal responsibilities and the Scottish Government's expectations of how fair work should be addressed in tenders. Scottish Hazards has some difficulty in accepting the very low weighting given to fair work in document we have seen, we feel it unlikely that organisations are unlikely to undergo behavioural change and commit to fair, safe and healthy workplace practices when they have little influence on the eventual outcome of a decision to award a contract or not.

Trade unions should also be more involved in public procurement decisions of the public bodies where they have recognition agreements. There is a duty placed on employers to consult trade union safety representatives on health and safety implications arising from introduction of new technology but there

⁴ https://electronicswatch.org/electronics-watch-monitoring-methodology-guidance-1-0_2577562.pdf

is no similar duty to consult on public procurement contracts, such as facilities management, that could have an impact on their members workers lives.

Fair work is about encouraging employers to go beyond their legal obligations to build a society and economy based on fair work, this message will be lost on many employers who only provide the minimum rights that are required to by law yet will still expect to benefit from public sector contracts.

Perhaps legislative change need to be considered to ensure maximum fair work advantage can be gained through public procurement.

Scottish Hazards

January 2022