



Communities and Local Government Committee

Oral evidence: [Local Government Procurement](#), HC 712

Monday 11 November 2013

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Written evidence from witnesses:

- [Transparency International UK](#)
- [International Association for Contract and Commercial Management](#)
- [Chartered Institute of Public Finance and Accountancy](#)

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Members present: Mr Clive Betts (Chair); Bob Blackman, Simon Danczuk, Mrs Mary Glendon, James Morris, John Pugh, John Stevenson, Heather Wheeler, Chris Williamson

Questions 185–278

Witnesses: **Dr Elizabeth David Barrett**, representing Transparency International UK, **Paul Mallory**, Vice-President, International Association for Contract and Commercial Management, and **Ian O'Donnell**, Executive Director of Corporate Resources, London Borough of Ealing, representing the Chartered Institute of Public Finance and Accountancy, gave evidence.

Chair: Welcome to our third evidence session and to our Inquiry into Local Government Procurement; thank you for coming. Before we get into the main business, members of the Committee have got to put on record particular interests with regards to this Inquiry. I am a vice-president of the Local Government Association.

Heather Wheeler: I am a vice-president of the Local Government Association, and my husband is a councillor.

Bob Blackman: I am chairman of the all-party parliamentary group on outsourcing and shared services.

Simon Danczuk: My wife is a local councillor.

Heather Wheeler: I am also chairman of the all-party parliamentary local government group—sorry, I forgot that one.

Q185 Chair: So many hats. Okay, so we have put that on the record. Just for the record as well, could you introduce yourselves and say who you are and what organisation you represent?

Paul Mallory: My name is Paul Mallory. I am vice-president for professional development with the International Association for Contract and Commercial Management.

Dr David Barrett: My name is Elizabeth David Barrett. I am an academic at Oxford University and I am representing here today the UK chapter of Transparency International.

Ian O'Donnell: My name is Ian O'Donnell. I am the executive director of corporate resources at the London borough of Ealing. I am here today representing CIPFA. I am also the chair of Fighting Fraud Locally, the counter-fraud strategy for local government. I am also a trustee of Public Concern at Work, the whistleblowing charity.

Q186 Chair: Thank you. You are all very welcome; thank you very much for coming. Just as an introduction, could you indicate to us whether you think there are serious factors now driving local authorities to improve their procurement approaches and what you think the factors driving improvement are?

Paul Mallory: Yes, I think so. It is an increasingly complex economic environment, not least the cost-cutting and the constraints that we all know about in local authorities, but also in terms of the demands on professionals to deliver new service models—new contractual models. Perhaps moving from dealing with major corporations to dealing with small to medium-sized enterprise, for example, introduces a degree of complexity in some cases. I also think there is an increasing focus generally in the UK on better outcomes from procurement and contracting, which is shining a light more and more on procurement professionals in particular to demonstrate better results from the process.

Dr David Barrett: I should say that I am here today representing Transparency International, partly because I was the researcher on this report about corruption risks in UK local government. One of the things that we found in the research for the report is that although there have been quite a lot of improvements in terms of probity in recent years in public procurement in many stages of the process—partly, it seems, pushed by the EU procurement directive and partly by the framework for checking standards around that—there is one area where there seemed to be quite a lot of concerns that the checks were less rigorous, and that was the area of contract implementation. At the post-award phase of procurement, several of the people that we consulted in the research suggested that this might be an area to watch.

In terms of other drivers of probity, another issue that emerged in the research for the report is that many of the checks on procurement probity are being weakened with some of the recent changes to legislation and the checks and balances around the conduct of both officers and elected members in local government. For example, one tool that used to exist, which was operated by the Audit Commission, was something called the use of resources, which was a mechanism for checking how local authorities were using their resources, and this had a whole section around public procurement. It seems that what this did is require local authorities to say what they were doing in this particular area to conform to best practice standards; and on the basis of their submissions they were then rated and given a kind of score.

It seems that that was quite good at driving standards forward, partly because there was a kind of reputational mechanism and authorities were in some sense competing with one another to get a good grade on that system, and that was driving them forward. It also allowed the Audit Commission, in setting the standards that they required local authorities to report on, to gradually up the standards and put in place additional areas and additional lines of inquiry that they were asking about.

Chair: I think we can probably follow up on that audit point a little bit later in more detail.

Dr David Barrett: Just to be brief: yes, that is a key thing that is now lacking.

Ian O'Donnell: I think the desire to provide good quality services to residents is one of the primary things driving councils. They have articulate and vocal customers these days who are keen to hold them to account at the ballot box—or, indeed, through JR or challenge to the procurement process. Other factors include innovation, which is driven by technology, and the fear of failure, which is one of the reasons why councils have as much procedure around the procurement process as they do. There is also a need to provide more for less, because of rising expectations from customers, rising demand for services and, of course, the reducing resources in the public sector.

On the question of probity and fairness, I think it is true to say that this is very much already embedded in the way that councils go about doing their procurement, and that has been caused by the fact that they face a very significant level of scrutiny and the risk of challenge, in a way that perhaps the private sector does not. Over the years there have been a number of rules put in place to assist councils in meeting the sorts of standards approaching fairness that are required from them—things like compulsory competitive tendering, which some years ago introduced some rules around this; the EU procurement rules obviously; the best value regime; freedom of information; and, more recently, the transparency regime.

The emphasis on transparency is undoubtedly a very good thing, but we would argue that it needs to be tempered by the need not to stifle innovation by councils or by their contractors.

Q187 Chair: As a follow-up point, how should we judge whether a council is effective in its procurement—or, indeed, how should councils themselves judge that? Is value for money so important now that it almost overwhelms everything else in terms of procurement and looking at what is good practice and what is not?

Paul Mallory: Yes, absolutely. The need to focus on the in-life part of contract management goes on to that point as well. The probity probably is there in the pre-award tendering phase—it is a very clear requirement. Probably there is more that can be done in in-life contract management—in other words, the measurement of performance or the checking that goes on during the life of the contract. That is an area that we would see contributing greatly to value for money. The danger with a procurement function is that all of the focus can be on getting to the contract and getting to the right price, and at that point, of course, you have not determined the final cost at the end of the project—I am talking about the more longer-term, perhaps more complex projects. There is a need to proactively manage through the life of the contract.

Dr David Barrett: Similarly, something that should be embedded in that value-for-money definition, apart from the price, is safety considerations. Often what you see with corruption in public procurement is that safety ends up being compromised by the use of substandard products. Similarly, if competition is unfair as a result of corruption in the procurement process, then that can mean that companies that are offering value for money are driven out of the market—they are not winning the contracts because there is corruption occurring in the process.

Ian O'Donnell: Councils measure success in procurement by looking at the level of budget savings that they make from undertaking the exercise. They consider whether the contract meets the required service standards, and they monitor that very carefully. They ensure that they meet the probity standards that are required. Councils are determined not to fail and, in fact, have a relatively good record compared with some other parts of the public sector in letting contracts. In terms of measuring their own performance, councils will benchmark their costs against each other; and CIPFA, in fact, runs a number of benchmarking clubs that assist councils to do this.

It is our view that councils do at this time have the sorts of skills, expertise and capabilities that enable them to procure their needs. However, there is a need for them to continue to develop as new methods come along, innovation comes along. What we see happening with councils is that they are using private sector consultants and other, similar resources, like CIPFA and institutes, to support their procurement professionals, not only in measuring the progress that they are making, but in developing expertise and taking on the sort of innovation that is available.

Q188 John Stevenson: I want to build on what has been said already about skills and capacity within local government. Do you think councils have those skills to deal with the contracts at the tendering stage and then obviously monitor the contracts as they develop over the years? Do the councils have those skills now?

Paul Mallory: Yes, sure. It would be fair to say there is scope for improvement—there always is, regardless of which sector we look at, public or private. The organisation I work for is a professional association for commercial and contract management, and we have global members, so we get to see quite a range of different skills and abilities in many different countries. There is always scope for improvement; one of the difficulties for professionals working in the local government area is the relative isolation of those practitioners in their particular local authority. We would like to see a lot more done to create critical mass by bringing more professionals together, and networking.

Q189 John Stevenson: Collaboration between councils—you see that as a way of improving the skills?

Paul Mallory: Yes, in terms of skills collaboration, quite aside from economic collaboration; yes, I think skills collaboration would help a lot. In private companies we find, where they are very geographically dispersed, that individual practitioners feel very isolated and do not get access to many examples of best practice. They do not get to see many examples; they just see what crosses their desk, so the more we can do to network professionals and help them to share experience and examples would help a lot.

Dr David Barrett: One problem that came up in the research is that there might be expertise within a local authority around procurement, but that is mainly employed in the pre-award and award phases. Then what happens is there is often a separation, in that the contract implementation is managed by the particular part of the local authority that is giving the service—so, if it is the IT department, then the IT department. At that point you might get a disjuncture, where the expertise of the procurement part of the council is not being employed to benefit the monitoring stage of the contract. There might just be a lack of awareness about what exactly the objectives and terms of the contract were, or the department that is the client is not fully paying attention to ensure that the contract is fulfilled.

Q190 John Stevenson: How would you rectify that?

Dr David Barrett: It would be important to join up those bits to ensure that the procurement function is playing a role in checking the monitoring, or this could be something that is done by the audit function, in terms of ensuring that the contract is implemented as foreseen. I would also say that procurement is an inherently complex area and, particularly for big projects and infrastructure projects, having the required expertise to really know whether a cost forecast is a genuine forecast, and whether there is a genuine need to renegotiate the terms of a contract, is something that is just inherently difficult. There is a certain amount of opacity there, which is always going to create a risk—it is just difficult. I have a colleague in Oxford who has done research on infrastructure projects, who finds that there are constantly these cost overruns, so that means it is very difficult to judge whether something is legitimate.

Q191 John Stevenson: Do you think councils fail to have the capacity to deal with the post-tendering implementation?

Dr David Barrett: There is a huge variation; I think some councils lack that capacity, but it is also a difficult capacity to have, and to have in each local authority.

Q192 John Stevenson: They could buy it in.

Dr David Barrett: They could.

Q193 John Stevenson: Do councils buy it in as a general rule?

Dr David Barrett: I do not know.

Ian O'Donnell: I would say that councils do not buy it in as a general rule. What tends to happen is that a contract will run for a number of years, so the officers who were involved in letting that contract and then implementing it will then not have any experience of doing another implementation until the contract is let again, which could be five or seven years later. Typically, the officers managing a contract would not be skilled in that process, and they would need a lot of support from the procurement team within the council. Part of the problem is how you ensure that those officers are properly trained and equipped to implement and manage a contract, given that they rarely get the opportunity to exercise all of those skills.

Training is the key to this: we would say that local authorities largely do have well-trained procurement staff, but we would also agree that there is always scope for improvement.

The collaboration work that is going on between councils at the moment is generating a new tier of procurement experts—these are people who are working across a number of different councils and typically would be working for a consortium. As a result, they may be being paid higher salaries. Certainly those salaries do not match anything like the sorts of salaries that would be paid to a purchasing head in the private sector in a company that is worldwide or even national, but that means there is a chance of attracting expertise into those roles that an individual council possibly would not be able to afford.

Q194 John Stevenson: As a generalisation, do you think the skill base is quite good in local government?

Ian O'Donnell: Yes.

Q195 John Stevenson: You do. Do you think it is equally as good in the implementation of contracts and ensuring it is managed properly?

Ian O'Donnell: That is a weaker area, partly for the reason that I gave—that the implementation itself is something that only happens once in a while. In managing the contract, there are lots of risks that officers have to deal with, not least the risk of fraud and bad behaviour by the contractor. What I would say is that councils seem to be getting better at this, and have come to understand much more than they did before that a good contract is one that delivers the right benefits for both sides. Typically now, rather than getting into a dispute with a contractor and letting that end up in court, councils will enter into dialogue with a contractor and seek to resolve the issues through dialogue, understanding the outcomes that both sides need in order to deliver services.

Q196 John Stevenson: Do you think the private sector has a role in the procurement process, in terms of helping the council ensure that it is implemented correctly?

Ian O'Donnell: I think the private sector is already contributing to that through a variety of different consultancies that provide expertise to councils on a routine basis. At my own council at Ealing, for example, we have recently conducted a review of our procurement function using a private sector consultant, with the idea of testing whether our procurement function meets the highest standards that it can.

Q197 John Stevenson: Just on the question of private sector involvement, any comments from others witnesses?

Paul Mallory: Following on from that, one of the things that we do quite a lot is an online skills assessment. It is one of the ways of helping individuals to benchmark themselves, because one of the difficulties here is that if you are sitting in a particular organisation, you do not necessarily know how you stand—nine out of 10 people believe they are above average. I did that survey recently, and nine out of 10 people put their hands up. It is quite hard to tell, if you are sitting in a particular organisation, how you are benchmarking externally, so skills assessment and those kinds of mechanisms can help.

Q198 Simon Danczuk: Starting with you Ian, how much do you think we are losing to fraud and impropriety?

Ian O'Donnell: The National Fraud Authority publishes an annual fraud indicator, in which it looks at all of the sectors in the UK economy and estimates the loss to fraud by

each of those sectors. In local authorities, the total figure for fraud loss from all types of fraud is £2.1 billion.

Q199 Simon Danczuk: Is that per annum?

Ian O'Donnell: Yes, per annum.

Simon Danczuk: In local government?

Ian O'Donnell: In local government £2.1 billion; that is correct. For procurement fraud, it is £876 million. That is the figure that they estimate. That is a crude estimate; it is based on a methodology that was developed by the Ministry of Defence police for estimating their own procurement loss in the MOD.

Q200 Simon Danczuk: Based on your knowledge and expertise, do you think it is higher or lower than that?

Ian O'Donnell: I think it sounds quite plausible to me that that is about right.

Simon Danczuk: You think it is around about right.

Ian O'Donnell: Yes, although I will say that the Audit Commission is about to publish its report called *Protecting the Public Purse*, which is based on a survey that it runs annually for councils, in which it collects all of the information about reported fraud. By comparison to the estimate, the actual reported fraud on procurement, reported by local authorities, was £1.9 million.

Simon Danczuk: £1.9 million,

Ian O'Donnell: £1.9 million compared with £876 million estimated.

Q201 Simon Danczuk: Right, okay. What do you make of all this Elizabeth? Are these figures about right, do you think? Are they underestimates or overestimates?

Dr David Barrett: I could not really comment on whether they are accurate or not; it is a very difficult thing to measure, and it is also very difficult to measure how much losses are according to corruption as opposed to fraud. Anyone who is involved in corruption and fraud has an interest in covering it up, and often the power to do so, so it is a difficult thing to measure. I would say that it is very important to make these efforts to measure it at a national level and to have a body with the responsibility for trying to collect that data, and to be able to hence pick out from that what the trends are, and where the risk areas are.

Q202 Simon Danczuk: Paul, what is your view?

Paul Mallory: I am afraid I also do not have any data.

Q203 Simon Danczuk: No. Have any of your members ever got embroiled in fraud or impropriety?

Paul Mallory: Absolutely not; none of them.

Simon Danczuk: None of them, no?

Paul Mallory: No, but we have seen the newspaper reports of some of the companies that have been discovered, some of which are corporate members of our organisation.

Simon Danczuk: That is what I am asking you for; have some of your members been embroiled in fraud or impropriety?

Paul Mallory: Most of our biggest members are the well-known household name corporations.

Q204 Simon Danczuk: Which of your members have been embroiled in fraud or impropriety?

Paul Mallory: I would not like to go there, I am afraid.

Q205 Simon Danczuk: You would not like to go there—why not?

Paul Mallory: I can only read the newspapers, the same as you, so I have no further information.

Q206 Simon Danczuk: What have you done with the members that have been embroiled in fraud and impropriety?

Paul Mallory: We have a very clear ethical code for being a member of IACCM, and people are required to sign up to that and comply with it.

Q207 Simon Danczuk: The ones that have been embroiled have been thrown out, have they?

Paul Mallory: Any suggestions that people are not complying would result in them being thrown out, absolutely.

Q208 Simon Danczuk: They have been thrown out. Have you thrown any out?

Paul Mallory: I am not aware of anybody being thrown out recently, no.

Q209 Simon Danczuk: But you are aware of some being embroiled in fraud and impropriety.

Paul Mallory: No. What I said was that I have seen some newspaper reports relating to certain companies, but I do not have any more information than is publicly available.

Q210 Simon Danczuk: As an organisation, do you not investigate that?

Paul Mallory: We do not investigate individual members, no. That is not our role. We are a professional association for commercial and contract managers.

Q211 Simon Danczuk: Yes, I know, but it surely reduces the perception of your organisation, and the other professionals who are abiding by the high standards that you have set, if they themselves read that other members of the organisation are embroiled in fraud and impropriety, but they are not investigated or thrown out.

Paul Mallory: No, I absolutely take your point, but we are representing the contract management profession, and what other professionals do within companies is not

something we can control or investigate. We absolutely require people to follow our code of practice, and if we ever discovered that they did not, they would be thrown out.

Q212 Simon Danczuk: You are not going out of your way to discover it, are you? That is the problem.

Paul Mallory: I do not think it is our role to go and investigate companies—that is not what we are there to do.

Q213 Simon Danczuk: Ian, as we move towards more private sector involvement in outsourcing, more contracting out to the private sector, do you think fraud and impropriety is more likely, less likely or no different?

Ian O'Donnell: It is probably no different. Councils have got a lot of defences in place already against fraud—probably rather more than the private sector would have. For example, because of the level of challenge that councils face around a procurement process, they pay a lot of attention to probity. Having said that, there is still quite a long way to go before all councils have adopted best practice across the board. We have our national strategy for counter-fraud in local government, and that strategy is driving a process for getting councils to engage with that best practice and adopt it.

There are a whole range of other things happening within the sector; so, for example, CIPFA has a better governance forum, which helps to support counter-fraud work in local government. We publish the Red Book, which is a standard for councils to use on counter-fraud action. We have a procurement and contracts audit forum, which is chaired by the NAO, and that has just recently commissioned a special interest group on procurement fraud, which will report back in December.

The Audit Commission had a number of tools that it had developed for local government, one of which is the National Fraud Initiative—that is the data-matching initiative that all councils are mandated to participate in. That is moving to the Cabinet Office as part of the reforms that are taking place under the Local Audit Bill. The Audit Commission also does the survey that I talked about earlier—*Protecting the Public Purse*—reporting back on how councils have fared in dealing with fraud. That is at a sector-wide level.

Councils will have local controls in place to help them to reduce the risk; for example, they will all have a set of procurement rules for staff to follow. They will have training for staff, separation of duties and sign-off thresholds, which staff will have to adhere to.

Q214 Simon Danczuk: I am conscious of time, Ian. There is no doubt about it: it seems to take longer to get through the procurement process in the UK compared with the European Union, perhaps for some of the reasons that you were just outlining there. It seems a very thorough process to go through, but we still have £800-odd million worth of fraud in local government. Elizabeth, do you have a view on this? Is it going to become more likely as we contract more work out to the private sector?

Dr David Barrett: I am not sure if it is going to become more or less likely. What I would say is that the accountability becomes more complex, so although local government retains the responsibility for holding those private providers of public services to account, it becomes more difficult for the public to know to whom they should complain if they suspect that there is a problem. I think that sometimes the local authorities are less

involved in and less interested in holding those private providers to account, because they have also outsourced that function. This means that transparency becomes more important, because you rely more on the public for holding them to account. We should not compromise the transparency and accountability because we have changed who the provider is, and there is a risk that those things could be compromised if the institutional checks are not in place.

Q215 Simon Danczuk: That is a really good point. Paul, do you have any views on this?

Paul Mallory: I agree with Elizabeth. I could not really add anything to that.

Q216 Simon Danczuk: Very briefly, the last question to you, Ian: in the submission that they made, CIPFA said, “Sometimes the danger is excessive transparency.” When do you consider transparency to be excessive?

Ian O'Donnell: As I mentioned before, the need to demonstrate probity and fairness is a big driver for local government procurement. In fact, many practitioners in local authorities have come to see that as more important than obtaining the best possible value for money. That drives a process-driven approach, and we would argue that that potentially stifles innovation by councils. On the other side of the equation, contractors improve value for money by seeking market advantage and innovating. The publication of information about the way in which they are delivering a contract can potentially give away some of the innovations that they have made to market competitors, and therefore they lose their advantage by doing it, which potentially discourages innovation by contractors. Our argument is that it is very important to strike the right balance between probity and allowing councils and contractors to innovate and take risk.

Q217 Heather Wheeler: I think quite a bit of my question has been answered, so I will move on a little bit. I am interested in the future and how changes to the audit arrangements for councils could impact on the likelihood of impropriety and fraud in procurement. If somebody was setting out now to take advantage of new audit arrangements, where do you think the attacks are likely to come? Let us get in first—your expert opinion.

Paul Mallory: I would like to hand that over.

Dr David Barrett: In a way, the attacks could come anywhere; the point is that we would not be able to detect them, because of the change in the audit function. The risk with the new audit regime is that the independence of external auditors is potentially compromised by the fact that they are concerned about winning the next contract from the local authority. With local authorities appointing their own external auditors, those external auditors are incentivised not to challenge the local authority too much for fear that they would not get either this contract renewed or that they would not win other contracts with the local authority for providing other services. One of the issues that emerged in the research for the report was that many audit companies are providing not only audit services to local authorities, but also other back-office functions.

Q218 Heather Wheeler: There have to be clear separations.

Dr David Barrett: There should be a clear separation, and there is a risk that they might not bring up or challenge something under the audit for fear of losing other business. That is a risk if you think about a situation where you do have embedded political corruption. It

might be the case that this does not happen in most cases, but where you have got a local authority where you do have entrenched political corruption, that is exactly the one where the auditor might fear challenging the person who is commissioning them to do that contract.

Q219 Heather Wheeler: You do not think that they would uphold their professional principles, at the risk of being taken to their standards and privileges and professional body?

Dr David Barrett: The auditor?

Heather Wheeler: Yes.

Dr David Barrett: Some will; some will feel that they now lack a source of external support in doing that, which used to be provided by the Audit Commission. In previous cases where there has been impropriety in local authorities, the Audit Commission has played quite an important role as a moral support for auditors who are putting their jobs and their contracts on the line.

Q220 Heather Wheeler: You are aware that the National Audit Office is going to pick up this role.

Dr David Barrett: We need to be clear about what exactly the National Audit Office is picking up.

Q221 Heather Wheeler: They gave evidence to the pre-legislative scrutiny Committee that I sat on, giving that assurance.

Dr David Barrett: We need to see whether external auditors feel that the National Audit Office will take on all of that role, and whether it will give them the confidence they need to make those challenges.

Q222 Heather Wheeler: Thank you very much for your opinion Elizabeth. Ian, what are your views on this?

Ian O'Donnell: We think that the new arrangements largely cover all of the things that need to be covered for councils. One of the changes taking place, as I mentioned before, is the NFI—the data-matching arrangements are transferring to Cabinet Office. One of the concerns that arises out of that is that, given that Cabinet Office may well have a different view about how the NFI can be used, there is a possibility that local government may not be the focus of attention for the NFI in the future. That may mean that it is not developed in the way that local government would need it to be developed in order to deliver data-matching results for it. That is one issue that we would fear from the changes that are taking place.

Whether the external auditor has a great deal of influence upon the detection of fraud is a good question. It is rarely the case that the external auditor is the first port of call when fraud or corruption is being reported; they tend to be brought in at a later stage, when perhaps there has not been a response from the council and a whistleblower is unsatisfied with the response that they have had. The NAO does indeed have a role to play in terms of supporting those district auditors, but one of the things that we would not want to see is

the emergence of a new, heavily resourced body, just to support local government, that looks just like the Audit Commission.

Q223 Heather Wheeler: Yes, quite. Paul, do have any comment? If you do not, that is fine.

Paul Mallory: I have nothing to add.

Q224 Simon Danczuk: What steps do you think should be taken to support whistleblowers, Elizabeth? It is a real issue.

Dr David Barrett: It becomes extremely important to support them; whistleblowers are a key way of detecting fraud and corruption, because they have got that inside knowledge and often feel passionately about getting value for money and support for the public purse.

Q225 Simon Danczuk: They are better at bringing things to attention than perhaps a police investigation or some sort of auditors or accountants in many ways, because they are at the coalface of it very often.

Dr David Barrett: Yes, absolutely. They also have the evidence of what is going on, so they see from the inside. They are an important channel for detecting corruption, particularly so if other institutions are weakened. A lot more can be done: research shows that whistleblowers are still typically heavily penalised for raising concerns at work. Public Concern at Work did some research earlier this year on this, which found that, of those cases where the whistleblower gets a response at all, around about one fifth are fired or have some very hostile reaction.

One very important thing is that the whistleblower feels that their concern is going to be investigated and investigated by some external body that is not just going to call their superior and say, “This complaint has been made,” because that is the position in which they feel very vulnerable that they are just going to be reprimanded, ostracised or rebuked for taking this action. Another thing would be that there should be some more institutional support, so the current PIDA regime relies very much on individuals invoking the law if something goes wrong, to protect their individual right. It would be much better if we had some support for whistleblowers that made sure nothing went wrong—that they did not get a hostile reaction for raising something that is in the public interest. A lot more could be done in terms of institutional support for them.

It would be good to have systems in place that examine the records of local authorities in dealing with whistleblowers—how many complaints they get, how they deal with them, checking that they are managing them in the right way. We could require local authorities to report on whistleblowing. We could require them to have a senior person who is responsible for the whistleblowing practice. We could have a code of practice on whistleblowing.

Again, Public Concern at Work has some research that they are releasing today, which shows that, although a lot of private sector institutions have whistleblowing policies in place, they are not then using them. They are certainly not having regulators come and check whether they have got them. We have moved ahead a lot in terms of getting policies there for whistleblowing, but it is whether people are using them and feel confident in them. That is a whole other issue.

Q226 Simon Danczuk: There is a lot more to be done, you think, in this area.

Dr David Barrett: Yes, absolutely.

Q227 Simon Danczuk: I agree with you, from my experience. Ian, local authorities are particularly good at dampening down whistleblowers—from my experience anyway. It is a bit like the complaints process that many local authorities have: they do not encourage the public to use it in any way or actively discourage them from using it. What is your view about whistleblowers in regard to procurement?

Ian O'Donnell: I very much agree with what Elizabeth has said. The study that was done by Public Concern at Work found that there was very little difference between sectors in this, and the typical whistleblower will raise their issue a couple of times with management and is most likely to experience absolutely no response at all—that is what the study showed. Then when management does respond, the typical response is a reprisal taken against the individual.

The Public Interest Disclosure Act has had an impact: it has essentially stopped whistleblowers from getting sacked, on the whole, but it has not stopped other reprisals being taken against them. Following that report, Public Concern at Work has set up a whistleblowing commission, which is currently sitting, and it is due to publish its findings in December. The commission is looking at the whole question of how whistleblowing can be made more effective.

Q228 Simon Danczuk: Paul, that is my final point; do you have anything to add?

Paul Mallory: The thought that occurred to me was the role of leadership here in setting the tone and the culture of the organisation. I agree with everything that has been said. If we want whistleblowers to come forward, it needs to become part of the culture that it is a valued thing.

Q229 Bob Blackman: Ian, we have heard you refer to the extent of fraud and corruption overall. Have we got figures on the delivery phase? Elizabeth, in your evidence you are suggesting that that seems to be the area of least regulation, if you like. Have we got any figures for that? I will come to you Elizabeth, but could we have some examples?

Ian O'Donnell: No, the figure is not broken down, but I will say that most losses from fraud really crystallise during the delivery phase rather than during the procurement phase. There are lots of different fraud risks that take place once a contract is in place—I do not want to list them all for you, but contracts can be improperly extended, the value can be improperly increased, and so on.

Q230 Bob Blackman: Is that not part of a negotiation that may take place subsequently to say, on both sides, there is an interest to extend the contract or to extend the scope of it, because both sides are agreeing that that is what should happen, rather than going through another procurement process?

Ian O'Donnell: It can be done properly through the law, and it can be done in a completely different way, which we would not find acceptable.

Q231 Bob Blackman: Can you give some examples of when it has been done improperly?

Ian O'Donnell: I would not be able to give you a specific case.

Q232 Bob Blackman: You see the difficulty we have as a Committee here: you are all speaking generally about “This happens”, and we need to zero in on some things that have happened, so some lessons can be learnt. Without some specifics, it is going to be very difficult to say, “Well, the figures are huge,” when we cannot zero in on where something has gone wrong.

Ian O'Donnell: It would be possible for me to provide some case studies, if that would be helpful.

Q233 Bob Blackman: Yes, that would be very helpful. Elizabeth, have you got any examples? You have said that there are lax procedures in the way that contracts are being implemented.

Dr David Barrett: In the report we talk about an example from Wirral council—a public-interest report was done on this. We are not suggesting there is corruption here; we are suggesting that the local authorities seemed to have some problems with managing a large contract and that there were some discrepancies that raise alarm bells. Out of that, we would suggest a couple of recommendations. One is that when there are big price discrepancies between the bids being made for a contract, it would be important to have reporting on that, so to have someone flag up the fact that it looks odd.

Q234 Bob Blackman: How would you suggest we measure that? Should there be ranges? One of the examples I have raised in a previous evidence session is that, especially on building contracts, one builder will come in with one figure, which seems artificially low, and then all the rest come in around the same sort of level; in the next contract a different contractor will come in with the low bid, and they are all acting as a cartel. Are there any examples of that that you would highlight?

Dr David Barrett: There are plenty of examples of that. The OFT had a big investigation a couple of years ago into many scandals, and there were proven allegations there about misconduct.

Q235 Bob Blackman: Do you think there should be ranges or guidelines? What do you think there should be?

Dr David Barrett: I am not in the business of institutional design, but a range would make sense—to flag up where there is a range. The second thing that could be done is to have reporting similarly on where variations are negotiated in the implementation phase and, again, to flag up: “There is a big variation according to when the bid was awarded, and what the costs are here.”

Q236 Bob Blackman: One of the points that you have made in evidence is to say people bid low and then start increasing the costs afterwards. They say, “Well, yes, but you did not tell us about this, and that is an extra £500 here,” and so on, so the costs keep increasing.

Dr David Barrett: Exactly, yes.

Q237 Bob Blackman: What can be done to ensure that local authorities get this right in the first place, so we do not get this sort of activity going on?

Paul Mallory: Thinking about that last point you were making, it does merit looking at whether there is some more awareness or skills training that could be done around examining price ranges and deciding whether or not there is anything odd about them. On the point you were just making, it definitely is a pattern that competitive tendering processes tend to drive people to a very low price—maybe this is not fraud but just bad management—but they are then looking to make up that price to a reasonable level later on, perhaps through change control, perhaps through other means. During the tendering process it is important to look at the results and try to make some assessment of whether it is a real price. I believe a very low price should be questioned as much as a very high price.

Q238 Bob Blackman: In the evidence you talk about the monitoring of these contracts—that often it is the user department monitoring rather than the procurement people, who know what they have agreed. Are any of you suggesting that there should be big changes in the way contracts are managed in this way?

Paul Mallory: As I said in my opening remarks, more professional management throughout the lifecycle would help, and that is an example of something where experience could be brought to bear in judging whether the results are looking right or wrong—whether they are looking realistic or not. There is scope to improve skill in that area.

Q239 John Pugh: Can I ask about the culture that you are familiar with, with regard to local authority procurement? You have obviously met a lot of people who are involved in procurement for the local authority side, and there has been a suggestion that commonly they are pretty risk-averse—more worried about a project failing and bad press, rather than getting best value for their constituent organisations. Is that your perception—that they are very much concerned to take the safe option, or what appears to be the safe option, rather than the best value? It might be the same thing. Paul, you have probably the most experience of this.

Paul Mallory: I think there is something in that. Culturally and structurally, the way these processes are run can encourage people to be quite risk-averse and to avoid being innovative. Being innovative means doing something differently.

Q240 John Pugh: Does it mean they return to the same suppliers; it is the tried and trusted, and that makes it slightly difficult for new entrants to come into the market?

Paul Mallory: Yes. It is a difficult balance between ensuring that it is not a cosy relationship where nobody else gets a look in and at the same time wanting strong relationships with long-term providers, so that they will deliver those innovations that you mentioned.

Q241 John Pugh: Larger suppliers rather than smaller local suppliers.

Paul Mallory: Possibly, yes. It is a difficult balance, and that is the commercial judgment part that we think can be improved, in terms of the skill of the procurement people.

Q242 John Pugh: Another factor suggested in many procurement processes is they are worried about challenges from the big suppliers who routinely deal with local authorities. Is that a common perception shared by all of these or do you find it a familiar feature of local government procurement?

Ian O'Donnell: Yes, I do think it is true that councils fear challenge, and they face a level of scrutiny that some other sectors do not face. For example, a contract award can end up in a scrutiny committee, which is, of course, a public meeting, and there can be a debate about that contract award if it is called in. In addition to that, they can be subject to challenge, either under EU rules or through judicial review. Councils constantly need to be aware that they might be asked to explain their thinking and explain their process.

Q243 John Pugh: You recognise that EU regulations probably reduce the prospect of fraud, do they not?

Ian O'Donnell: That is right, and all of that process is in place to try to reduce the risk of failure and the risk of fraud; that is correct. Our concern is that that can stifle innovation and can make councils focus on process rather than outcomes. However, having said that, there are some very good innovations going on at the moment. Councils are making new markets. For example, in Ealing, where I work, we have recently let a contract for libraries and leisure together—that is something that has not been done before. We went about that by going to talk to the market and found out whether they would be interested in a different kind of contract involving a different combination of services, and whether that would deliver any extra value for us.

Councils are also looking at opportunities with small and medium-sized businesses, and local businesses, in a way that they were not before, looking at social value and the way in which that can contribute.

Q244 John Pugh: Do they find it sits happily with the EU procurement rules?

Ian O'Donnell: Yes.

Q245 John Pugh: Paul, are there any changes you would like to see in the EU procurement rules to make life easier for your members?

Paul Mallory: I am sure there are probably many. It sounds as though the changes to the rules being made are a step in the right direction, as far as I can tell, depending on exactly how they are implemented. The idea of having a bit more flexibility—a bit more opportunity to exercise commercial judgment, rather than just merely applying a set of rules all the time—is the right direction, because I think councils need to be free to do the right thing by the council tax payers.

Q246 John Pugh: As I said before, councillors and certainly officers tend to be risk-averse rather than good at risk management—clearly they are two different things. How do you think you could get councils to be better at managing risk, other than going for well-established suppliers that they have dealt with hundreds of times before?

Paul Mallory: Some of that is skill—again, at the danger of being repetitive. The confidence and the skill of the procurement people are important; risk management is a skill that can be learnt.

Q247 John Pugh: Do you think councillors need to be more forgiving when things go wrong and it all gets in the papers?

Paul Mallory: I am not sure about that. We do not want risk to become a free-for-all; it should be managed risk, it should be mitigated risk and it should be embracing risk where that is the right thing to do.

Q248 John Pugh: Officers should be taught how to manage risk well?

Paul Mallory: Yes, I think so.

Q249 John Pugh: Are there any particular models of procurement—one thinks of PFI, which is supposed to put the risk on the contractor—that particularly lend themselves to good risk management?

Paul Mallory: There are models; I would say it is important to recognise that good risk management is not putting all the risk on to the supplier or on to the contractor.

Q250 John Pugh: Okay. What is it, in your opinion?

Paul Mallory: It is absolutely a balance; it is a grown-up discussion about how to share the risk.

Q251 John Pugh: It is managing a relationship.

Paul Mallory: Yes, absolutely. It is the risk/reward balance between the buyer and the supplier. As any of us would do in our private lives, you have a grown-up conversation about who is going to take the risk and what the cost of that is.

Q252 John Pugh: You are nodding very definitely at this.

Ian O'Donnell: I would agree with that. There are some risks that are better managed by a council and some risks that are better managed by the contractor. For example, in a TUPE situation, where the council is transferring staff with pensions to an external supplier and the external supplier is going to become a member of the pension scheme as an admitted body, that creates a scenario in which, in fact, it is more expensive typically for the contractor to manage the risk around that pension commitment than it is for the council to retain it themselves for the life of the contract. That is an example of where a sensible discussion about how that risk is best managed is the right way forward.

Q253 John Stevenson: Local SMEs are extremely important to the economic success of local authorities in their areas, and obviously employ people and make a valuable contribution to their community. Quite often you find that councillors and officers will be friends and socialise with local business people—play golf, et cetera. Is there any evidence of the close relationship that there can be between officers, councillors and businesspeople leading to fraud, corruption, et cetera?

Paul Mallory: I do not have any evidence of fraud and corruption. What I would say is that there is always a danger with these close, cosy relationships, we might say, that people become less diligent than they might be, or they become a little bit less clearly applying the rules than they might otherwise do, because of the close relationship. It seems to me you always have to differentiate between a professional relationship and a personal one, and there needs to be a clear separation of those things. I would expect people

spending taxpayers' money to be very clearly just operating clear, commercial professional principles.

Dr David Barrett: I am not sure I have any particular general evidence on this. Clearly, the risk is there. It might be worth having another look at the rules around what interests councillors are allowed to have—so, not just what they can declare but what they are allowed to have in terms of being allowed to sit on the planning committee and also have a construction company, and things like that. It might be a good opportunity to review some of those.

Ian O'Donnell: It is worth thinking about the experience that we already have around grants being made to the voluntary sector, the way in which councillors can be involved in supporting a local voluntary-sector organisation and the way in which that is currently managed. That brings an increased focus on things like declarations of interest for officers and councillors, but CIPFA thinks that broadly the controls that are already in place do largely deal with the risk.

Q254 John Stevenson: You have not got any evidence that this is a major issue at all.

Ian O'Donnell: There is no evidence that this is a particular issue that is not already managed by the risk mitigation that is in place.

Q255 Chair: On the issue of interests, and maybe offers of hospitality and gifts, Transparency International, in the report, said that there was no guidance about declaring the receipt of gifts and hospitality, or the offering of it. Surely declarations of interest have to be made in those circumstances. It has to be there on the public record, does it not?

Dr David Barrett: There is no statutory requirement to have a gifts-and-hospitality policy; I think that is probably what we have found.

Q256 Chair: There would be a requirement to declare anything that might influence a councillor coming to a decision.

Dr David Barrett: Yes, but I think what we have found is that there is not a requirement for local authority to have a policy on that.

Q257 Heather Wheeler: I would be fascinated to go through the 450 councils and not find in their standing orders that it is £25, £50, or £100, or whatever it is—I think you would be surprised.

Chair: It would be the same in every council.

Heather Wheeler: It would be in their standing orders.

John Stevenson: For officers as well.

Heather Wheeler: Absolutely.

Chair: Could you go back and check on that? It is down in your evidence; we just want to ensure we have got that absolutely right.

Dr David Barrett: Absolutely, yes.

Q258 Bob Blackman: Turning to employment rights, one of the issues that we have raised at a previous evidence session is the effect on employees who are transferred to a private sector company afterwards. What, in your view, is the impact on both their employment rights and also their relationship with the local authority thereafter? Paul, I think you have given some views on this.

Paul Mallory: Yes, employment rights is not my specialist subject. The one thing I would say is that quite often in an outsource there is an opportunity for people to enter a professional career stream that they did not have access to before. I think quite often we look at the downsides of being outsourced. For individual employees—I am thinking of things like IT outsourcing, for example, having worked in that sector myself for a while—quite often that is very positive from a career point of view for the individuals being outsourced, because they join a professional community of likeminded people.

Q259 Bob Blackman: They potentially get access to other types of opportunities as a result.

Paul Mallory: Yes, absolutely.

Q260 Bob Blackman: What about the impact on the staffing, in terms of redundancies, pensions, their contractual hours, their rates of pay, et cetera? That, of course, has an impact, and the accusation is that private sector companies will use the opportunity to downgrade the employment rights of the employee after they have left a local authority.

Paul Mallory: Yes. I do not know whether that is true as a pattern of behaviour or not. Again, my personal experience is that quite often over time the benefits of people increase. In the example I gave of people going into the IT outsourcing industry, they might well find themselves on a much improved package once they have joined that professional stream. I cannot guarantee that always happens, but I have certainly seen it happen.

Q261 Bob Blackman: Outsourcing is being looked at not just for IT but for all sorts of roles, so there may not be those same opportunities.

Paul Mallory: Yes.

Q262 Bob Blackman: Elizabeth, any views from you?

Dr David Barrett: The research uncovered a couple of examples where people had gone from roles of being inside, writing a contract or working on a particular policy, to then being outside the government in a private provider that had either won a contract or was working on that particular area. There would be risks that we would be concerned about around conflicts of interest resulting from this practice.

Q263 Bob Blackman: One of the concerns raised has been in the adult social care areas and care of vulnerable children. Have you got any examples where that seems to have gone awry?

Dr David Barrett: I do not.

Q264 Bob Blackman: Ian, any particular views?

Ian O'Donnell: There is an issue about pay levels and conditions. A lot of councils have signed up to Living Wage, and in order to be accredited with the Living Wage, one of the

things that you need to do is to work with your contractors to ensure that they pay a living wage to their staff as well.

Q265 Bob Blackman: Do you think that contracts should specify that contractors should pay either minimum wage or living wage, or whatever a council should specify? Should councils go into that level of detail?

Ian O'Donnell: In a sense, that is a political choice for a council to make.

Q266 Bob Blackman: Well, with due respect, it is not, because it does affect the standard of service that is provided if people are being employed on very low levels of pay compared with another supplier, who may pay considerably more. It is a reward and recognition basis as well, is it not?

Ian O'Donnell: Well, in my own council, we have signed up to Living Wage.

Q267 Bob Blackman: In your own council does every contract specify that every supplier to the authority must pay a living wage?

Ian O'Donnell: Not yet. We are working towards it, and my point is that it is unaffordable immediately. It is going to take a period of some years. As contracts come up and we renew them, some of them we will be able to switch into Living Wage; some of them we will not be able to afford to do the first time around, and we will have to plan for it over quite a considerable period. Certainly, Living Wage is not going to bring about an immediate shift in whether those private sector contractors are paying a living wage to their staff.

Pensions are another issue. If, once staff have transferred, over time a contractor moves them away from a local government scheme and into a private sector scheme that does not offer the same benefits, that is perfectly feasible, and typically a private sector scheme does not offer the same sorts of benefits that the local government scheme does. There is a big question about whether the local government scheme is affordable at the moment. We are looking at that, but again, it is an erosion in terms of terms and conditions.

Q268 Bob Blackman: Could I just pick up on the pension issue? One of the problems that can happen is that a contractor wins a contract for three years, four years, five years, and then at the end of that they lose the contract. The staff then transfer to another company or come back to the authority, or whatever. As an employee, you can end up with a whole series of different pensions with different pension schemes. Have local authorities looked at that as a specific example of where individuals need to be protected?

Ian O'Donnell: Yes. Typically what will happen is that the private sector company will be allowed to set up as part of the local authority scheme, as an admitted body, which means that the benefits for the employee would be the same. However, the problem with it is that the employer contribution rate might well be different within that admitted body—an actuary will look at things like the life expectancy of the individuals working for the company where the transfer has taken place—and that could make it very expensive to be a member of that scheme. It goes back to what I was saying earlier on. Sometimes it is better to manage that risk by capping the contributions that the contractor has to make towards the costs of the pensions, and meeting them through the council's own resources; it can work out more cheaply.

Q269 Bob Blackman: Can I raise the last issue, which is zero-hours contracts? That is obviously controversial at the moment. In your authority, are all your contracts excluding zero-hours contracts for staff?

Ian O'Donnell: Broadly speaking, we do not use zero-hours contracts for the purpose that has been described in the press coverage about it recently. However, we do have some workers who work on an as-and-when basis—for example, they may be people who give music lessons.

Q270 Bob Blackman: Supply teachers are a prime example.

Ian O'Donnell: In which case we do not have a basic number of hours that we would contract with them for, but in those cases those contracts are perfectly appropriate.

Q271 Bob Blackman: Regarding the contracts you have with the suppliers, are you monitoring whether they are operating zero-hours contracts for the people they employ? That is the other accusation that is made.

Ian O'Donnell: It is true to say that some contractors will be doing that. In a recent case that we have just dealt with, in which a contract was brought to its end before its termination date, we found that a number of the employees were on zero-hours contracts and were working extraordinary hours, quite beyond the EU limits.

Q272 Chris Williamson: Paul, can I ask you, when contracts are externalised a year beyond that, or two years beyond that, what is the size of the work force in your experience compared with the work force that was originally transferred? Has it increased, reduced or stayed broadly the same?

Paul Mallory: I do not have any statistics on it, so my response is a bit anecdotal. What tends to happen in my experience is that those people who have been outsourced tend to become part of a pool for the company that is providing the service—potentially a shared service, so they are providing services to a number of different companies—so it is quite hard to do a one-for-one comparison in many cases. Many companies will consolidate them into some kind of shared services centre, but I am afraid I do not have any hard data to give you on that; it is not something I have studied.

Q273 Chris Williamson: What about any changes in terms and conditions after a year or two years? Is there evidence that the salary remuneration packages increased, reduced, or stayed the same after a period of time?

Paul Mallory: I do not have any evidence on that I am afraid; it is not something I have studied.

Ian O'Donnell: One of the reasons why we would outsource something might be because we think that the market can achieve economies of scale that we cannot. For example, they may be servicing five, six, 10 or 100 councils across the country. Our own in-house operation is more expensive because we cannot achieve those economies of scale—we have to have overheads that we would charge to our in-house operation, et cetera. We would expect to see less resource charged to us, and that would be our reason for wanting

to outsource it in the first place. Would we see a change in the terms and conditions? Staff are protected by TUPE for a certain period.

Q274 Chris Williamson: I am thinking about beyond that period.

Ian O'Donnell: Over time we may well do, although I do not have any evidence to show that that is necessarily a bad thing. One of the advantages of joining a much larger organisation delivering services across a range of different local authorities is that it provides more in the way of career opportunity and potentially more investment in the individual.

Q275 Chris Williamson: Would you say it has any impact at all on the local economy that is serviced by the local authority if, as a result of externalising contracts, staff numbers are diminished or staff remuneration packages are reduced or, conversely, numbers of workers are increased and remuneration packages are increased? What impact would you suggest that might have, or not, on the local economy as a consequence of those decisions that are taken?

Ian O'Donnell: It may indeed have an impact in terms of the number of jobs that are available locally. For example, by outsourcing you could in fact end up with the service being delivered from a completely different part of the country, so you could lose all of the jobs in one fell swoop.

Q276 Chris Williamson: What impact would that have on the wider economy, in terms of thinking about not just the council but other businesses who depend on people having money to spend in their local economy? Does that have an impact if those jobs or those activities are done in a different part of the country? Those jobs are no longer available in the local area, so consequently that money is not being spent in the local economy.

Ian O'Donnell: It has shifted where the money is being spent to another part of the country, and it has also reduced the amount of money that is being paid to staff. The other side of the equation is that hopefully that would be reflected by a reduction in council tax paid by local people, because they are benefitting from a saving that has been achieved through letting the contract externally.

Q277 Chris Williamson: Have you got evidence that council tax is reduced as a result of contracting out?

Ian O'Donnell: There is certainly a lot of evidence of council tax being held in recent times by a number of councils through their achieving efficiencies, not only through contracts but through a range of other things as well. It would be hard to pin it down to a particular contract, but certainly outsourcing and working with the private sector has contributed to councils being able to make savings and thereby manage the local council tax.

Q278 Chris Williamson: Finally, would you say that that offsets any potential negative impact on the local economy as a result of less money being in that local economy in the area where the council has externalised its activities to another part of the country—that is, that the reduction in council tax has offset any loss of spending in the local economy?

Ian O'Donnell: It is very hard to say; you would have to look at it on a case-by-case basis. If, for example, it was the type of activity that is very labour intensive and, therefore, involves the employment of a lot of manual workers, and that work was then outsourced—so a number of manual workers through attrition were no longer required—then you could say that that might have a serious impact on the local economy, because they might find it difficult to find another job to move into. In another type of activity, it may not be an issue at all.

Chair: Thank you very much indeed for coming and giving evidence to us. Thank you.