

# PROCUFAIR COUNTRY REPORT

# THE UK

**Promoting Decent Work Through Public  
Procurement in Cleaning & Private Security  
Services**

**Co-financed by the European Commission**



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# PROCURFAIR – UK Country Report Executive Summary

- Public procurement in the UK has been subject to much policy change and innovation in the last decade.
- Drivers of this change include European legislation, the increasing inclusion of social clauses within public tenders, the aftermath of Brexit, and innovation at the level of devolved governance including Scotland, Wales and city regions.
- Levels of outsourcing and consequently procurement activity vary considerably, with England having engaged more with more complex, embedded forms of privatisation (in local government, the NHS, the civil service and the academisation of schools), outsourcing and organisational fragmentation than is generally the case in Scotland and Wales.
- Public procurement has been widely identified as placing downward pressure on employment conditions, especially among predominantly female, low paid occupations. Public procurement has contributed to the erosion of collective agreement coverage with wages gravitating towards statutory minima. Responses to outsourcing have varied widely and can be clustered into two main categories.
- First, some contracting authorities have focused on improvements to the working conditions of outsourced workers, most commonly with commitments to pay the Real Living Wage but in some cases with adherence to employment charters (regional voluntary instruments establishing employment standards above the legal minima)
- Second, some contracting authorities have sought to address the problems faced by outsourced workers through addressing issues relating to ownership/ control rather than the regulation of work.
- This includes processes of insourcing, the use of arms length, traded services where workers remain employed on collectively agreed public sector terms and conditions and similar
- Through outsourcing, public authorities seek to make savings and reduce their headcounts, particularly in low-paid and labour-intensive occupations. Public authorities often lack the internal resources and expertise to deliver certain services which is a product of the hollowing out of the state.
- Due to regulation, licensing requirements, insurance, liability, working arrangements and related complexities, public authorities often do not have the capacity to provide security services in-house.
- Private contractors generate revenues and profits through providing general and specialised services at a lower cost than public authorities would. The overall reduction of staff costs often has discriminatory effects and creates structural barriers for career advancement in the labour market. In this context, it is important to ask how 'decent work' can be achieved?
- Some positive examples were evident in terms of insourcing cleaners and re-regulating their work, albeit the Real Living Wage remains low giving ongoing high levels of inflation.
- This report is based on 29 interviews with 35 participants, including national level experts and four case studies.
- The national interviews and case studies demonstrate considerable innovation and activity in the arena of public procurement and attempts to address social, economic and employment related concerns within them.
- Major tensions remain including ongoing cuts and funding restrictions in the public sector, the relative weakness of statutory employment protections and the erosion of collective agreement coverage, and the limited resources held by local authorities to monitor compliance with social clauses included by outsourcing providers within their tenders.

# Introduction

This report constitutes the findings from the UK team’s contribution to the wider PROCURFAIR programme of research. Drawing on detailed case studies of public procurement in England, Wales and Scotland, as well as expert interviews with a range of stakeholder organisations, the report explores the positive potential of public procurement to “buy decent work”. There is ongoing uncertainty in procurement regulations in a context of Brexit, as well as conflicting normative pressures about the value of outsourcing public services in light of private sector failures on the one hand and central government determination to downsize the role of government in economic activity on the other. This report highlights the growing diversity and experimentation in public procurement by analysing practices aimed at improving decent work in the cleaning and security services provided for public authorities. A mix of hard and soft regulatory mechanisms, alongside varied local government and trade union strategies, generate multiple tensions and contradictions in matters of setting, extending and enforcing decent work standards. The examples provide meaningful lessons for improved public procurement practice and strategies to improve working conditions for these two low-wage occupations, but are severely constrained by ongoing fiscal austerity and challenges facing unions in mobilising members and making their collective voice more visible and powerful.

The challenges for public procurement to “buy decent work” are significant. The report identifies major protective gaps faced by workers in the cleaning and security services industries in the UK – not least low pay, discrimination, irregular and long working hours and health and safety. Moreover, job quality is worse for women and migrant workers. As such, public procurement “buying decent work” practices could and should make a difference by counteracting the multiple gaps in protection that are left by labour law, collective bargaining and other standard regulatory measures meant to secure decent work.

## **PROCURFAIR Project – Research questions and design**

This report is the UK contribution to the EU- funded research project entitled “Promoting decent work through public procurement in cleaning and private security services” (PROCURFAIR).<sup>1</sup> The project aims to explore how public authorities and social partners have engaged in novel practices to ‘buying decent work’, i.e. to ensure decent working conditions within public procured services across distinct industrial relations and welfare regimes such as Denmark, UK, France, Germany, Italy, and Poland. Through in-depth case studies in each of the six countries, the project examines innovative or experimental solutions of public procurement practices to secure and promote decent work in

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<sup>1</sup> The project was funded by the European Commission – DG for Employment and Social Affairs (Call ‘Improving expertise in the field of industrial relations’, Grant VS/2021/0211) and managed by Mark Bergfeld at UNI Europa’s Property Services office which covers the services sectors of industrial cleaning and private security. The scientific coordination of the project was assumed by Karen Jaehrling at the University of Duisburg-Essen’s Institute for Works, Skills and Training (IAQ), Germany.

For a more detailed account of the research design and methodology, key concepts and findings from the cross-national analysis see the comparative report (Jaehrling, K. (2023): *Buying Decent Work - Public Procurement Strategies for the Improvement of Working Conditions in the European Service Sector*. Comparative report of PROCURFAIR - Promoting Decent Work through Public Procurement in in Cleaning and Private Security Services project).

The comparative report, as well as all 6 country reports of the PROCURFAIR project are available at: <https://www.uni-europa.org/procurfair/>.

cleaning and private security services – within the new regulatory context set by the EU Procurement Directives, and despite adverse economic conditions following the COVID-19 pandemic.

To guide the case studies and the national data collection the following topics were addressed in all country reports:

- (1) **Protective gaps and goals:** What are the most important protective gaps for employees under public contracts that are not sufficiently addressed by established forms of work regulation and that would therefore benefit from ‘organisational and institutional experimentation’ in public procurement practices? Which of these gaps do public purchasers and social actors target with their strategic experimentation on social responsible public procurement?
- (2) **Strategies:** Which tools and resources do actors mobilise for this purpose; to what extent do they seek to build alliances (between peer organisations; between representatives of employers, employees, customers, public purchasers and other types of organisations involved in social responsible public procurement (e.g. control agencies, inspectorates)?
- (3) **Learning processes:** What kind of conflicts and obstacles arise in the process and how do actors cope with them?
- (4) **Institutional constraints and support:** What role do regulative and budgetary constraints play? To what extent and how has the new EU procurement regime stimulated new experiments? To what extent does subnational, national and European legislation and jurisdiction inhibit a stabilization of experiments or force actors to adjust their strategies?
- (5) **Overall lessons:** What are the lessons for trade unions, employers, local authorities and governments in how to more effectively use public procurement for securing decent work?

To address these research questions, this report draws on a total of 29 interviews with 35 participants from trade unions, employers associations, industry experts, policy-makers, municipalities and procurement managers as well as findings from a national workshop with key stakeholders. The data have been triangulated with desk research of relevant policy documents, official statistics, legal texts as well as minutes from local municipal and parliamentary debates.

### Structure of the report

The report draws together a raft of qualitative data and a wide range of secondary data, and is structured in three parts.

- **Part ONE identifies the key ‘protective gaps’ within the cleaning and security services.** It highlights issues of employment quality, the regulation of publicly procured services and trends towards outsourcing/insourcing in a context of efforts to buy decent work.
- **Part TWO (1) reviews wider debates and developments in relation to UK public procurement.** This covers employment clauses and charters associated with tenders and outsourced services, the inclusion of ‘social value’ within public contracts, wider trends towards insourcing and bringing services back ‘in-house’, and the complex, contentious nature of industrial relations and the role of social partners, notably trade unions, in relation to these structural developments and their impact on work and employment.
- **Part TWO (2) reports the findings of expert interviews** with the aim of mapping the wider regulatory and employment context of UK public procurement of these two services.

- **Part THREE of the report presents the findings from our case-study research**, involving four case studies of innovative public procurement in relation to security and cleaning workers employed in England, Scotland and Wales.<sup>2</sup> Our analysis investigates the legacies of outsourcing in each case, the use of arms-length bodies controlled and owned by the councils to deliver security and cleaning services, legal challenges and new hard and soft regulations, recent moves towards insourcing, and the impact of wider priorities concerned with localised expenditure and their impact on outsourcing and employment conditions.

Overall, our findings highlight a range of multi-level and changing pressures on public procurement. These reflect a combination of political moves to reduce outsourcing to private providers, insourcing driven by the outcomes of legal disputes in relation to pay inequality, union campaigning, and wider concerns in relation to local economic development and sustainability and notions of ‘decent work’ within the areas the councils have jurisdiction over.

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<sup>2</sup> Similar innovations relating to public procurement, social value and real living wage commitments are emerging in the context of devolved governance in Northern Ireland, which we were not able to cover in our empirical research due to resource and access constraints.

# **PART ONE: UK public procurement and the challenges of “buying decent work” for cleaning and security services**

This section provides a comparative overview of employment quality and regulatory standards in the cleaning and security services industries in the UK, drawing on Labour Force survey data and other secondary sources. It begins with a focus on issues of low pay, working hours and other employment quality problems and then considers wider issues of employment quality and the changing conditions in each industry shaping the potential role of public procurement to “buy decent work”.

## **Protective gaps**

Three features characterise pay in these two sectors: pay is low, close to the statutory minimum wage; average pay for security workers is higher on average than for cleaners, likely related to male versus female over-representation; and the public-private pay gap is wider for security services than for cleaners.

**The Low Pay Commission has defined both cleaning and security as constituting low pay sectors**<sup>3</sup>, our analysis finds that average hourly pay for workers in both sectors between 2012-2020 was below average wages for both private and public sectors in general (figure 1). Average pay for the private cleaning sector remained close to the level of the statutory minimum wage with 2016 and 2020 the average wages in these sectors going just below the adult minimum wages set. Similarly the low pay commission found that the cleaning sector was one of three “leading” sectors where non-payment of wages were reported between 2016 and 2022<sup>4</sup>. The average pay gap between the public and private sector security services is much wider than that for cleaning. It also seems to be highly varied over time. The public-private pay gap peaked in 2018 (a gap of £5.47) and was narrowest in 2015 (£2.45). For cleaning the average wage gap ranged from £1.38 in 2016 to £0.28 in 2013.

Full-time security guards in both the private and public sector work longer hours than the UK average. While those working in the public sector on average worked at or below the threshold set by the working time regulation, those working in the private sector worked longer hours than set by this regulation for all years.

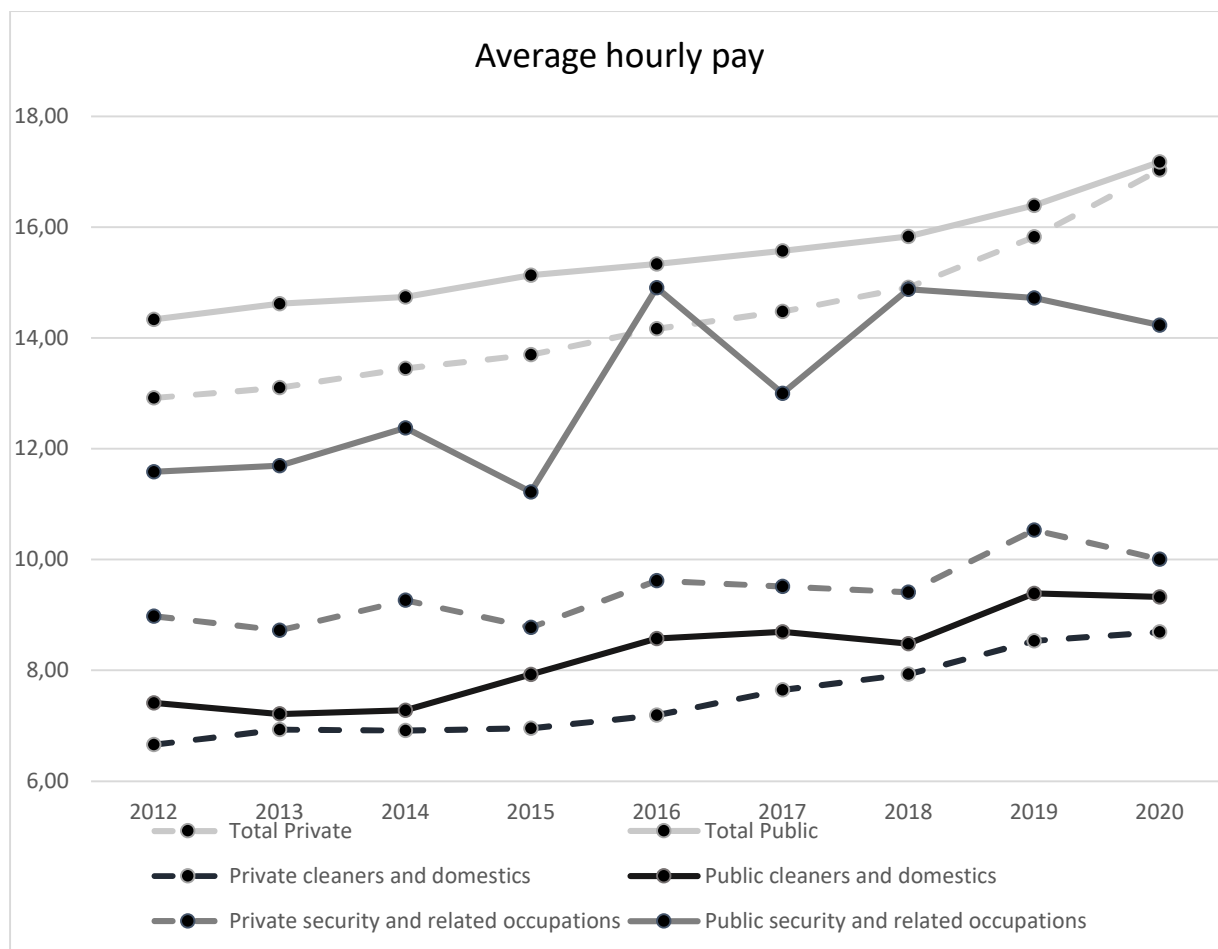
**Figure 1 – Average hourly pay for cleaners and security guards, public and private sectors, 2012-2020**

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<sup>3</sup> Low pay sectors are defined by the Low Pay Commission as being “these as occupations or industries which contain a high number or large proportion of low-paid workers based on the Standard Occupation Classification (SOC) and Standard Industrial Classification (SIC) codes published by ONS” see [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1129930/Low\\_Pay\\_Commission\\_Report\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1129930/Low_Pay_Commission_Report_2022.pdf)

<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1129930/Low\\_Pay\\_Commission\\_Report\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1129930/Low_Pay_Commission_Report_2022.pdf)

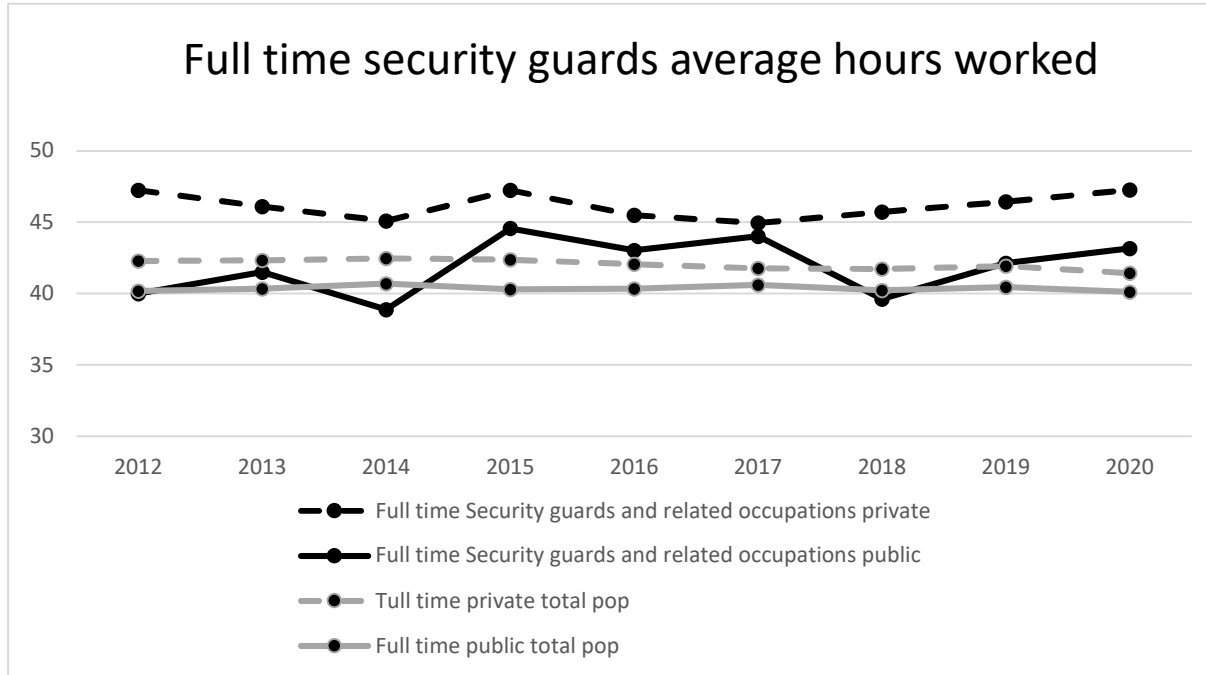




Source: Annual Population Survey Two-Year Longitudinal Dataset, 5 Standard Occupational Classification 2010 for main job (SOC2010)

<sup>5</sup>We accessed the data at UKDS, (SN: 8835, 8836, 8837, 8838, 8839, 8840, 8847, 8888, 8984)

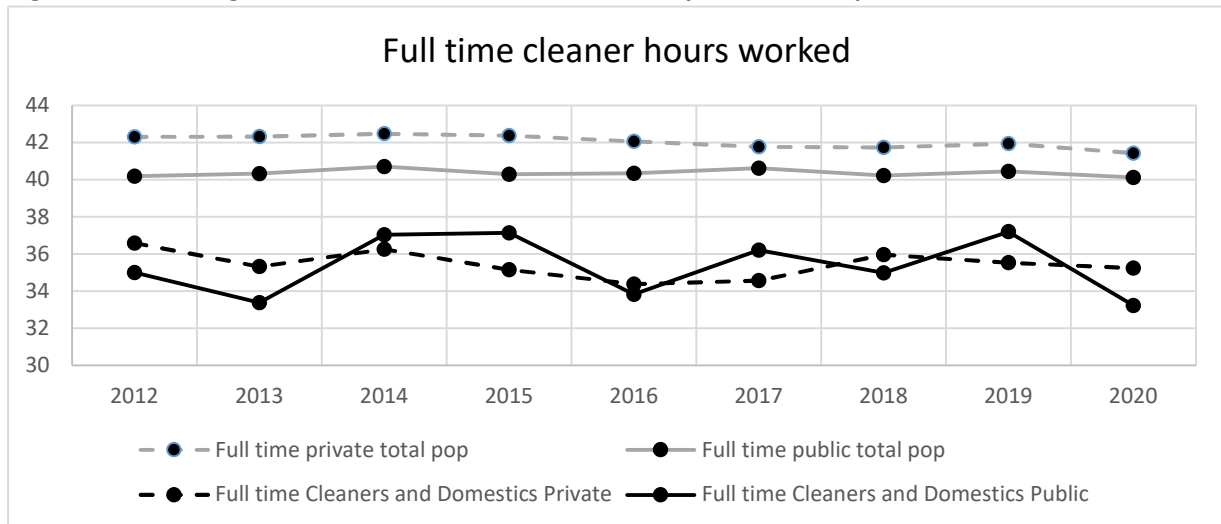
Figure 2 Average hours worked for security guards, public and private sectors, 2012-2020.



Source: Annual Population Survey Two-Year Longitudinal Dataset,<sup>6</sup> Standard Occupational Classification 2010 for main job (SOC2010)

Cleaners working full time both in the public and private sector worked fewer hours than the UK average for all full-time workers. Hours worked in the public and private sectors were similar.

Figure 3: Average hours worked for cleaners, public and private sectors, 2012-2020



Source: Annual Population Survey Two-Year Longitudinal Dataset,<sup>7</sup> Standard Occupational Classification 2010 for main job (SOC2010)

With regard to general social security and welfare provision, in terms of healthcare entitlements all UK residents have full access to the National Health Service, and non-self-employed workers or

<sup>6</sup>We accessed the data at UKDS,(SN: 8835, 8836,8837, 8838, 8839, 8840, 8847,8888, 8984)

<sup>7</sup>We accessed the data at UKDS (SN: 8835, 8836,8837, 8838, 8839, 8840, 8847,8888, 8984)

employees qualify for Statutory Sick Pay (£99.35 per week after someone is off work for three days).<sup>8</sup> Statutory annual leave entitlements in the UK mean that those who work a 5-day week must receive at least 28 days' paid annual leave a year.<sup>9</sup> Statutory parental leave constitutes 2 weeks paid paternal leave and Statutory Maternity Pay, paid for up to 39 weeks at 90% of average weekly earnings (before tax) for the first 6 weeks and £172.48 or 90% of average weekly earnings (whichever is lower) for the next 33 weeks.<sup>10</sup> Unemployment benefits in the UK, Jobseekers Allowance, currently stands at a weekly rate of £67.20 for those aged 24 and under and up to £84.80 for those aged 25 and over.<sup>11</sup>

## Cleaning services

The cleaning and hygiene industry directly employs over 957,000 people, and if occupations that involve cleaning and hygiene within other industries such as public services and hospitality are included, the total number of individuals working in the industry amounts to 1.47 million. Some caution is needed with such figures as cleaning is a common occupation among those holding multiple jobs.<sup>12</sup> However, the industry is sizeable, and has been growing; in 2020 alone 1,500 new companies were set up, which led to a 22% increase in employment levels within the sector which was higher than most other European countries<sup>13</sup>. **The cleaning industry employs approximately 5% of the UK workforce employed across 66,420 businesses (2020 data); nine in ten businesses (88%)<sup>14</sup> are micro businesses with fewer than ten employees.**<sup>15</sup> Also, three in four cleaners (76%) are employed in the private sector including for outsourced providers.<sup>16</sup>

According to the Labour Force Survey, the standard occupational category of Cleaners and hygiene operatives and domestics amounts to 238,700 individuals, or 30% of the overall number working in the wider industry. Women are over-represented: 69% are female and 31% are male. Migrant workers are also over-represented: 20% of those working in the industry overall and 32% of those whose primary role is the 'general cleaning of buildings' are foreign-born people compared to around 17% across the wider UK labour force, and this varies markedly across nations and regions – for example, in London 55% of the industry workforce were born overseas compared to 9% in the North East. 59% of cleaners, hygiene operatives and domestics work part-time.

Average hourly pay for those working as cleaners and domestics between January 2020 and December 2021 was £8.69 in the private sector and £9.33<sup>17</sup> in the public sector; the statutory minimum wage for those aged 25 years old and over was £8.72 at the time. Median average hourly pay rates in Britain in 2020 were £13.68 per hour with workers deemed to be low paid (i.e. earning at or lower than two-

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<sup>8</sup> <https://www.gov.uk/statutory-sick-pay>

<sup>9</sup> <https://www.gov.uk/holiday-entitlement-rights>

<sup>10</sup> <https://www.gov.uk/maternity-pay-leave/pay>

<sup>11</sup> <https://www.gov.uk/jobseekers-allowance>

<sup>12</sup> For additional data and a comparison with EU MSs see <https://www.efci.eu/wp-content/uploads/flipbooks/6/>

<sup>13</sup> <https://www.efci.eu/wp-content/uploads/flipbooks/2/>

<sup>14</sup> [British](https://www.bics.org.uk/wp-content/uploads/2021/06/RR2021.pdf) Cleaning Council (2021) The cleaning, hygiene and waste industry: Research report. <https://www.bics.org.uk/wp-content/uploads/2021/06/RR2021.pdf>

<sup>15</sup> <https://www.resolutionfoundation.org/app/uploads/2022/05/Low-Pay-Britain-2022.pdf>

<sup>16</sup> <https://www.tuc.org.uk/research-analysis/reports/international-justice-day-cleaners-and-security-guards#:~:text=80%25%20of%20cleaners%20are%20women,to%2030%25%20of%20all%20workers>

<sup>17</sup> Annual Population Survey Two-Year Longitudinal Dataset, January 2020 - December 2021. [data collection]. 3rd Edition. UK Data Service. SN: 8984, DOI: <http://doi.org/10.5255/UKDA-SN-8984-3>

thirds of the median average) earning £9.12 per hour or less – again, caution is needed here as this presupposes ‘standard’, full-time working hours and a majority of cleaners work part-time.<sup>18</sup> Analysis of ONS and LFS data averaged across the 2019-21 period indicates that among cleaners 37% are low paid when considering their hourly pay and 50% classed as low paid when looking at their weekly pay.

Other significant employment quality challenges include the following:

- 18% of cleaners had insufficient hours i.e. would prefer to have more working hours than were available, with 28% reporting insecure contracts and hours and subsequent pay volatility;<sup>19</sup>
- The total number of reported non-fatal injuries to employees in the Services to buildings and landscape standard industrial classification for 2021/22 was 599 with 8 fatalities.<sup>20</sup>
- Widespread use of zero hours contracts, lack of union representation, in-work poverty and unfree labour are also problems faced more commonly by cleaning workers than many other occupational groups.

With respect to worker voice, union representation is low and collective bargaining weak and patchy. The main unions representing cleaners are Unite, GMB and Unison; the PCS and RMT unions have relatively small membership levels among cleaners in civil service buildings and rail respectively, and newer independent unions the IWGB and UVW have cleaners as a prominent component of their membership. According to LFS figures for 2022, only 15.1% of cleaners were union members and 21.7% reported that union-employer agreements affected their terms and conditions of employment.<sup>21</sup> Overall union membership density in the UK stands at 24% and 26% of employees in the UK are covered by collective bargaining agreements. There is no multi-employer agreement in the sector. **Different unions organize employees, and a sectoral organization exists on the employer side, although without any role in collective bargaining. Bargaining takes place at company level but the extent of this is very limited except where directly employed in-house cleaners in the public sector are covered by national multi-employer agreements.**

Previous research suggests the above problems of job quality are in part caused by cost-focused and short-termist procurement practices, which overlook the negative impact on workers’ lives, as well as performance problems related to staff turnover, absenteeism, productivity and the quality of service delivery.<sup>22</sup> As a result of a raft of empirical evidence commissioned by the Equality and Human Rights Commission (the governmental organisation tasked with promoting and upholding ideals and laws

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<sup>18</sup> All figures in this paragraph drawn from <https://www.bics.org.uk/wp-content/uploads/2021/06/RR2021.pdf>

<sup>19</sup> <https://www.resolutionfoundation.org/app/uploads/2022/05/Low-Pay-Britain-2022.pdf> - p56.

<sup>20</sup> <https://www.hse.gov.uk/statistics/tables/index.htm#riddor>

<sup>21</sup> These figures on membership density are taken from combining responses to questions in the LFS for the standard occupational classifications: 6240 ‘Cleaning and housekeeping managers and supervisors’; 9132 ‘Industrial cleaning process occupations’; 9232 ‘Street cleaners’; 9233 ‘Cleaners and domestics’; and 9239 ‘Elementary cleaning occupations.’ It is possible that the results from this sample may slightly overestimate both membership density and bargaining coverage.

<sup>22</sup> Grimshaw, D., Cartwright, J., Keizer, A., & Rubery, J. (2019). Market exposure and the labour process: The contradictory dynamics in managing subcontracted services work. *Work, Employment and Society*, 33(1), 76-95; Equality and Human Rights Commission (2014) “The Invisible Workforce: Employment Practices in the Cleaning Sector” [https://www.equalityhumanrights.com/sites/default/files/the\\_invisible\\_workforce\\_full\\_report\\_08-08-14.pdf](https://www.equalityhumanrights.com/sites/default/files/the_invisible_workforce_full_report_08-08-14.pdf)

concerned with equalities in Britain) and an associated industry taskforce that examined working conditions in the sector,<sup>23</sup> a range of initiatives were developed to tackle some of these challenges. Among others, the taskforce developed responsible procurement principles to guide public and private sector client organisations that buy in cleaning services. In addition, in 2015 the Business Services Association (representing facilities management companies including those that provide cleaning services) incorporated these responsible procurement principles when developing its Responsible Cleaning Provider Scheme. This committed members to promoting responsible procurement with the aim of supporting fair employment practices.<sup>24</sup> The impact of such initiatives appears to be somewhat inconsistent and protective gaps and other challenges within work and employment identified above remain significant.

Cleaning services in the public sector, including directly employed cleaners and external publicly procured services, and the way they are funded and organised differ markedly across England, Wales and Scotland, in large part because of the specific variations in how parts of the public sector have been restructured. For example in Scotland, schools had not been converted into quasi-independent academies and still had strong relationships with local authorities, which tended to provide school cleaning services across local authority-supported schools, in contrast to the approach in England where individual academies organised their own cleaning services on the basis of competitive tendering. Similarly, in Wales, where academisation had not taken place, many local authorities operated cleaning provision as traded services, providing public sector cleaning services for schools under a local authority area and in some cases providing window cleaning and other commercial services too. Academisation was said by an expert on cleaning services from an ethical research consultancy working with the public sector to have led to cuts and underinvestment in cleaning within the English public sector. Innovation such as the use of robotics and new technology in the provision of cleaning was underway in Scotland, and despite the current limitations in the effectiveness of this technology, its use was supported by the more coordinated, public sector-oriented approach there. This was less feasible in the English context due to the emphasis on public sector fragmentation and increasingly localised approaches to outsourcing cleaning services.

**The comparatively higher levels of fragmentation of public services in England meant there were a very wide range of different arrangements for how cleaning was provided in schools and great diversity in terms of how local authorities provided cleaning services.** These included traded services where the council, either directly or through an arms-length organisation, provided cleaning to other public sector and some private sector clients; in house services where cleaners and directly employed casual workers ('bank staff') were engaged to clean public sector buildings including schools; fully outsourced services provided by private sector outsourcing providers; and numerous permutations and combinations of such approaches depending on the locality.

In terms of employment regulation within publicly procured services, it was noted by expert interviewees that there were widespread problems of modern slavery within the cleaning industry.

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<sup>23</sup> The taskforce was an industry-led action group, formed by the Commission to improve working conditions for cleaning operatives across the sector. Members included governmental organisations, facilities management firms, employer organisations, unions, third sector and civil society organisations.

<sup>24</sup> BSA's cleaning forum represents about 130,000 staff, see <https://www.equalityhumanrights.com/sites/default/files/cleaners-rights-review-of-cleaning-taskforce.pdf>

Local authorities are legally obliged (under the Modern Slavery Act 2015) to have policies to prevent the use of forced labour, and other charters and standards used by outsourced providers to demonstrate quality included adherence to local and regional employment charters, the standards set out by the industry body the British Cleaning Council, the Investors in People standard (a voluntary set of management standards and accreditation related to the management and development of employees), and similar. However, experts felt that these non-statutory instruments had lesser importance than issues relating to overall budgets and how much purchasing authorities were prepared to spend on cleaners' wages. This could include cleaners being placed on national collectively agreed pay scales for local government and/or Living Wage Federation accredited rates of pay, and again there was a great deal of variety and complexity in how such standards were applied.

## Security services

There were estimated to be approximately 304,800 security industry employees working in the United Kingdom as of 2022<sup>25</sup>, and as of August 2022 there were 64,226 active security guarding licences as an indication of the overall number of security guards employed.<sup>26</sup> Between 2022 and 2023 the number of security guards rose sharply by a further 14%.<sup>27</sup> The Security Industry Authority (SIA) is the regulatory body for the security industry more broadly, issuing licenses for wider categories of security workers including Door Supervisor Training, Close Protection Training, CCTV Training and Cash and Valuables in Transit, meaning that once these employees are taken into account (many of whom fall outside of the security industry itself), 393,313 active licenses are reportedly held across 827 'approved contractors'.<sup>28</sup> 78 per cent of security guards are employed in the private sector including within outsourced service providers.<sup>29</sup>

**A recent SIA report highlighted numerous challenges in terms of the recruitment and retention of security guards, with surveys highlighting problems of low pay, the complexity and cost of licensing, training, and vetting requirements, unsociable hours, lack of flexible working as a barrier to those with caring responsibilities (particularly women) working in the industry, wider labour shortages and 'saturation' of employment within local areas, reduced candidate pools as a consequence of Brexit and the pandemic, risks of workplace verbal abuse and physical violence, and a lack of career pathways and progression opportunities.**<sup>30</sup>

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<sup>25</sup> <https://www.statista.com/statistics/780333/security-industry-employees-uk/>

<sup>26</sup> <https://www.gov.uk/government/publications/recruitment-and-retention-in-the-security-guarding-sector/sector-profile-recruitment-and-retention-in-the-security-guarding-sector-web-version#survey-findings-and-data-used-to-produce-this-sector-profile>

<sup>27</sup> <https://www.ifsecglobal.com/security-officer/british-security-industry-bucks-trend-as-demand-for-security-officers-soars/#:~:text=In%20the%20twelve%20months%20to,increase%20in%20licenced%20male%20officers>

<sup>28</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/109312/5/sia\\_annual\\_report\\_21-22\\_20pt.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/109312/5/sia_annual_report_21-22_20pt.pdf) - p19

<sup>29</sup> <https://www.tuc.org.uk/research-analysis/reports/international-justice-day-cleaners-and-security-guards#:~:text=80%25%20of%20cleaners%20are%20women,to%2030%25%20of%20all%20workers>

<sup>30</sup> <https://www.gov.uk/government/publications/recruitment-and-retention-in-the-security-guarding-sector/sector-profile-recruitment-and-retention-in-the-security-guarding-sector-web-version#working-in-the-security-guarding-sector>

The security guard role is frequently expected to encompass other functions, notably facilities management, cleaning, health and safety-related crowd management, customer service tasks such as dealing with complains, enquiries and providing advice, and a wide range of other functions that used to be performed by other staff on-site. There is a strong indication that role expansion and work intensification is a core feature of the work of security guards as organisations make cuts to other facilities management staff while retaining a security function.<sup>31</sup>

Key employment features of security work include:

- Security work is male-dominated: 84% of security guards are men;
- 26% of security guards are of black, Asian or minority ethnic (BAME) heritage, compared to 12% of all workers in the UK;
- Older workers are also over-represented: 43% of security guards are over the age of 50, compared to 30% of all workers;
- Security guards normally work 12 hour shifts<sup>32</sup>;
- Pay is low – average pay rates for security guards are typically only slightly above the statutory minimum wage at £10 per hour in the private sector and £14.23 in the public sector as of 2021 compared to median average hourly pay rates in Britain of £13.57 (2021);
- As illustrated above, security guards earn less in the private sector compared to the public sector –£4.23 per hour less on average.
- Security guards are at least twice as likely to be on zero hours contracts compared to the UK workforce with most found in the private sector;
- Elementary security occupations had the highest mortality rate amongst males of all occupations during the Covid-19 pandemic, with a mortality rate of 45.7 per 100,000 in 2020<sup>33</sup>;
- In 2021/22, 192 non-fatal injuries to employees were reported.<sup>34</sup> Security occupations are hazardous, and data released by ONS under FoI requests for 2014-16 indicated an average life expectancy of 62 for those working in security occupations compared to an average life expectancy of 81 in the wider population.<sup>35</sup>

Regarding worker voice, the GMB is the primary trade union for workers in the security sector. According to LFS figures for 2022, 28.6% of security workers were union members and 38.7% of security guards reported that union-employer agreements affected their terms and conditions of employment.<sup>36</sup> Overall union membership density in the UK stands at 24% and 26% of employees in the UK are covered by collective bargaining agreements. On the employer side, the British Security

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> <https://www.tuc.org.uk/research-analysis/reports/international-justice-day-cleaners-and-security-guards#:~:text=80%25%20of%20cleaners%20are%20women,to%2030%25%20of%20all%20workers>

<sup>34</sup> <https://www.hse.gov.uk/statistics/tables/index.htm#riddor>

<sup>35</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/adhocs/008307deathsinpeopleworkinginsecurityprofessionsenglandandwales2014to2016>

<sup>36</sup> This figure on membership density is taken from combining responses to questions in the LFS for the standard occupational classifications: 9241 'Security guards and related occupations'; and 9249 'Elementary security occupations'. There was no data available on the union-employer agreement question for SOC9249, and overall it appears that these results from this sample may slightly overestimate both membership density and bargaining coverage.



Industry Association (SIA) is the dominant employers' association in the sector. 570 companies are members of the SIA and the association is member of CoESS. SIA used to participate in collective bargaining but this is no longer the case.<sup>37</sup> A 2019 Eurofound study refers to the existence of a Skills for Security sector skills bipartite body where SIA and GMB participate but this has become a wholly-owned subsidiary of the SIA.<sup>38</sup>

In 2022, Working the Doors, an online community forum for Security Industry Authority (SIA) licenced UK security operatives, released the results of a survey of approximately 2,000 respondents employed in the sector.<sup>39</sup> The results indicated that security workers in the UK were overworked, under-valued, under-paid, and regularly forced into new and unfamiliar roles, all while training was minimal and levels of violence faced by security employees was increasing. **Telephone surveys conducted in 2021 by the SIA indicated that the average pay rate for a British security operative was £10 – £12 per hour;** this pay rate has not improved significantly since similar research was conducted by the SIA itself in 2006.<sup>40</sup> Problems relating to recruitment and retention were a feature of the industry, and survey respondents indicated that barriers to recruitment and retention were: low pay, unsociable hours, job insecurity, high levels of physical and verbal abuse, training costs and the licence application fee (application or renewal).<sup>41</sup> **Complex, multi-layered subcontracting placed further downward pressures on pay, in turn affecting industry morale and employee retention.**

Licensing is a complex issue in terms of security services. Directly employed security workers do not generally need to have the state mandated SIA license that outsourced security guards need in order to work in the industry. As with cleaning, there are a variety of often complex approaches to how security workers are engaged; situations where joint security teams involving unlicensed in-house security guards work alongside outsourced, SIA licensed guards are common. Employers with in-house or directly employed security employees still have to carry out numerous background and criminal records checks on employees, which reportedly generated a considerable amount of work and concerns relating to employer liability and responsibility for these staff; such 'risks' were more dispersed and less of a direct threat to the purchasing authority organisation in cases where security was outsourced, which was a disincentive to maintaining in-house security services.

Further challenges relate to insurance and liability arrangements. Insurance premiums and the potential for legal challenges to a public authority who would hold liability for, for example, injuries or similar caused by their directly employed security employees, were significant and again a significant driver informing motivations to outsource security.

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<sup>37</sup> [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef19014en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19014en.pdf)

<sup>38</sup> Ibid.

<sup>39</sup> <https://www.workingthedoors.co.uk/surveys/state-of-frontline-security-industry-study/> SIA has the power to license and regulate the private security industry. It licenses individuals who take on certain security activities and also manages a voluntary scheme that measures and accredits private security suppliers against independently assessed criteria and this is called the Approved Contractor Scheme (ACS).

<sup>40</sup> <https://www.gov.uk/government/news/sia-publishes-sector-profile-on-recruitment-and-retention-in-the-door-supervision-sector>

<sup>41</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100415/sia-ds-recruitment-and-retention.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100415/sia-ds-recruitment-and-retention.pdf)



The SIA operates a voluntary “Approved Contractor Scheme”. This is awarded to companies based on an assessment of 78 criteria relating to financial management, guard licensing, staff training, health and safety and similar. Large security providers such as G4S, Mitie, Securicorp and other major firms, typically signed up to this scheme, as purchasing authorities such as local authorities, the NHS, major construction firms, infrastructure projects and similar often insisted on membership of this scheme for those firms tendering for work. Stronger regulation of the security industry and more rigorous procedures in terms of licensing and criminal record checks through the Private Security Industry Act (2001) had reduced and limited unscrupulous activity in the industry, but exploitative practices in parts of the industry were identified. Experts from the regulatory authority for the industry, the SIA, told us about migrant workers stationed as guards on construction sites on rates of pay significantly below the statutory minimum wage, but who were fearful of raising problems due to their immigration status, threats from employers, distrust of the police and other state authorities, and a perceived lack of alternative options in terms of work.

In many cases where purchasing authorities outsource the bulk of their facilities management, security was being included as an additional function as part of an overall tender for services. This benefits the larger, better resourced facilities management firms that can offer the full portfolio of cleaning, security and other ancillary services.

Overall, procurement of security services reveals a great deal of complexity. **Numbers of security guards engaged by public authorities are often relatively small, less ‘visible’ and less likely to be subject to calls for insourcing compared to services such as cleaning and social care which employ higher numbers of people and had greater levels of advocacy on their behalf.** As our interviews with expert informants demonstrate below, the complexity of licensing, liability, insurance and fluctuating demand for security services also played a significant role in maintaining the typically outsourced, fragmented and peripheral nature of security employees within wider public employers and infrastructure projects.

## **PART TWO: Regulatory developments in UK public procurement**

### **2.1 A brief assessment of the main trends of regulatory developments in public procurement in the UK**

**Public procurement in Britain has been subject to considerable reform, debate, innovation and controversy over the last decade. There are three main strands to recent developments.**

**The first strand relates to the developments related to Brexit.** There is ongoing uncertainty about how much divergence or continuity there will be in new procurement regulation in Britain in the context of Brexit. Senior (but now departed) government figures had called for radical changes to the nature of public procurement, promoting deregulation as a supposed ‘opportunity’ afforded by exiting the European Union, but numerous scandals relating to public procurement during the Covid-19 pandemic may have limited the scope or appetite for further deregulation in these areas. The government has been promising to legislate in this area since late 2019, producing a Green Paper on procurement in early 2020 setting out long-planned changes to UK procurement rules on the basis of the following “principles of public procurement”: value for money, public good, transparency, integrity, equal treatment and non-discrimination.<sup>42</sup> Following consultation, a Procurement Bill was submitted and has been progressing through the legislature. It received Royal Assent during 2023 and will come into effect in 2024. The Cabinet Office’s notes accompanying the Procurement Bill explained: ‘The purpose of the Procurement Bill is to reform the United Kingdom’s public procurement regime following its exit from the European Union (EU), to create a simpler and more transparent system not based on transposed EU Directives.’<sup>43</sup> **While progress on this has been stalled due to repeated changes in prime minister, the Act seeks to streamline the complex range of legislation currently regulating public procurement, to give greater scope for poor performing outsourcing firms to be debarred from public contracts, provide a simplified process for smaller organisations bidding for smaller public contracts, strengthen post-procurement management of contracts, and ensure greater transparency in relation to public contracts that have been awarded. The proposal does seem to go beyond simply consolidating the web of EU-derived rules on procurement.** However, the extent to which the Act has the potential to truly transform, as the Cabinet Office originally suggested, public procurement can be questioned on the basis among others

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<sup>42</sup> <https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

<sup>43</sup> <https://bills.parliament.uk/publications/46458/documents/1787> The Bill will repeal over 350 individual regulations derived from EU Directives that are contained in the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011.

that it lacks significant certainty (e.g. around the new, somewhat vague concept of “public good” and how society in general terms might benefit from procurement decisions, particularly in terms of its relationship to social value, and the principle of value for money)<sup>44</sup> while some important areas, such as transparency, are due to be the subject of secondary legislation.

**The second strand to recent developments in UK public procurement concerns the extent to which public procurement should be used to drive up labour standards.**

In this respect, there is evidence of considerable changes in UK procurement regulation. This started with the adoption of the Public Services (Social Value Act) 2012) requiring public authorities in England and Wales to ‘consider’ how procurement activities might ‘improve ... economic, social and environmental well-being’. However, as discussed in the Grand Committee of the House of Lords recently:

*“there are regular reports of public bodies that have secured promised social-value outcomes from contractors—apprenticeships, jobs created, investment in local infrastructure and so on—but these are not delivered. As social value is weighted in tenders, organisations can win tenders to deliver social value but may not always deliver the social value that they have promised.”<sup>45</sup>*

Against this context, **the Procurement Act can be read in two different ways. On the one hand, the Act makes a significant shift by replacing the reference to the “most economically advantageous tender” (MEAT) and using instead the “most advantageous tender” (MAT) as the basis on which contracts are awarded.**<sup>46</sup> The removal of the reference to “economic” provides in principle scope for the inclusion of social and environmental issues. However, given that this principle has been present in legislation (via the Social Value Act) for 10 years, it could be suggested that the Act might be described as more of a legislative clarification than anything truly revolutionary.<sup>47</sup> Moreover, in practice, price in some form is very likely to form part of the award criteria in most procurement processes. Evidence of a divide in terms of the extent to which the Government is willing to use the procurement process to further social policy and other objectives such as the environment and workers’ rights is also provided in the lack of support for the incorporation of specific objectives at various stages of procurement.<sup>48</sup> From the perspective of labour issues per se, the Act fails to explicitly address these in a tailored and progressive manner.

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<sup>44</sup>See, among others,

[https://s3.amazonaws.com/lawingov\\_production/uploads/document/file/2023/Lawyers\\_in\\_Local\\_Government\\_LLGLG\\_-\\_Green\\_Paper\\_consultation\\_response.pdf](https://s3.amazonaws.com/lawingov_production/uploads/document/file/2023/Lawyers_in_Local_Government_LLGLG_-_Green_Paper_consultation_response.pdf)

<sup>45</sup>[https://hansard.parliament.uk/lords/2022-10-24/debates/87250434-8ABA-40F5-89C3-C1A3E4D5B5F7/ProcurementBill\(HL\)#contribution-8E86E492-3B33-4EE6-95AE-05EF42F51003](https://hansard.parliament.uk/lords/2022-10-24/debates/87250434-8ABA-40F5-89C3-C1A3E4D5B5F7/ProcurementBill(HL)#contribution-8E86E492-3B33-4EE6-95AE-05EF42F51003)

<sup>46</sup> Clause 18 of the Procurement Bill.

<sup>47</sup> See also the Cabinet’s statement in the Green Paper that pointed out that “this [MAT] approach is already provided for in the current regulations under MEAT, so this change would be about reinforcing and adding clarity rather than changing scope.” The Green Paper also stated that MEAT can “be mistaken as the need to deliver the lowest price when actually there may be scope to deliver greater value through a contract in broader qualitative (including social and environmental) terms.” However, 77% of the respondents to the Green Paper agreed with the proposed switch, believing that it would further encourage contracting authorities to take account of social value in the award of public contracts.

<sup>48</sup> For a synopsis of the issues, see <https://researchbriefings.files.parliament.uk/documents/CBP-9402/CBP-9402.pdf>

The only area where there is reference to labour issues concerns the ability of procuring authorities to disregard bids from suppliers known to use forced labour or to perpetuate modern slavery in their supply chain. Authorities will be able to exclude them where there is sufficient evidence; they do not need to have a conviction. However, it would be a discretionary exclusion ground rather than a mandatory exclusion ground.<sup>49</sup> Further, the Act represents a regression from the existing regulatory framework as it seeks to remove international standards as grounds for discretionary exclusion of tenderers.<sup>50</sup>

In the wider context, recent developments in terms of the links between procurement regulation and social/labour objectives have gone hand-in-hand with a broader questioning of outsourcing public services. Highly publicised incidents in recent years including the collapse of the Carillion group, which was engaged in a hugely diverse range of outsourced functions across the public sector<sup>51</sup>, loss of contracts and fines in the case of G4S<sup>52</sup>, and numerous examples of underperformance, failed and in some cases fraudulent gain of public money during rushed procurement processes associated with the pandemic (for example in purchasing personal protective equipment and similar) have led to increasing questioning of the role of the private sector in delivering public services.<sup>53</sup> New arguments are being made about the benefits of insourcing once-privatised functions by public bodies. Some local councils are pursuing this and insourcing represents a key policy demand of the Labour Party opposition up until 2019. Some local authorities, most notably the city of Preston in the north west of England, have pioneered the so-called 'foundational economy' approach which seeks to prioritise the public procurement of locally-provided goods and services.

**The third strand of regulatory developments relates to the evolution of country and regional approaches to public procurement.** An emerging theme is reform of procurement within devolved administrations at two levels, i.e. country-level (by the Welsh and Scottish governments) and at the level of metropolitan regions (e.g. Greater Manchester). Notably, **procurement reforms and local initiatives in these devolved regions are increasingly seeking to include clauses relating to employment and working conditions.**<sup>54</sup>

**In Scotland, the Fair Work First (FWF) policy, introduced in 2018, promotes the application of fair work criteria to grants, other funding arrangements and contracts awarded across the public sector.** The criteria and supporting guidance were developed in

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<sup>49</sup> See Schedule 7 of the Public Contracts Regulations.

<sup>50</sup> The list of international agreements in Schedule 9 does not include any ILO conventions or, indeed, any human rights instruments at all.

<sup>51</sup> See <https://www.nao.org.uk/wp-content/uploads/2018/06/Investigation-into-the-governments-handling-of-the-collapse-of-Carillion.pdf>

<sup>52</sup> The Ministry of Justice stripped G4S of its contract to run the HMP Birmingham prison in 2019 – see <https://www.theguardian.com/society/2019/apr/01/g4s-stripped-contract-run-hmp-birmingham-prison> ; G4S was fined heavily by the Serious Fraud Office for overcharging the Ministry of Justice for the electronic tagging of offenders - see <https://www.theguardian.com/business/2020/jul/10/g4s-fined-44m-by-serious-office-over-electronic-tagging>

<sup>53</sup> This has been most clearly evidenced in Mazzucato's work on the 'entrepreneurial state' – Mazzucato, M. (2013) *The Entrepreneurial State: debunking private vs. public sector myths* (Anthem); such questions have also feature in recent UK Labour Party policy debates – see <https://labour.org.uk/wp-content/uploads/2019/07/Democratising-Local-Public-Services.pdf> .

<sup>54</sup> Please note that the Procurement Act, discussed above, would apply to procurement by devolved authorities in Wales and Northern Ireland. Scotland, however, would maintain its own legal framework.

collaboration with the Scottish public sector, the Fair Work Convention, and business and not-for-profit representatives. The five fair work criteria include: 1) appropriate channels for effective voice, such as trade union recognition; 2) investment in workforce development; 3) no inappropriate use of zero-hour contracts; 4) action to tackle the gender pay gap and create a more diverse and inclusive workplace; and 5) providing fair pay for workers (for example, payment of real living wage). In 2021, ministers announced the expansion of the FWF policy to include two new elements (offering flexible and family-friendly working practices for all workers from day one of employment; and opposing the use of fire and rehire practices) to tackle specific labour-market issues arising from COVID-19. A contracting authority must consider, for example, before undertaking a procurement exercise, whether it is relevant and appropriate to include questions on FWF. In assessing this, the guidance suggests that it is important that contracting authorities consider all relevant factors and are able to justify their inclusion in any decision-making process. These factors may include a risk that workers working on the contract might be subject to exploitative practices, the employer's opposition to trade union recognition and access, and evidence that working conditions are making recruitment and retention problematic. Further, the guidance advises that, apart from where exclusion grounds apply, it may be better for contracting authorities to include fair work practices as award criteria that can be considered in tandem with other considerations, e.g. price/cost and quality. Economic operators bidding for public contracts are thus encouraged to explain how the FWF practices they propose to apply will positively impact the way the contract is performed.

**In a similar vein, there has been growing interest in how the Welsh Government and public services can leverage their considerable purchasing power to secure an array of economic, social and environmental outcomes.** The Fair Work Commission, which operated between 2018 and 2019 and comprised a group of individuals from outside the Welsh Government who were appointed by Welsh Ministers, considered how fair work can be promoted and encouraged in Wales. Following a report published in March 2019, the Social Partnership and Public Procurement (Wales) Bill was laid before the Senedd Cymru (the Welsh Parliament) in the summer of 2022; it was also reviewed by the Equality and Social Justice Committee<sup>55</sup> and received Royal Assent in 2023. The Act makes provision for:

- the establishment of a Social Partnership Council;
- a statutory duty on certain public bodies to seek consensus or compromise with their recognised trade unions (or where there is no recognised trade union) other representatives of their staff, when setting their well-being objectives and delivering on those objectives under section 3(2) of the WFG Act 2015;
- a statutory duty on Welsh Ministers to consult social partners, employers and worker representatives through the Social Partnership Council when delivering on their well-being objectives under section 3(2)(b) of the WFG Act 2015<sup>56</sup>;
- amendment of section 4 of the WFG Act 2015 by substituting 'fair work' for 'decent work' within the existing "A prosperous Wales" goal;

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<sup>55</sup> <https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=39479>

<sup>56</sup> The WFG Act calls for policy to support a 'prosperous Wales' as a 'well-being objective', which in this case would involve the integration of fair or decent work principles into procurement decisions.

- a statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy.
- certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains.
- reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty.

**As an example of experimentation at local level, the metropolitan-level administration Greater Manchester is introducing clauses that will demand that organisations providing publicly procured services adhere to employment charters that oblige the payment of the Living Wage** (i.e. a minimum rate of pay determined by living costs, unlike the lower statutory national minimum wage); engagement with unions; reduced use of precarious and zero-hours contracts; and other measures seeking to improve job quality.

**Overall, there is therefore considerable regulatory change and local institutional innovation in terms of public procurement, with the aim of addressing employment quality issues.**

## 2.2 Mapping the employment and regulatory context for cleaning and security services: What potential for “buying decent work”?

This section draws on more detailed qualitative industry data to explore the key issues regarding changing regulatory and strategic approaches to public procurement with impacts for employment quality. It draws on national level expert interviews and benefits from insights gained from a previous project which explored similar themes in the context of local government in England.

### Data sources

The full mix of data sources include secondary sources (national and local government documents, labour statistics, press and trade reporting, **research** reports, legal cases) and ten national level expert interviews from unions, employer associations and relevant non-governmental organisations. We designed a set of expert interviews with individuals from relevant organisations. The interviews were informed by the design of the PROCURFAIR project and supported by previous research conducted by the team on public procurement and employment standards in Britain. Interviewees were asked to explain and reflect on their organisations’ position on the relationship between public procurement and employment, the legislative and regulatory context and framework in relation to procurement, policy developments including in relation to Brexit, devolved administrations and their role within procurement and employment standards, ‘socially responsible procurement’ initiatives (in respect of employment issues), the most important aspects of job quality and employment relations that need addressing in cleaning and security, and the potential role of procurement to “buy decent work”.

We conducted in-depth interviews (lasting 70 minutes each on average, which were transcribed) with 12 experts from 10 organisations:

- The TUC (the peak level union confederation in the UK);
- The GMB (a diverse, general union with members in the public and private sectors including among cleaners and also within security, including with firms such as G4S);
- Unison (the largest public sector union);
- The Living Wage Foundation (a UK wide NGO that seeks to expand the coverage of the ‘real’ living wage within public authorities and public and private sector employers);
- The Local Government Association (the employers’ association for local government);
- The British Cleaning Council (the trade association for the cleaning industry);
- The Confederation of British Industry (the peak level employers’ organisation in Britain);
- The Association of Public Sector Excellence (an ethical consultancy working with public bodies on issues relating to procurement, outsourcing and similar);
- The Security Industry Authority (the state regulatory agency for the security industry); and
- We Own It (an organisation that campaigns in favour of public ownership in Britain).

Also, in June 2023, a stakeholder workshop was held involving participants from unions, employers, policymakers and academics with expertise in procurement, the public sector and the regulation of

employment standards, which was invaluable in gaining initial feedback on the themes emerging from our research.

## Findings

Trends towards outsourcing, insourcing, and the arrangements in place to protect how employment standards are regulated varied widely. One expert interviewee from an ethical public sector consultancy explained:

*'(T)here's always reasons why a council or any company decides to outsource . . . It's because they don't want to be bothered with it in some cases or actually can they get it cheaper? ...Or what they're having delivered is not great so let's give it to somebody else to do. But also now I think there is a bit of a sea change in that they're realising that actually private...and this is not across the board, there are people in private...it works really well. Joint ventures work really well in some cases, but in others it doesn't. And then that's when you look to insource it. And sometimes it's just a change in political leadership. And the will of the elected members and the leadership in an organisation. But what you tend to find is if you want to do the social value and terms and conditions and that sort of thing you probably do have to have control over it through in-house, either a traded service or...because that way then you've got more control over where you spend the money and how it looks like and what you get for that money.'*

The cases explored in Part two highlight some of this complexity and diversity within publicly procured services. **They demonstrate the differing approaches to outsourcing and how various forms of regulation were enacted by local authorities and other stakeholders as a means of seeking to protect or enhance employment standards among cleaners (and other workers) in publicly procured services.** Here, we set out some of the key issues from the expert interview data.

## Progressive change in hard and soft regulations

A first theme raised by a number of interviews related to potential changes to procurement regulation. **This marked a shift from contracting bodies which previously had to make decisions based on 'most economically advantageous tenders' to 'most advantageous tenders'. In principle, this could give public bodies greater capacity to include notions of social value, including good employment standards, within tendering processes.**

Trade union interviewees welcomed this change:

*We very much welcome the extraction of economic considerations...we want to see commissioning authorities really take into account in a very proactive, way, a range of factors...How do we be deliberate and proactive in making labour standards in there, when thinking about what a 'most advantageous tender' looks like during commissioning? (TUC policy officer)*

Regarding soft regulations, union interviewees also welcomed the development of voluntary employment charters at regional and city levels, and the scope this brought for union involvement in the development of policy and new forms of (soft) regulation:

*The way that many Charters have run is that they get a lot of buy-in because of the way that they're developed, either through what we would call a tripartite process or wider stakeholder*



*process. And there's some great examples of them having been developed with a lot of the key stakeholders on board, which has been absolutely critical to getting them in place and getting people to sign up to them. (TUC policy officer)*

### **Tensions with operationalising the living wage**

However, interviews with some individual unions demonstrated a degree of scepticism regarding the value and enforceability of employment charters. There were particular tensions where living wages were applied through publicly procured services. In the security industry, tensions were arising where Living Wage Foundation pay rates were in effect due to their relationship with more established collective bargaining:

*We in in the security industry are being advised that clients are holding off negotiations on cost of living adjustments, precisely because they want to see what happens with the Foundation living wage because that seems to be some sort...arbiter of what is a fair and reasonable wage, and I mean we've got significant issues with it, anyway....that has now become the new floor, and doesn't distinguish between the types of roles that people do which is unfortunate. (GMB national officer)*

### **In some cases it was argued that employment conditions mandated through Charters or the Living Wage Foundation risked undermining collective bargaining:**

*I think with London living wage, and Foundation living wage, all of these measures are really important. But they are a sticking plaster, and they are a reaction to the problems that we're already facing the market, which is a lack of organizational power...what that does is it actually takes wage bargaining out of the hands of workers...when you become linked in an index to a social provision, and you lose agency....just because you're paid a good wage...doesn't mean that you have any strengths in the workplace, it doesn't mean you have a respectful relationship with the employer, it doesn't mean that your [non-pay] terms and conditions aren't being cut, cut, cut. (GMB national officer)*

### **Valuing essential work**

While cleaning and security are both industries where below average pay (see p7) and poor working conditions are prevalent, there are key differences which impact on how feasible the introduction of the real living wage might be in security compared to cleaning procurement. The pandemic was felt to have had an impact on some employers improving the working conditions of cleaners given their crucial role in dealing with Covid-19:

*Security is considered slightly more skilled than cleaning from what I've gathered...does seem to get slightly higher rates of pay than cleaning...I have heard anecdotally that security companies find it easier to get clients to push the market rate to living wage because it's usually slightly higher anyway whereas cleaning has the tendency to be viewed as a low skill job, which anyone can do, and I think that has caused a lot of struggle. Now, interestingly over the pandemic...cleaners although I'm not sure they were ever fully recognized as key workers; there was a strong view that you need your cleaners because that's how you're fighting the bacteria and the infections...we saw the number of living wage employers increase at a faster rate than we've ever seen before. (Living Wage Foundation interviewee)*

## **Decoupling procurement from contract management**

**A further important theme that arose in our interviews with employer-representing organisations (LGA, CBI, the cleaning industry trade association), related to issues arising in the administration of publicly procured services and the decoupling of the procurement process from the contract management function:**

*What generally tends to happen is that the procurement team negotiate the contract and do all of the processes, package it all up and then hand it to the contract manager. And then the contract manager needs to then look for the next three years: "This is the contract, you're going to do that." And sometimes, because that contract manager hasn't necessarily been involved at the beginning, they just pick out of the contract: "OK, what are the bits of this contract that I need to do that I think are important and not necessarily?" Even though we [the procurement team] put the clause in the contract, they [contract managers] don't necessarily pick up on that. And it is not just councils that do that... The private sector does that as well. They default to managing what they think is important at the time rather than trying to manage it all. (Local Government Association interview)*

The pandemic highlighted problems faced by cleaners at work and the stressful conditions of seeing the tragic consequences of Covid-19 in hospital settings. Coupled with wider labour market issues affecting recruitment and retention, interviewees raised serious concerns.

*There was shortage of staff earlier in the year... One of the biggest employers with 28,000 cleaners [were] 5,600 staff short...staff, who, especially during a pandemic were literally sitting with people in their last minutes on this planet...another human being who hasn't got their loved one with them. And we have had an awful lot of people who've left the industry because they just literally burnt out... It's not an easy job. Conditions are not always good. (British Cleaning Council interviewee)*

## **Inflation and regulatory uncertainty**

While employer representatives claimed that increasingly outsourcing firms were focusing on quality as opposed to cutting costs as a means of gaining competitive advantage, challenges were also raised in terms of how outsourcing firms related to the public sector, given the political prominence of various outsourcing failures associated with particular firms, policy trends towards insourcing in some cases, problems relating to high inflation and what this meant for wages and other costs within multi-year procured contracts, and the uncertainty this brought to public sector 'markets' :

*It is incredibly difficult for a business who agreed a multi-year contract a few years ago to absorb the current inflation costs and continue to deliver a contract based on prices...which no longer represent reality. And you know that is a significant issue for a number of businesses...being asked to take a significant loss on public contracts... One of the other points...which is playing a factor in their decision to compete is the long-term sustainability and government support for public sector markets. Again, pre-pandemic there was a significant debate happening around where the public sector markets would continue... There isn't that long term surety that these markets are going to be supported and to continue. (CBI interviewees)*

Overall, these expert interviews highlighted several key issues that subsequently informed our case-study research. **The first major issue concerns the changes in the regulatory context, including national level legislation and ‘softer’ national and regional regulations in the form of employment standards.** From the perspective of union stakeholders, emerging tripartite forms of policymaking and an increased emphasis on basic labour standards were welcomed but tensions were identified in terms of the enforceability of such regulation, contract management, and the tension between mandated living wage levels and more ‘traditional’ union-led bargaining over wages and conditions. **Secondly, employers emphasised challenges concerning the decoupling of labour-related clauses in public contracts from the day-to-day management of these contracts,** which undermined the enforcement of better employment conditions. **A third issue concerns high inflation and the ongoing impact of the pandemic amidst a ‘tight’ labour market and uncertainties within the wider policy context.** Tables 1 and 2 summarise the key issues relating to protective gaps, employment standards, buying decent work and alternative means of addressing the problems in cleaning and security.

**Table 1. Cleaning services: Setting, extending and enforcing standards**

CORE QUESTIONS	SETTING STANDARDS	EXTENDING STANDARDS	ENFORCING STANDARDS
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<p><b>1) most important protective gaps</b></p>	<p>Low pay ZHCs Exposure to Covid-19 (20/21) Low union coverage Seperation from core workforce Prevalence of modern slavery</p>	<p>Need for stronger HR oversight of outsourced services as a challenge to maintaining DW Need for stronger union presence Enforcement agency presence Embedded nature of outsourcing and marketised provision</p>	<p>Contracting authorities – limited role in enforcing employment conditions Unions lack capacity and presence in order to enforce standards State enforcement agencies with limited resources and capacity</p>
<p><b>2) Policies and efforts to diminish these gaps (<i>apart from</i>. BDW)</b></p>	<p>LWF accreditation in particular employers/LA areas/public bodies Union organising among outsourced workers Adherence to employment charters</p>	<p>(Re)integrating outsourced workers into collective agreement coverage Insourcing as a means of eliminating 2 tier workforce Two tier code – legal barring of disparities between direct/outsourced employees (revoked in 2010s)</p>	<p>Challenges given weak legal support for union recognition Employment charters as difficult to enforce LWF accreditation as effective but decoupled from direct employer regulation of employment conditions</p>
<p><b>3) Potential role of BDW to diminish the gaps ?</b></p>	<p>Social value clauses in public procurement Linking of labour clauses and charters to public procurement</p>	<p>Inclusion of LWF living wage in tenders Commitment by providers to adhere to charters Exclusion of providers known to utilise eroded working conditions</p>	<p>Contracting authorities use of LWF as outsourced form of pay regulation Limited contract management to ensure DW standards maintained</p>

**Table 2. Security services: Setting, extending and enforcing standards**

CORE QUESTIONS	SETTING STANDARDS	EXTENDING STANDARDS	ENFORCING STANDARDS
<b>1) most important protective gaps</b>	Low pay ZHCs Exposure to Covid-19 (20/21) Low union coverage Separation from core workforce, isolation Violence and harassment at work Licensing requirements /expense	Need for stronger HR oversight of outsourced services as a challenge to maintaining DW Need for stronger union presence Enforcement agency presence Embedded nature of outsourcing and marketised provision Legal complexities and licensing requirements as a barrier to insourcing	Contracting authorities – limited role in enforcing employment conditions Unions lack capacity and presence in order to enforce standards State enforcement agencies with limited resources and capacity Guards often employed in small numbers, often isolated and oversight is a challenge
<b>2) Policies and efforts to diminish these gaps (apart from. BDW)</b>	LWF accreditation in particular employers/LA areas/public bodies Union organising among outsourced workers Adherence to employment charters	(Re)integrating outsourced workers into collective agreement coverage Two tier code – legal barring of disparities between direct/outsourced employees (revoked in 2010s)	Challenges given weak legal support for union recognition Employment charters as difficult to enforce LWF accreditation as effective but decoupled from direct employer regulation of employment conditions
<b>3) Potential role of BDW to diminish the gaps ?</b>	Social value clauses in public procurement Linking of labour clauses and charters to public procurement	Inclusion of LWF living wage in tenders Commitment by providers to adhere to charters Exclusion of providers known to utilise eroded working conditions	Contracting authorities use of LWF as outsourced form of pay regulation Limited contract management to ensure DW standards maintained

## PART THREE: Four case studies of public procurement of cleaning and security services in England, Wales and Scotland

Four case studies were conducted to interrogate diverse organisational practices of public procurement and associated employment and working conditions in cleaning and security services. Each case is pseudonymised in line with the requirements of the University of Manchester research ethics regulations. Table 3 provides a summary.

**Table 3. Summary of the four case studies**

	Case	Local authority	Past outsourcing details	Current details	Issues
1.	<b>ALCS Cleaning</b>	UBNE (Urban Borough Northern England)	Initial outsourcing in 2000; revenue-raising aspirations; provision of cleaning to council and external public sector bodies e.g. schools	Maintained as an arms-length service despite insourcing pressures within LA; real living wage employer and cleaners employed on LA-equivalent terms and conditions	Some problems with local management/supervision due to separation from council management structures; school academisation as a threat to 'market share'
2.	<b>ALSO Security</b>	UBNE (Urban Borough Northern England)	Established in 1990s as an arms-length subsidiary	Complex organisational form – council, arms length body, private security guards	Complexities in terms of licensing, liability, regulation and contract status
3.	<b>ALEO Cleaning and other services</b>	SCC (Scotland City Council)	Cleaning and other services outsourced in 2006 to an arms-length organisation;	Cleaning and other services brought back in-house following a lengthy legal and industrial campaign over equal pay	Outsourcing as driving structural workforce inequalities without improving service quality or efficiency; ongoing tensions around job evaluation and pay comparisons
4.	<b>Local authority cleaning and related services</b>	Wales and local authorities	Outsourcing, competitive tendering trends similar to rest of UK from 1980s onwards	Since devolution in 1998, generally less widespread outsourcing than UK; greater emphasis on localised	Widespread adoption of RLW; devolved legislation focused on local economic development and a strengthened

				contracting; greater emphasis on keeping services in-house	role for unions in policy and procurement
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The first and second case studies, ALCS Cleaning and ALSO Security, are located in the same local authority, named as Urban Borough Northern England (UBNE). The third case study, Scotland City Council (SCC), focuses on a long-term process of outsourcing which was met by legal and industrial challenges and ultimately brought back in house within the context of wider reforms to public procurement and employment standards. The fourth case study focuses on the context of Wales, exploring some of the wider reforms to procurement, social and employment related clauses within this region of devolved governance, with reference to several local authorities within the province.

The case study organisations provide a considerable amount of detail on both cleaning and security. The second case study focuses explicitly on the employment of security workers and some reference to security guards and how they are employed is made in both the third and fourth case. This may not be as equally balanced as would be desirable but the security industry in general proved difficult in terms of gaining research access. **Each case demonstrates a considerable amount of policy and strategic initiatives relating to more progressive approaches to public procurement and engagement with mechanisms such as employment charters, social value and notions of community benefits within contracting processes. There are also some significant developments in terms of bringing services back in-house and ‘insourcing’.** Use of arms-length management organisations (ALMOs), where services are outsourced to nominally separate organisations owned and controlled by the parent organisation, was a feature in both the UBNE case studies and at SCC, albeit with contrasting outcomes as we discuss below.

## Two case studies in Urban Borough Northern England: Progressive procurement reform and insourcing

### Introduction and organisational context

UBNE is a large metropolitan local government organisation in the north west of England. The council has, since 2017, been led by a progressive, left leaning city Mayor and leadership, and has engaged considerably with wider notions of sustainable procurement, the use of public procurement as a means of driving economic growth and addressing problems of poverty and low pay in the city region, adopted numerous charters and forms of non-statutory employment regulation including the regional Good Employment Charter, Living Wage Federation (LWF) accreditation and similar. The leadership of the council has acknowledged that outsourcing of services has been inefficient, had a negative impact on working conditions, and resulted in revenues being extracted from the city region by private providers. **The approach of the council has been to insource services where feasible and to ensure adherence to 1) LWF pay rates and 2) for staff to be covered by the non-pay terms of the national collective agreement for local government where they remain outsourced.**<sup>57</sup>

For the purposes of this report, which focuses on cleaning and security services, we analyse two “arms length organisations”, which are wholly owned subsidiaries of the local authority, UBNE. This includes the Arms Length Cleaning Service (ALCS), a contract cleaning organisation owned by the council that provides cleaning services for other organisations, principally schools, across the city region; and Arms Length Security Organisation (ALSO), a security service owned by the council that provides CCTV coverage and contracts in private security guards and other resources, with a main focus on safety and security in relation to council buildings and other relatively recently redeveloped areas of the city. **This form of organisation is of interest because it contrasts with the more marketised nature of outsourcing to private providers, maintains a degree of protection of local government collective agreement coverage and minimum standards that are often not recognised within publicly procured services, and provides alternative forms of service provision for other public sector (and some technically private sector) organisations that outsource various functions within the local area.**

The overall work of UBNE is of interest. It is a relatively progressive council with influential local unions. UBNE has implemented the LWF living wage across council services, adopted approaches to procurement that have integrated concerns relating to social value and the payment of the living wage, and, at the time of interviews, were in the process of establishing a local “Insourcing Commission”, which will review council services and employment features with a view to insourcing as much as possible and reducing the role of the private sector in the delivery of council services. Social

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<sup>57</sup> The 2021-22 Real Living Wage as set by the Living Wage Foundation stood at £9.90 per hour, a higher rate than the first two grades of the National Joint Council collective pay agreement for local government in 21/22, which stood at £9.50 per hour and £9.60 per hour respectively.



housing had been transferred from the council to housing associations (non-profit social housing providers independent of the public sector), and the council procured social care from a range of bodies including some large private sector social care employers. A wide range of relatively smaller functions across the council area had been brought back in house and this project of de-marketisation was ongoing.

Unison, the largest public sector union in the city region, had been active in campaigning within the NHS to bring outsourced cleaners back in house and had, in the last few years, been successful in doing so. It had run campaigns at other NHS hospitals. In some cases these had led to full insourcing of outsourced staff, and in others they had campaigned and organised industrial action to bring cleaners on to employment conditions consistent with those employed under collectively agreed NHS terms and conditions, meaning *'there's now no economic reason for that NHS trust not to bring that in-house, because they've got parity pay, terms and conditions'* (Unison organiser/ Councillor).

Union interviewees saw strategic value in using LWF pay rates as a means of narrowing the divide between those on these rates and those on collectively agreed local government rates of pay, reducing the scope for savings from staff costs and subsequently the cost-saving rationale associated with lower cost private providers. This counters some of the arguments made by union officials in our expert interviews who were concerned that the LWF took pay determination away from workers and their organisations, representing a pragmatic approach in the context of very low membership density and bargaining coverage among cleaners and other low paid, commonly subcontracted occupations. It was acknowledged that the contract management function in relation to procurement had suffered due to austerity, meaning **there were very limited resources within the local authority to make sure commitments in tenders were adhered to by outsourced firms, including in relation to the living wage.** A councillor described the value of the LWF rates as a means of 'outsourcing' contract management, with the accreditation process a more effective means of regulating pay than oversight from contract managers within the council:

*'One of the problems with austerity is the contract management side of things for local authorities were one of the first things to go... So that contract management around living wage, Living Wage Foundation can do that for us basically, through their accreditation process.'*

## **Outsourcing in UBNE and the situation before the experimentation**

Outsourcing and the use of public-private partnerships had been widespread in UBNE prior to 2016 and the election of new leadership in the council. In the early 2000s, UBNE had privatised its planning, building control, property, highways and construction-related functions to a partnership organisation involving two major outsourcing companies. Many of the more than 100 staff working within this function were seconded from the local authority and largely maintained their terms and conditions, although the outsourcing provider was responsible for HR services which had led to inconsistencies in terms of employment practices, pay and reward. Concerns with the service quality and lack of obvious benefits from the privatised relationship had led to the service being brought back in house in early 2020. The partnership entity was described as an 'umbrella' involving staff from the outsourcing companies as well as the local authority secondees, and the process had allowed staff originally employed by the outsourcing firms to also come onto local authority terms and conditions. **Services with outsourced components such as this 'umbrella' arrangement had been reviewed across the local authority, and a number of services had been brought back**

**in house, often due to performance issues and contracts coming to an end.** HR managers interviewed indicated that the ethos was more focused on preventing further outsourcing and bringing services back in house where it was deemed more effective in terms of service delivery for the council to run them directly.

Subsequently, the HR function was largely focused on TUPE related issues in relation to such changes, which tended to be driven by elected members responding to pressure from residents and in some cases the unions rather than a wider strategic approach to insourcing in the name of improving the coordination and coverage of human resource management. The council had an expectation that external organisations that they procured services from would pay the Foundation Living Wage, which was included at the tender stage and allowed tendering organisations to use a digital portal where bids could be assessed. **LWF accreditation and other employment related criteria could be included in the Social Value weighting within tenders and so contracted organisations would be viewed more favourably in the tendering process if they adhered to such clauses.**

## ***Case UK-1. ALCS cleaning services***

### **Overview and origins of the experimentation**

UBNE originally provided cleaning directly, with council employees engaged across local authority buildings and affiliated schools. It outsourced its cleaning services, which were provided to council buildings, facilities and local authority schools, in approximately 2000. The council then set up a wholly owned subsidiary, ALCS, which became responsible for this provision.

This arrangement became more complex in subsequent years. Since the 2000s, many schools in the region had gained academy status, acting as independent bodies outside of the control of the council and making their own individual decisions on procurement, facilities management and similar. ALCS maintained a cleaning contract with the majority of newer academy schools, and also provided cleaning in council leisure facilities, but it had in some cases lost contracts to privatized cleaning services that had tendered for the business at lower rates. Union interviewees indicated that they felt this model was *'not perfect...and then not the vehicle that the union would ultimately want'* (Unison representative.) However, they had not strongly campaigned to insource this service, mainly as the public sector link was maintained and employees were maintained on the same terms and conditions of employment as those set out in the national collective agreement for local government:

*'those workers at [ALCS] get exactly the same terms and conditions and pay benefits as they would if they were employed directly by the council without a wholly owned subsidiary in the way. And therefore, while again, from a purist perspective, we might say, well actually, do you need ALCS at all? It's not really an argument that we pursue with everything else going on, because, to those workers, in reality it wouldn't make a big difference.'* (Unison branch chair)

**Union interviewees saw a benefit in the ALCS setup in that it had maintained the majority of the schools cleaning workforce under collectively agreed local government terms and conditions and better employment standards than typically found in privatised outsourced cleaning,** which academy schools could choose to engage instead if they wished (and in many cases had felt forced to do so due to wider cuts to their budgets.)

## Actors involved, strategy and resources

### **In this local authority the union worked to ensure that they would have the right to access the workforce in outsourced services in order to share information and recruit**

– a problem in some local authorities was that union representatives on paid secondment from a local authority employer would be denied facilities time to support outsourced workers as they were engaged by a different employer. This exclusionary approach had been attempted but resisted by the union, who insisted this was necessary given the sheer numbers of outsourced staff, particularly in social care, who would otherwise have few links to the wider union branch structures. All staff in ALCS had guaranteed hours and no ZHCs were used. While core terms and conditions such as pay and pensions were administered through the council's HR services, it was noted that problems still arose in terms of how people were managed as a consequence of the outsourced arrangement:

*What we have found in the past is that certain managers...use the fact that they saw themselves as a separate entity to engage in management practices that would not have been allowed elsewhere within the Council...We were quite clear that that that couldn't continue, and the Council had to play a more interventionist role in making sure that those people were being treated the same as everybody else...It was more how they were managed, how they were being treated, how sickness was being dealt with, how often they were having supervisions. (Unison representative)*

There were union members and representatives within ALCS, meaning that the employment relationship within the subsidiary was very similar to the setup within the council despite the risks of local managers acting unilaterally or in conflict with established practices. There was a major focus on insourcing within the council, but ALCS was largely outside of these discussions given that the major concerns union representatives had in terms of outsourcing driving down the terms and conditions of local residents were largely addressed through maintaining the workforce on local authority terms and conditions. The original aspiration with the establishment of wholly owned subsidiaries, that they would then generate income by selling services to private providers on a commercial basis which in turn would subsidise local services, had not really materialised and there was not an especially active strategy of attempting to secure new business.

## Obstacles, constraints, conflicts and learning processes

### **Some of the major problems in relation to employment conditions that faced cleaners related to wellbeing and visibility, which were felt to be exacerbated by their indirect employment status.**

It was often difficult to ensure that outsourced cleaners were receiving appropriate breaks, and the lack of visibility of cleaners who would often start at 5-6 in the morning with limited means of digital communications with the wider organisation and colleagues, with managers concerned they might feel 'detached' from the local authority, viewing the specific school or building they cleaned as their employer, which limited attempts from within the human resources function to engage them with wellbeing initiatives, training and development and similar (SHRM manager). The intention behind running cleaning services as an arms-length management organisation LMO was that it could bring in income from private sector organisations using their services, but uptake had been limited, in large part due to the stipulation that workers were paid at LWF rates. It was felt that service quality and working conditions were better than in many private cleaning contractors, but intense cost competition limited the capacity for market expansion.

The status of ALCS as a traded service meant that they had contracts with schools outside the boundaries of the local authority, many of which had Academy status, which in broader terms was viewed as positive as it kept cleaning services in such schools under public control, with terms and conditions set collectively and such staff having access to HR services around health and wellbeing that their previous contractor would not be able to offer. In this case, Citywide went 'slightly against' TUPE rules keeping staff on their previous terms and conditions of employment when transferred over to Citywide in that their pay in many cases would be increased to the Foundation Living Wage level. Citywide staff were included in council-wide assessments of the gender pay gap, which widened the calculated inequality between the most highly paid staff and the largely female workforce in cleaning and catering, but it was felt that 'it increases it slightly, [but] it increases it for the right reasons.' (SHRM manager)

## Outcomes

**This case represents a form of outsourcing, albeit to a public sector entity, which maintained collectively agreed employment conditions and relationships, with the promotion of the real living wage as a core feature.** In line with our findings elsewhere, it serves as an example of alternative forms of outsourcing beyond the prevailing use of subcontracting to private firms, and while some tensions were evident due to the separation of management functions between the council and the subsidiary, characteristics of 'decent work' were maintained to the extent that the local union, which in general strongly promoted insourcing, had not felt the need to challenge the arrangement.

## ***Case UK-2. Arms Length Security Organisation (ALSO)***

### **Overview and origins of the experimentation**

**UBNE engaged numerous workers in security functions across the urban area that it covers. These included some who were direct employees of the council, various security staff who worked in janitorial services in large social housing blocks, and a further wholly owned council subsidiary, ALSO, that was responsible for a wide range of security-related services to clients across the city.** ALSO had been established in the 1990s to provide security services in a deindustrialised port area of the city that had high levels of crime and was in the process of redevelopment at the time. The council itself provided CCTV services across the city, and ALSO provided discretionary services to fee paying customers and to council affiliates. These included fire and intruder alarm monitoring, remote video response services (responding to particular activations of CCTV cameras or activity identified through such monitoring, or ‘intelligent CCTV’). A further function was of security patrols and responses to specific incidents and other services including locking and unlocking of buildings and security gates.

In terms of employment, the service provided a control room function with staff employed on non-Council terms and conditions. There is a public space CCTV service which provides 168 hours of cover a week, and typically the staff monitoring these cameras worked 48 hours per week – four staff were allocated to this function. A further operator would monitor alarms and direct the drivers the service used to carry out their various activities. A team of mobile response operators were employed on 5pm-7am shifts on weekdays and 24 hours over the weekend. The overall operation was overseen by a council employee.

When the service was last put out to tender in 2019, with ALSO ultimately being awarded the overall contract, the contract was divided into two lots covering 1) CCTV services and 2) manned security guard functions. Part of these manned guard services had since been brought back in-house under the control of the Council’s facilities management function. Ongoing reviews were taking place within the council to explore the option of insourcing more of these services, but it was noted that there were some highly particular issues and tensions in relation to any proposal to bring manned security guard services back in house. **Statutory requirements, SIA accreditation (i.e. the licensing regime for those working in security), the specific health and safety issues relating to the safety of individuals in vans, working alone, responding to alarms, key holding, key audits, risk and liability were viewed as complexities specific to security that the council itself was reluctant to absorb.**

Security guards and related employees typically work more than 40 hours per week (see Figure 2, p8) and within this case 48-hour weeks were said by service managers to be common. With council terms and conditions stipulating a 36-hour week in employment contracts this was another issue that made insourcing problematic. Since the retendering outlined above, a local private security company based in a neighbouring town was responsible for providing security guards which were then contracted in through the arrangement described above. This local firm had largely replaced the patchwork of contracts with larger, national private security firms that previously existed. These security guards were employed on separate terms and conditions determined by the private security company, but this contractor had moved its staff onto the real living wage with subsidy provided by the council.

## Actors involved, strategy and resources

ALSO had approximately 210 customers, approximately half of which were schools. Other customers were typically corporate buildings, car parks, and similar. The service had not sought to expand greatly, but the commercial aspect of the operation was largely informed by generating revenue to be able to provide security services to key parts of the city without burdening the council with the cost of providing them. There was an emphasis on localised, quality provision that was of a better standard and value than rival providers could offer:

*Our costs have largely been based on a commercial charging model...we're significantly less than the commercial model ...it's felt to be a better service than some of the other national services that operate across wide geographic areas, whereas our focus has always been a basis in [UBNE]. Therefore you can be guaranteed of the best response times. (ALSO manager)*

The complex intersection of council oversight of a wholly-owned subsidiary which then outsourced most of the security guarding functions raised numerous complexities in terms of employment, which contrast markedly with the system in place at ALCS where cleaning workers were largely engaged under unified local government terms and conditions. Regulation and licensing, and monitoring compliance with these processes within often complex organisational arrangements, raised challenges: 'to a certain extent we take it on faith that the contractor we're employing subsequently employs staff who are capable, confident and security licensed' (City Watch manager), and there was a prevalence of migrant workers within the industry that made licensing and background checks more complex. Those in CCTV monitoring roles would have access to police radio communications and need to have permission from the police to access them, involving background checks and similar. **A plethora of complexities relating to risk, liability, regulation, licensing and the nature of security work were felt to militate against bringing such a service back in house.**

In terms of the provision of security services across the borough, some of the most significant yet complex sites that utilised security services and manned guards were 6 'Gateways', providing community services including NHS primary care services, library services in some cases, and customer services functions providing advice on council tax and social security. The local authority and respective NHS organisations were co-tenants in these facilities, and they also had community spaces which could be booked and rented by local organisations and community groups. Three of these facilities had been established through Private Finance Initiative arrangements, involving a 25-year contract with a consortium involving private sector construction, outsourcing and finance partners, who subcontracted the management to a private sector facilities management firm which provided such services across the NHS primary care estate. This firm had responsibility for facilities management in the building, including cleaning which was outsourced to a large private cleaning provider. These public-private partnership arrangements involved a council-employed centre manager with complex associated outsourcing arrangements. Three of the Gateways were owned and managed by the local authority, in which case security guards, caretaking and facilities management were organised directly by the council, with cleaning and caretaking provided by ALCS and in-house provision respectively. Security guards were provided through the regional security firm that had a relationship with ALSO, as mentioned above.

Prior to the Gateways using this regional security firm, they had a contract for security guards with a large multinational facilities management and construction company. In 2018, the security contract came up for tender, and it was felt that service quality had deteriorated and that there was a lack of commitment from the contractor to retendering, with this relatively small contract then allocated to

the regional security provider used subsequently. It was felt that this had led to an improvement in service, more consistency in terms of staffing, a closer relationship between guards and the contractor's management, and an improved working environment and employment relationship for the guards themselves, who had been transferred over from the previous provider. Under the previous provider, guards had felt isolated, took their problems relating to HR issues such as sickness, pay and other issues relating to (for example) uniforms to the local authority centre manager rather than the contractor's management, which often involved referral to impersonal regional call centres elsewhere in the country. **While Unison had members among these workers, they did not have recognition under the earlier outsourced arrangements, and the re-establishment of representation and bargaining rights had been a significant gain from this reorganisation.**

Security cover at the Gateway sites were to cover hours from 6.30am until 11pm, with a team of three covering each site to fill these shifts. The guards would typically do some weekend working and were typically spread across six days per week. The regional security provider currently used was said to monitor working time more closely – the previous private provider often had guards working excessive (i.e. over 48 hours per week) hours, leading to fatigue and breaches of the Working Time Directive; as with many firms in the UK, guards were 'encouraged' to sign an opt out from the working time rules.. Again, these practices had ceased under the present contractor. This had led to improved staff retention, in part due to improved status given their increased customer service role as well as a feeling that this was a preferable role to working, for example, as a guard in a security cabin on an industrial estate or construction site. **Team working with the wider group of reception and customer service staff in the Gateways had improved due to stability of staffing and the more integrated nature of working between the regional security contractor compared to the previous private provider.**

The council-owned, non-PFI Gateways had security guards who also monitored CCTV (a skill which led to wage enhancements under collectively agreed job grading structures), and would support the cleaners with, for example, removal of refuse and spills. 14 directly employed caretakers worked across the council-owned sites, dealing with repairs and some of the tasks mainly allocated to the security guards. There was greater scope for dealing with pay and reward issues under these arrangements than under the more extensively outsourced structures in the PFI-originating facilities.

The PFI Gateway facilities had a contract with a large multinational private cleaning provider and had not used the quasi-public ALCS service as the consortium that owned and managed them had preferred providers that it used. The contractor had changed several times over the lifetime of these facilities and had contracts with Carillion at the point when it collapsed. The local authority had no input into decision making on bringing the services back in house following Carillion's collapse, meaning a different private provider was then selected, with none of the collective coverage or LWF rates of pay that featured in ALCS.

A further case of insourcing in relation to the provision of security services within the council had taken place at a small scale in the case of a private company that had tendered for and won a contract to provide security and caretaking services to large local authority housing developments including tower blocks. The service had been criticised by residents for the level of service provided and the lack of cover, and had been brought back in house – six staff members were brought back in house but remained on the terms and conditions they held with the private sector predecessor, which were less



favourable than local authority terms and conditions but maintained due to the TUPE regulations ensuring that they transferred on their existing terms and conditions.

### **Obstacles, constraints, conflicts and learning processes**

There was a reluctance to bring the security guards working in the Gateways back in house – the council-level management was undertaken with minimal numbers of staff and the complexity of organising the employment of security guards, licensing and insurance requirements, staffing and covering shifts would be highly resource intensive and not feasible given the capacity levels of management. The regional provider had been responsive to the needs of the council, effective at covering shifts in cases of sickness or holiday absence, and it was felt that the improvements in job quality and greater protection of pay and reward that these arrangements, compared to the previous arrangement of outsourcing guarding to a large multinational firm, mitigated the concerns regarding downward pressure on employment conditions typically associated with outsourcing.

The local authority had committed to pay LWF rates of pay at a minimum. It had also developed employment charters (covering a range of expectations relating to pay, guaranteed hours, employee representation and similar), which could be included as part of the social value weighting of tenders as a means of raising employment standards in services they procured.

### **Outcomes**

Overall, this case of complex, multi-layered approaches to providing security services highlights the highly fragmented nature of inter-organisational and employment arrangements in parts of the public sector. **A number of complexities relating to the regulation of security work and the plethora of different organisations tasked with working together to provide services suggest that more binary conceptions of outsourcing and insourcing may be overly simplistic, given the embedded nature of private contractors and ownership and highly fragmented forms of organisation.**

### **Resources**

These two case studies in UBNE are based on seven interviews with nine interview participants, and we also had access to a wide range of documentation from within the council, minutes of meetings of elected members, policy documentation on procurement strategy and similar.



## ***Case UK-3. Procurement in Scotland: Political devolution, arms-length organisations and the (partial) defragmentation of local government services***

### **Introduction and organisational context**

The case of Scotland as a devolved administration within the UK is of interest as there are specific, devolved regulations in relation to procurement. Compared to England, there is in general somewhat less widespread outsourcing and privatisation in Scotland, and across the devolved nation a centralised ordering system with a relatively limited number of preferred suppliers is to be used by public bodies, limiting the proliferation of new private entrants into the 'market' for outsourced public services compared to England. While this constrained further marketisation, it was acknowledged to be challenging for SMEs attempting to win public contracts, especially given the wider range of considerations in terms of social and employment related clauses they were expected to meet. Considerable reform of procurement was evident. For example, the Social Value component of tenders in operation in England does not apply to Scotland but a similar form of assessing such elements of a contract, Community Benefit, applies instead. The Fair Work First principles<sup>58</sup> typically constitute 5% of the value of a tender, a relatively small component of a tender that did however mean that those tendering for contracts have to demonstrate their credentials in terms of paying the real living wage, training, sickness absence policies, policies on working time and similar when attempting to win business.

As in many other areas, problems were identified in terms of labour market pressures. The local authority in this case study, Scotland City Council (SCC) has high levels of call centre employment, which would often be offered on the basis of shifts that could be used to accommodate childcare responsibilities, meaning that turnover was a problem. Partly because of these pressures, decisions had been made to ensure that any agency staff used were on harmonised terms and conditions that were equal to those directly employed by the council. SCC was in the process of attempting to gain LWF accreditation, implementing the Fair Work principles into public procurement, and also expanding the use of Community Benefit clauses in a way that supported local communities and organisations in a more responsive way. Fair Work principles included payment of the Living Wage, non-exploitative use of zero hours contracts, flexible working policies and not using fire and re-hire approaches, but a tension as identified as tendering companies could claim they were working towards these goals rather than having achieved them all, and post-contract monitoring of progress was problematic. **The procurement function had become increasingly complex – legal**

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<sup>58</sup> The Fair Work First (FWF) policy, introduced in 2018, promotes the application of fair work criteria to grants, other funding arrangements and contracts awarded across the public sector. The criteria and supporting guidance were developed in collaboration with the Scottish public sector, the Fair Work Convention, and business and not-for-profit representatives. The five fair work criteria include: 1) appropriate channels for effective voice, such as trade union recognition; 2) investment in workforce development; 3) no inappropriate use of zero-hour contracts; 4) action to tackle the gender pay gap and create a more diverse and inclusive workplace; and 5) providing fair pay for workers (for example, payment of real living wage)

**challenges were more frequent, pre-tender supplier engagement was more extensive, social and economic goals were an increasingly significant part of tenders, and wider concerns with sustainability, trafficking, forced labour, organised crime, supply chain analysis, and preparing for economic and price shocks were much more significant priorities than they had been previously.**

### **Outsourcing in SCC and the situation before the experimentation**

In 2006, the then Labour-led SCC restructured numerous council services to be provided by arms length organisations. Union interviewees were critical of this council leadership who were felt to be overzealous in relation to outsourcing and ‘would have got rid of everybody if they could...and just kept the office workers.’ Cleaning, catering and numerous other services were transferred to an Arms-Length External Organisation (ALEO). In September 2018, all services delivered by ALEO and under its brand were transferred back in-house to SCC and ALEO ceased to trade. Facilities management services including cleaning were brought back in-house with the staff affected brought back into being covered by wider local government collective agreements, including in relation to pay. Social care workers in the council-operated residential care homes had not been transferred over to ALEO, but social care services previously delivered by ALEO were brought under the management of the city region’s Health and Social Care Partnership (i.e. a partnership between local government and the city-level NHS). Facilities management and catering services once provided by ALEO are now delivered by the council's Property and Land Service. SCC claimed that this ‘restructure of the council family allows the council to continue to deliver an efficient and effective operating model and best value services for the city. What hasn't changed are the services being delivered and the people who do these jobs, all staff transferred to SCC.’

**A key driver of the move to insource services once run by ALEO related to a long-running legal and industrial dispute in SCC against the council and in relation to equal pay.** In 2016 the GMB union registered a collective grievance against ALEO in relation to overtime premiums, non-standard working payments, and other issues of non-payment for travel time among care workers and similar issues relating to work content. The grievance covered home carers, janitors, and cleaning staff. The widespread problems evident in the model of employing outsourced workers in these functions had resulted in legal challenges that contributed towards workers being brought back in-house under local government collective agreements as a means of addressing the wider challenges to the outsourcing model in relation to equal pay.

ALEO was set up as an arms-length organisation (owned by but separate from the council), which employed cleaners, carers, small numbers of security guards, catering and broader facilities management. It was felt that the restructuring sought to reduce costs through employing such workers outside of collectively agreed local government terms and conditions, although inefficiencies were evident in that ALEO had its own management, human resources and IT functions. Problems were evident from an early stage, with one-off payments made to staff shortly after the restructuring in a partial acknowledgement of how their conditions had been eroded and the inequalities in terms of pay that were emerging because of outsourcing. 26 separate arms-length organisations were established by the council as part of this restructuring, with very damaging effects on the pay and conditions of employees. ALEO employees initially had their local government terms and conditions protected under TUPE regulations, but soon after the outsourcing ALEO eliminated overtime bonus rates, reduced holiday entitlements, and unilaterally changed the shift patterns of workers. The aim

of using the service as a means of selling services to other public and private organisations had not materialised in the way that was envisaged: 'that's what they expected, and that's where they expected to get extra revenue and additional revenue. And it was based on a case of reducing their own workforce's terms and conditions' (GMB representatives). Other public sector organisations including police premises had maintained their own outsourced cleaning arrangements and little private sector business had been secured. The legal dispute over equal pay culminated in a series of strikes in 2018 following several years of legal challenges, and the ultimate agreement settling the dispute led to ALEO staff being brought back in house. **The 'institutional experimentation' in this case involved the process of bringing female dominated roles that had been outsourced to ALEOs by a local council in an attempt to waver equal pay liability back in house. The aim was to ensure that women were paid equally to men (negotiating a new pay settlement) and that they received some of the local authority benefits that they had lost by being outsourced.**

This case focuses mainly on ALEO and cleaners but given the focus on security guards elsewhere, questions were asked about security and procurement arrangements in the council. Security guards were engaged in council buildings, the city centre at night including taxi queue marshals, and construction sites. This was outsourced to a major private security contractor, and the bid had largely been accepted on the basis of cost – security guards were not paid the Real Living Wage and it was felt that the cost including the upgrading of supervisory pay scales and differentials would have been too expensive.

### **Origins of the experimentation: outsourcing and workplace inequality**

The main ALEO discussed in this case study was formed in 2006 and started trading in 2007. From 2009 onwards ALEO had responsibility for core council services such as cleaning, catering, homecare and janitorial services. The Council leader at the time made announcements about social procurement and how ALEO may be able to help maximise income in these services. While SCC maintained control over the running of these services through ALEO, the latter was not bound by the same collective agreement as SCC which was between the trade unions and COSLA (the national association for Scottish Local Authorities). This meant that the workers from ALEO had different terms and conditions of employment from those who were directly employed by SCC including pay. In 2011 ALEO workers received a 0.65% pay rise however this was at the expense of other terms and conditions including access to enhanced overtime rates and bank holiday working among other things. While this meant that ALEO was now seen to be paying the city-level Living Wage it enabled ALEO to maintain a competitive advantage while further budget cuts were announced by SCC. It was argued that ALEO was more politically palatable for SCC than outsourcing to the private sector completely.

Simultaneous to the development of the ALEOs, SCC in 2007 set up a Workforce Pay and Benefits Review Scheme (WPBRS) the aim of which was to eradicate gender inequality. This scheme was in contrast to the Red Book scheme developed by other Scottish Councils which SCC rejected. The WRBS was later found to have led to people in female dominated roles being paid £3 per hour less than those in male dominated roles. There were two key reasons that this had happened, firstly the unions had negotiated a three year pay protection scheme for those who had lost out on bonuses, however this had only applied to male dominated roles and did not include many roles where women worked including cleaning. The second was the way in which the job evaluation scheme was designed. This scheme developed two pay categories, core pay and non-core pay. Core pay was evaluated through

more objective job evaluation techniques, while non-core pay was determined by the 'job context'; this meant extra pay was given based on a point system, where points were given for particular criteria and these points equated to extra pay. However these points were given for criteria such as having a full time contract which women were less likely to be able to meet. SCC had devised its own job profiles, job descriptions, staffing and payment structures, independent of wider local government collective agreements in Scotland. This opened it up to challenges in terms of how women workers were employed compared to other local authorities, but also within the council – for example, 'predominantly male based services...Parks and Recreation, what they were called at that time, so the guys that worked in the parks, whether they used the same equipment as a cleaner, they used brushes, mops, they kept the yards tidy, they kept pathways tidy, it was a cleaning post, but they got more money than the cleaners.' (Facilities manager)

The use of bonus schemes had a long and gendered history within SCC since the introduction of productivity-based bonuses in the 1970s from which female dominated occupations were excluded. Hence, by the development of the WPBRS over 120 different bonus schemes existed all of which excluded female dominated occupations. These bonuses in themselves equated to a basic level of pay where in some cases men could be earning over 300% than women in similar roles. The WPBRS did little to address the issue as the non-core pay points relied on the calculations that had been used on the previous bonus schemes. Hence, rather than the WPBRS eradicating gender equality it was seen to exacerbate the issue.

The development of the WPBRS and the ALEOs had not been opposed by the unions (Equal pay lawyer interview). This was particular the case because the most powerful representatives in these unions had been of the male dominated occupations that were protected by these practices, while representation of the female-dominated occupations had been minimal, and there had therefore been little appetite to challenge these developments.

**These developments lead to a substantial decline in conditions of employment. Not only did the new pay scheme enhance pay inequality, the creation of ALEOs meant that workers moved away from council terms and conditions, meaning that overtime premiums were no longer paid, leading to workers either having to work longer hours or find alternative ways to make ends meet.** When the council made cuts of £56 million, £6 million of these cuts were absorbed by ALEO, who subsequently cut many job roles. This included pooling janitorial services for schools, whereby instead of having one janitor per school they would have fewer janitors that would cover the cleaning of a group of schools. For cleaners this meant an intensification of work, which meant high staff turnover and conversely an increased use of agency workers (Unison interviewee). Further problems related to the system in place for dealing with illness and absence – the council's policies for dealing with such issues focused on attendance management, informed by support, compassion and empathy, whereas ALEO's approach to these issues was harder edged and felt by union interviewees to involve the threat of punishment.

### **Actors involved, strategies and resources: the beginnings of the legal challenge**

The process of litigating and fighting for equal pay against SCC started prior to the development of the ALEOs and the WPBRS. These claims were made by female workers with support of lawyers and limited support of the trade unions. The claims were made against the pay inequality brought about by the bonus schemes that existed in SCC that were not applicable to the female dominated roles. In 2006 a group of women won an equal pay claim against the council following which the council decided to

put together both the WPBRS and set up the ALEOs to avoid future claims. The feeling was the ALEOs would enable them to keep these women employed on different terms of conditions without liability. The women and their lawyers put forward a claim (that they lost) at an Employment Tribunal based on the idea that the pay scale and the utilization of ALEOs had been discriminatory. However the previous win, lack of support from trade unions and the decline in conditions of employment coupled with an increasingly hostile management system in ALEO set the groundwork for the agency and power of the female workforce. These conditions helped to shape the parameters of the grassroots workers campaign that led to the workers being brought back in-house, and ultimately the union leadership becoming more responsive towards and representative of their members within the majority female low-waged workforce. At the outset of the campaign for equal pay, getting the service brought back inhouse into the council was pushed for by the women workers together with a lawyer. While these women were union members, support from the unions had been limited. However as time went on and the women became increasingly active, a coalition of support was built between GMB, Unison and the Scottish TUC. This coalition pursued the equal pay claims through the courts and in 2014 they won their first court case whereby the Employment Appeal Tribunal overturned a ruling by the Employment Tribunal. The EAT argued that the use of ALEOs was a deliberate strategy utilised by the council to avoid their equal pay liabilities. The Court argued that the council owed a substantial settlement to these workers. While this court case was won, equal pay issues still remained and workers were not brought inhouse at this time, ongoing grievances that meant the campaign for equal pay became stronger.

In 2017 there was a substantial shift in the campaign as there was a change in political leadership in the council and in Scotland in general. The SNP, who became the party controlling the council, had run a successful electoral campaign referencing their support for the equal pay campaign and a commitment to bring the service in-house. While this political support was important, in 2017 a further claim by the equal pay coalition was met with the finding that the WPBRS and the payment protection scheme had been less favourable to women.

Despite the support received from the SNP during their election campaign when they came into power negotiations for equal pay and bringing the service back in-house were slow. This was predominantly due to disagreements that existed between elected council members and council officials. This led to the coalitions of unions organising the biggest strike of its kind over two days in 2018, with groups of workers who had never previously been on strike such as care home cleaners also joining the action. While this was the largest strike of its kind, strikes had been used earlier on in the equal pay campaign. This included strikes against the ALEO decision to cut overtime in 2012, janitor strikes and boycotts following a decision by ALEOs to pool janitorial services between schools rather than schools employing their own janitors, and the refusal by ALEOs to pay the enhanced rate for doing physically demanding duties as well as hazard pay as set out by the councils bonus scheme.

### **Obstacles, constraints, conflicts and learning processes**

Many of the newly elected council leadership after 2017 agreed for a need to bring the workers back in house, create a new pay grade system that would address the equal pay issues and would fall in line with the court settlement agreed with by the Unions. However this was opposed by some of the other councillors who argued that early court judgements had in fact never argued that the pay scheme utilised had been discriminatory. The opposition of a few councillors and the financial troubles of the council meant that negotiations regarding compensation for workers, new pay systems and bringing the workers back in-house took longer than expected. A council-wide job evaluation scheme was

underway at the time of the research (2023) which sought to harmonise terms and conditions, remove some long-standing inequalities and prevent further legal challenges over equal pay in the future. This was predicted to become problematic, however:

*'The first problem is the scoring is not going to be popular. And the second element is that the council doesn't have any money. And they're building up another liability and they have mortgaged absolutely everything to be able to pay for the last two settlements and there's going to be a massive...I expect there'll be a massive fight.'* (Equal pay lawyer)

Union representation in the council was felt to have improved – union interviewees indicated that local union branches in the 2000s, when the outsourcing to ALEO took place, were unsupportive of newer activists, concluded agreements without consulting adequately, and were slow or reluctant to engage with the wider legal disputes that emerged in the mid-2000s that challenged the inequalities inherent to the ALEO arrangement.

**The wider approach to procurement, outsourcing and insourcing that the unions were working with involved them being regularly consulted, opposing further outsourcing where possible and typically in agreement with council officers and elected members, and some forms of insourcing** – for example, during the pandemic, some security guards outsourced to work at venues which had closed were brought into local authority employment, giving them greater income protection, and moves were being made to ensure that cleaners working on multiple contracts, many of which were only 3-5 hours per week each, were amalgamated into block contracts, giving greater security of income and simplified contracts to these workers.

### **Outcomes of the campaign and the insourcing process**

The outcome of the equal pay campaign led by outsourced women workers meant that the ALEOs were closed down in 2018 with approximately 6,500 workers brought back in-house. Terms and conditions of employment had eroded in comparison to those prior to the outsourcing. For example, enhanced overtime was only paid to those with contracts of 37 hours or above, while previously this was paid to anyone working more than their contracted hours. However, there were some significant improvements. These were associated with the improving relationships that had developed between management and the unions (GMB and Unison) at the workplace level as well at council level. **While negotiation with regards to fair pay and levels of compensation are still underway this is achieved within a stronger framework of employer-union dialogue than was the case under outsourcing. Management at local levels had improved and felt by union interviewees to be more receptive to the needs of the workers.** Additionally, there were significant improvements in the unions' representation of women workers as the leadership now featured a number of the women who had played important roles in the equal pay campaigns.

Challenges relating to the process of bringing ALEO back in-house concerned its own procurement of materials and goods – these included food and drink items for the catering function of the organisation, cleaning products and similar key items. Numerous invoices to suppliers had been blocked or were seriously delayed. The contracts inherited on insourcing ALEO were deemed not fit for purpose and below the standards expected of the council's procurement policies and a major piece of work was undertaken to amend and renew these which was a significant challenge.



## Summary

This case is emblematic of numerous tensions associated with some complex and nuanced forms of outsourcing and organisational restructuring. Equal pay claims based on similar inequalities to those seen in this case have emerged in a number of local authorities across the UK, highlighting how the outsourcing of low paid, majority female workforces has resulted in unequal treatment that has increasingly been challenged through the courts and by unions. **The inequalities inherent to outsourcing, even in cases which differ from common models of a lead organisation subcontracting a function to a private firm, is evident, and the corresponding legal, industrial and political mobilisations associated with outsourcing and the equal pay campaign demonstrate both the complexity of unravelling complex systems of ownership and organisational fragmentation within public services, but also the prospects for contestation by workers in concert with unions and legal actors.**

## Resources

This case study was based on 7 interviews with 8 interviewees. Council documentation, press and legal reporting drawn from the Lexis-Nexus and ProQuest databases were also used to develop the case study context.

## **Case UK-4. Public procurement in Wales: Devolved innovation, localisation and re-regulation**

### **Introduction and organisational context**

**This case explores the context of Wales where, under the devolution settlement, it has introduced innovative new approaches to regulating public procurement.** This case is structured in a way that draws out these developments as a means of contextualising how procurement has been developed in two contrasting local authorities, one in an urban area and one in a semi-rural area.

Wales has some devolved powers in terms of procurement, and compared to England there has been somewhat less privatisation and outsourcing in general. Of particular relevance here is that academy schools were not introduced in Wales – this has meant that school cleaning is still usually the responsibility of local authorities.

Wales is estimated to spend £6 billion on procurement of good and services, equating to approximately one third of annual expenditure in 2020<sup>59</sup>. However, despite this high value of procured services, external spending with privatised and outsourced services is lower than in England. This is partly due to all schools remaining under control of local authorities as opposed to being converted into quasi-independent academies, as is the case in much of England<sup>60</sup>, and a lack of political will within many local authorities to outsource services such as cleaning and catering, instead keeping these under local authority control more commonly than has been the case in England. The main local government services where outsourcing has occurred, according to those interviewed, are social care and leisure services. While outsourcing remains relatively limited in Wales compared to England, **procurement is one of the key areas where Wales is able to legislate independently in accordance with the Welsh devolution settlement. This ability to legislate on procurement is an important tool for the Welsh government as areas including industrial policy and employment regulation remain under the control of the national Westminster government.**

### **Situation before the experimentation**

Until relatively recently, the Welsh government had not utilised these independent powers directly as they have largely relied on UK wide procurement legislation, in particular through alignment with EU procurement legislation subsequently transposed into UK law. While small adjustments were made to Welsh procurement through various codes of conduct over recent years that diverged from the Westminster approach, it was not until 2015 that Wales started to legislate independently on procurement, firstly with the Wellbeing of Future Generations (Wales) Act 2015, which set out the key parameters for local government procurement. A central element of this Act is a commitment to

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<sup>59</sup> <https://www.futuregenerations.wales/wp-content/uploads/2020/06/Chap-2-Procurement.pdf>

<sup>60</sup> <https://law.gov.wales/schools-maintained-local-authorities>



‘Deliver decent work with fair and equal pay conditions’ as one of seven core aims of the legislation aimed at promoting equality in Wales<sup>61</sup>. **There has been a notable history of innovations by local authorities towards social procurement that were seen to be beneficial both for their local economy and conditions of employment for procured services.** The more rural local authority within the overall case of Wales provided numerous examples of procurement focused on local spending with local businesses to support regeneration and improved employment, priorities that had been in place since the early 2000s. This went against the trend across the UK at the time where there were pressures to outsource services to larger providers.

## Origins of the experimentation

Following the 2016 Brexit vote, and the withdrawal from EU procurement regulation, further legislation developed by the Welsh government includes the Social Partnership and Public Procurement (Wales) Act 2023<sup>62</sup>. Interviewees were cautious in terms of predicting the impact of this legislation but were positive about its potential for increasing transparency regarding procurement decisions as well as stakeholder participation. This Act has direct implications for the way in which services are to be procured and the conditions of employment of workers in procured services. The aim of this Act is to ensure that ‘public sector expenditure delivers even greater value in contributing to positive social, economic, environmental and cultural outcomes’, thereby linking to the Wellbeing of Future Generations (Wales) Act, promoting social responsibility and a more consistent approach towards procurement across Wales. **The Act formally involves unions in decision making around procurement: ‘to make provision about sustainable development in accordance with a principle of social partnership; about socially responsible public procurement; establishing a Social Partnership Council for Wales.’** This Act potentially has direct implications for conditions of employment:

*[the Act] has got the potential to...go down the route of coproduction which can only benefit local government employees, our members and potentially those that are outsourced...we’ll have much more of a robust say in ...generating those ideas and how we can use procurement and commissioning going forward, especially in social care and those low paid sectors, such as cleaning. (Unison interviewees)*

Unions in general have had relatively little formal involvement with decisions around procurement in the UK and particularly England, and so legislation that strengthens the role of unions in such processes is a significant innovation in the UK context. This was viewed positively by procurement officials:

*it’s the Scandinavian model, of getting the issues out on the table and coming up with solutions and you end up with less industrial disputes and more productivity is the aim...certainly with the whole living wage agenda, the modern slavery agenda we’ve...presented to the internal trade unions to check they’re happy. Certainly in terms of modern slavery, we’re hoping their members will be the eyes and ears, if there’s any issues, they know how to report it. (Wales urban council procurement manager)*

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<sup>61</sup> <https://www.futuregenerations.wales/wp-content/uploads/2021/02/Procurement-Bitesize-ENG.pdf>

<sup>62</sup> <https://www.legislation.gov.uk/asc/2023/1/enacted>

**Wider improvements in industrial relations, as well as improvements to monitoring and enforcement capacity, drawing on the position of unions within public employers and procured services were viewed as positive potential outcomes of this new legislation.**

In addition to these comparative innovations in terms of social dialogue in relation to procurement decisions, the more rural of the three councils examined in this devolved national case included the use of strategic procurement so that third party expenditure would have a direct effect on improving the lives of people in their local area. The change in procurement strategy at this local authority was successful as there was a cross-party political consensus that localisation of procurement was a key means for the local economy to be supported. This consensus meant that the council set up a well-resourced strategic procurement team focused on ensuring that procurement policies both supported the local economy as well as remained compliant with EU procurement regulations. An active decision was made not to outsource any core services, and instead procurement was used predominantly for services where the local authority lacked capacity. A small number of schools did use private providers for cleaning services, but these two strategies combined meant that workers in procured services were paid at least the Real Living Wage and where possible were covered by collectively agreed local authority terms and conditions. This had helped with staff retention, as employment standards were slightly better within public and publicly procured services than was typically the case in low paid private sector employment where statutory terms and conditions, i.e. the legal minima, were the norm. Throughout this process the local authority worked closely with trade unions who were consulted over and provided feedback for the development of procurement tenders.

As well as experimentation within individual local authorities, further innovation included cross-local authority procurement partnerships between three councils. One of the larger councils set up a wholly owned company providing procurement services that other local authorities then accessed. The wholly-owned procurement company was informed by a long-standing commitment at council level towards socially responsible procurement, and in particular a commitment to ensuring that the Real Living Wage was paid to all workers in procured services. While social care was outsourced, outsourcing in other areas was comparatively limited and other “high-risk “services such as cleaning and catering remaining in-house. The decision to keep these services in-house was a deliberate one, and the council procurement team had consulted with trade unions previously to explore alternative delivery models for these services including outsourcing following budgetary pressures. However, it was decided to keep these services in-house and for the employer to focus their attention instead on ensuring that staff in outsourced services such as social care would be paid the Real Living Wage.

In 2021 the larger of these three local authorities went into a partnership agreement with other councils including one of the smaller organisations to allow for resources to be shared and reduce costs. The procurement of services for the two smaller councils were run by the larger local authority’s procurement company. While cost savings were seen as important, social value considerations were also a key part of the agreement and a reason why the small council went into partnership with the larger council. It was felt that without the partnership the smaller council would be unable to put in place strategic procurement and influence third party inclusion of social, economic and employment related clauses. This support enabled the council to go beyond a focus on cost savings and to engage more with the priorities of the Wellbeing of Future Generations Act, to encourage local spending and to invest in improving conditions of employment for contracted work more generally. However, for all of the local authorities surveyed in this case, outsourced social care services were a major concern as other sectors such as cleaning still generally remained under local council control.

## Actors involved, strategy and resources

The cross-council partnership was supported by local unions, with many procurement officers having worked in a number of councils and had developed strong working relationships with the local trade union branches. Union interviewees noted that they often were used as a sounding board for new procurement strategies being put in place by the councils. **Procurement innovation and new legislation derive from a long history of campaigning and collaborative working between community groups, local authorities and unions.** These includes the creation of formal structures such as Workforce Partnership Councils - tripartite bodies consisting of unions, employers and the Welsh government - that were set up to discuss public sector workforce issues within public services<sup>63</sup>. Through this structure key codes of conduct were developed including the Code of Practice-Ethical Employment in Supply Chains (2016), which was agreed through these partnerships and is concerned with the prevention of modern slavery and human rights abuses, encouraging trade union recognition, stopping blacklisting, preventing false self-employment and regulating against the use of umbrella schemes, zero hours contracts and encouraging the payment of the LWF real living wage. These innovative policies were valued but again, interviewees reflected on the challenges of enforcing such voluntary instruments in a context of acute resource constraints.

*we're encouraging public bodies to ask more questions about the way people are employed on these contracts to...hold those organisations to account...what we didn't do enough of, it's typical for Wales, great ideas, ahead of the game in some ways, produce some really useful policy material and then just don't put any resource into following it through...the weakness of the code is that we haven't had the resources to actually hold organisations to account for the commitments that they've made. (Wales government procurement official)*

While this Code pertained to procured services, and there was some scepticism as to how meaningfully local authorities could monitor and enforce these conditions given the complexity of supply chains in relation to (for example) food and electronics, these councils also decided that all directly employed staff would also be paid the real living wage. This influenced the current situation where the majority of Welsh local authorities now pay at least the real living wage. The inclusion and importance of the real living wage in the Code of Practice as well as in direct employment within Welsh local government derived from long campaigns by the community organising network Citizens Wales. This resulted in action groups being created whereby Citizens, local authorities, academics, some businesses and trade unions worked together to lobby businesses to pay the real living wage but also lobby the Welsh Government to make the funds available to enable the payment of the real living wage. Innovative community initiatives supported by Citizens Wales had involved working with a local boxing gym owner who had set up a security firm providing employment for those in marginalised communities, which was becoming formalised and working to provide services to the public sector in a way that supported economic development goals including addressing entrenched localised unemployment. Security workers, a partial focus of this wider research, were only employed in minimal numbers in the local authorities we surveyed, and with the exception of this community-level initiative security was largely dealt with by council facilities management and guards being bought in from private providers, but in very small numbers.

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<sup>63</sup> <https://www.gov.wales/workforce-partnership-council/terms-of-reference>

## Obstacles, constraints, conflicts and learning processes

However despite the comparatively limited outsourcing of key services, innovations to improve conditions of employment where services are outsourced, and the emphasis on good employment, cost considerations remain the most significant variable on contracts. While policies and attitudes towards procurement of services within Wales differ in some respects to those in England, in practice the experiences of employers procuring services in both countries is very similar. **Employers noted that there was always pressure to cut costs, and despite the rhetorical and policy commitments, employment conditions were usually secondary to cost in relation to procurement.** A further concern related to the increasing complexity and hierarchies potentially deriving from some of the new legislation relating to procurement:

*Wales is very much what we call a layer cake in terms of policy and institutions. The number of institutions going up in terms of people who have a say, interfere in terms of public procurement there's about four layers. If you look all the way to the new Social Partnership Bill creating a social partnership board it's about four and five layers between that and a local authority in terms of institutional bodies. (Manager, cleaning contractor, comments in stakeholder workshop)*

A procurement manager from a largely rural local authority welcomed the increased transparency that the Social Partnership legislation was hoped to bring, but expressed concerns over the new legislation, risks of centralisation and what it might mean for procurement strategies focused on localised spending and economic development informed by the principles of the foundation economy:

*It'll give us an opportunity to be more transparent, it will give us an opportunity for the argument to do more locally. I still believe we can do that local element, I think people have made arguments for not going local which are not there, if I'm honest. (Wales rural council procurement manager)*

**Despite the comparatively limited outsourcing of core services in Wales, public spending reductions under the guise of 'austerity' were experienced very negatively by local authorities. This meant that while services were kept in house other cost cutting mechanisms had to be put in place that were often reluctantly agreed by unions. This included significant staff cuts;** one local authority surveyed had cut 2,200 members of staff since 2005, predominantly through not filling vacancies when people left. This had led to generalised work intensification with staff working longer hours with the union noting high levels of sickness absence, stress and staff turnover. Unions had reluctantly agreed to staffing reductions in core services, as the alternative put to them had been that of outsourcing, further cost reductions and erosion of bargaining coverage as had been seen in social care.

## Outcomes

Overall, there have been some notable policy innovations at the level of Wales as a devolved administration that establish a formalised role for unions in being consulted over and influencing employment conditions within public procurement. **The comparatively limited (compared to England) extent of privatisation and outsourcing in Wales means that there is less of the multi-layered complexity that was evident in our English case studies. This meant**

that adherence with the Real Living Wage and collectively agreed terms and conditions of employment was perhaps more straightforward than was the case in the more fragmented public sector seen in England. However, Wales is subject to similar constraints in terms of ‘austerity’, and while these innovations strengthen the institutional position of unions within public procurement, it remains to be seen the extent to which this will meaningfully improve the working conditions of low paid workers in procured services such as cleaning and security.

## Resources

This case study was based on 5 interviews with 7 interviewees, supplemented with a wide range of documentation from devolved government sources in Wales and within the councils discussed, including minutes of meetings of elected members at local and (devolved) national level, and policy documentation on procurement strategy and related issues.

25	Early 2023	Wales urban council procurement manager
26	Mid-2023	Wales rural council procurement managerb
27	Mid-2023	Two Unison branch officers
28	Mid-2023	Two organisers from Citizens Cymru
29	Mid-2023	Welsh Government senior procurement official

## Case studies: Concluding comments

**The cases show the complexity and variety of different forms of outsourcing.** They demonstrate that outsourcing and public procurement in the British case is not just a case of public bodies buying from the private sector in a dyadic relationship but a much more complex, overlapping and fragmented environment, which involves the local state, arms-length bodies, public-private partnerships and multi-layered subcontracting, all taking place in a highly complex environment of changing forms of employment regulation.

The negative downward pressures on working conditions that derive from such complex subcontracting arrangements are well established in the extant literature. Nevertheless, **a range of diffuse, overlapping strategies and institutional contestation from actors - including unions, elected members in local authorities, campaign groups, community organisations and legal advocacy organisations - can be seen to have led to a partial re-regulation of procurement and outsourcing.** Examples drawn from our cases include:

- local, council-level initiatives to promote insourcing, actions to expand the coverage of the real living wage, and strategies to maintain collectively negotiated terms and conditions of employment for subcontracted workers (observed in cases 1 and 2 in UBNE);

- legal and industrial contestation of outsourcing and the associated inequalities, which underpinned the decision to insource and re-regulate workers' terms and condition(in case 3 in SCC); and
- progressive reforms of public procurement, which promote local expenditure, trade union involvement and effective social dialogue (in case 4 in Wales).

**Such institutional innovations took a range of forms**, including LWF accreditation; insourcing and the extension of collective agreement coverage; reduction of procurement spend with large multinational facilities management contractors in favour of not-for-profit or local private alternatives; extending forms of consultation with unions; and strengthening the institutional embeddedness of unions in the field of public procurement.

**Specific support was evident for these innovations, deriving from the emergent new regulatory context.** These included new forms of regional and city level governance, devolved nations, Social Value legislation and their devolved equivalents, private regulation such as LWF accreditation and the proliferation of voluntary codes of conduct relating to supply chains, approved contractor status and similar.

Despite these innovations in relation to regulation, employment standards and procurement, significant challenges remain. **Of particular significance in the current crisis are the dual challenges relating on the one hand to high inflation, which is fuelling wage and cost pressures and the 'cost of living crisis', and on the other hand to ongoing cuts to local government expenditures** directed by the current Conservative UK central government administration.

As such, whether or not public procurement can be pursued to progress opportunities for decent work depends on a fragile balance of local commitment and resourcing of progressive alternatives against radical constraints in the financing and central government support for local government public services. **What our evidence demonstrates is an emerging recognition among actors working in the sphere of public procurement to establish a valid and effective role for unions and the rejection of biased arguments promoted across political parties in favour of presumed cost advantages of outsourcing. Instead, we are witnessing a gradual, albeit limited and constrained, move towards partial decommodification of local government procurement and service provision and small but significant improvements in decent work.**

## List of Interviews

	Date	Organisation
<b>National/ expert interviews (10 interviews with 11 interviewees)</b>		
1	Mid-2022	Trades Union Congress (TUC) (the peak level union confederation in the UK)
2	Mid-2022	GMB (a diverse, general union with members in the public and private sectors including among cleaners and also within security, including with firms such as G4S);
3	Mid-2022	Unison (the largest public sector union);
4	Mid-2022	The Living Wage Foundation (a UK wide NGO that seeks to expand the coverage of the 'real' living wage within public authorities and public and private sector employers);
5	Mid-2022	The Local Government Association (the employers' association for local government);
6	Mid-2022	The British Cleaning Council (the trade association for the cleaning industry);
7	Mid-2022	The Confederation of British Industry (the peak level employers' organisation in Britain) – two policy officers interviewed
8	Early 2023	The Association of Public Sector Excellence (an ethical consultancy working with public bodies on issues relating to procurement, outsourcing and similar);
9	Early 2023	The Security Industry Authority (the state regulatory agency for the security industry); and
10	Early 2023	We Own It (an organisation that campaigns in favour of public ownership in Britain).
<b>Case study interviews</b>		
<b>Interviews for UBNE case studies – Case UK-1, Case UK-2</b>		
11	Mid-2022	Access interview with 1) the city mayor and 2) the deputy mayor
12	Mid-2022	Further access and background scoping interview with elected Labour Councillor with responsibilities for anti-poverty strategies and economic inclusion
13	Late 2022	Unison organiser/ elected Labour councillor
14	Late 2022	Unison branch secretary
15	Late 2022	Strategic human resources manager
16	Late 2022	Manager – Arms Length Security Organization (ALSO)
17	Late 2022	Facilities manager for cleaning and security
<b>Interviews for Case UK-3 Scotland/SCC</b>		
18	Late 2022	Scottish TUC
19	Late 2022	Scottish Government official
20	Late 2022	Two GMB union representatives
21	Early 2023	SCC procurement manager
22	Early 2023	SCC senior facilities manager
23	Mid-2023	SCC Unison branch chair
24	Mid-2023	Employment lawyer involved in equal pay claims
<b>Interviews for Case UK-4 – Wales</b>		
25	Early 2023	Wales urban council procurement manager
26	Mid-2023	Wales rural council procurement manager
27	Mid-2023	Two Unison branch officers
28	Mid-2023	Two organisers from Citizens Cymru
29	Mid-2023	Welsh Government senior procurement official
<b>TOTAL</b>		<b>29 interviews with 35 participants, average 50 minutes duration</b>