

# Public procuring during COVID-19

What's happened to labour rights  
in global supply chains?

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## **Introduction**

UNISON is the UK's largest union, serving more than 1.3 million members working in both the public and private sectors. UNISON works with individual unions and global union federations to defend public services and fight against austerity around the world. We also have a strong focus on international work and seek to defend human and trade union rights under attack.

The COVID-19 pandemic has dramatically exposed the existing fragilities and inequities embedded within global supply chains. In early 2020, many buyers, especially in the private sector, responded to the pandemic with a steep and sudden drop in demand. Elsewhere, specific sectors (such as Personal Protective Equipment (PPE), medical material and IT) experienced a rush in demand. But what impact has the COVID-19 pandemic had on public sector procurers' attempts to raise labour standards?

With cause for some optimism, at the end of March 2020, the Government published its first central government Modern Slavery Statement<sup>1</sup> covering around £50 billion of public spending. Then, in late September, it released the long-awaited conclusion<sup>2</sup> of the Transparency in Supply Chains consultation which announced that (in time) section 54 of the Modern Slavery Act 2015 would extend to public bodies. At the same time from early summer to mid-Autumn, the media exposed at least £10 billion worth of public service contracts awarded to the private sector with no competitive tendering and failure after failure in quality standards.

As this contradictory picture emerged it became clear that UNISON's 2019 research findings into public procurement global supply chain practices could now be wrong. To test this, through a series of interviews and electronic surveys we discovered that public procurement increased in significance during the first wave of the pandemic and whilst new opportunities for procurement and sustainability departments to do things differently arose, the challenge to maintain labour standards became harder.

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1 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875800/UK\\_Government\\_Modern\\_Slavery\\_Statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf)

2 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf)

The invaluable work of public sector workers during this time cannot be overestimated and UNISON is fighting hard for our members to be properly rewarded. At the same time, we cannot deny the problems the pandemic generated for supply chain operations and particularly the impact on supply chain workers. If we are to build back better through a holistic approach to resilience in procurement and supply chains, we must develop a deeper understanding of what went wrong during this time.

This period of opportunity may not last. It is likely, within the context of the UK's tumultuous political environment, that decisions will be made at lightning speed, whilst mobilising counterproposals, organising and implementation will be slower. And in a post-Brexit environment, we are also already fighting to maintain the social value aspects of public procurement.

This anonymised report draws upon 7 in depth interviews and a survey amongst procurement and contract management specialist UNISON members and networks to which 52 people responded. Noticeably, trends in the interviews were confirmed by the survey, giving additional meaning to the results. These results feed into UNISON's wider work on Purchasing Power: Putting Workers' Rights at the Heart of Public Procurement project as well as our campaigning work for a 'Failure to Prevent' abuse to people and environment regulation<sup>3</sup>.

Thanks and appreciation goes to Athena Rees and Ben Vanpeperstraete who were contracted to undertake the research and drafting of this report. The two research reports and the implementation of the four-year project strategy are made possible thanks to the financial support of UNISON's Campaign Fund<sup>4</sup>.

*At the time of writing, this report can be found in the 'Resources' section in the international section of our website, however before the end of 2020, this report and other related resources will be found on a new page [www.unison.co.uk/purchasingpower](http://www.unison.co.uk/purchasingpower)*

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3 [https://corporate-responsibility.org/wp-content/uploads/2019/04/190409\\_UK-mHRDD-campaign-statement\\_FINAL-with-logos.pdf](https://corporate-responsibility.org/wp-content/uploads/2019/04/190409_UK-mHRDD-campaign-statement_FINAL-with-logos.pdf)

4 Not affiliated to any political party, the Campaign Fund is paid for by members that opt into it. It is used to support local campaigns, to give a boost to the union's national political campaigns and pay for political advertising.

## Who cares for the lives of supply chain workers?

When the COVID-19 pandemic broke, there was a rush to find personal protective equipment (PPE) for key workers and laptops for homeworkers. But in the urgency to stay safe, few stopped to question who was making the PPE, and whether they were safe too. With billions of pounds spent on PPE, computers and other life-saving equipment, existing weaknesses in public procurement have become exacerbated and the extent to which the public purse contributes to, or is complicit in, human rights violations globally has worsened. In the scramble to save the lives of those in the UK, the global supply chain workers who have unnecessarily died or are long-term sick due to the pandemics are forgotten.

*“They know how dangerous the situation is, but they want us to work yet they stay at home because they are more valuable”  
Electronics Watch Czech local partner*

In an interview, staff from Electronics Watch, a public sector affiliate-based labour rights organisation, stressed how migrant workers' weak legal status and exclusion from their hosts national social protection systems, increased their vulnerability during the pandemic. As a result, in the race to procure high-demand goods, conditions in factories with existing unsafe working conditions worsened. For example, in a Czech facility, all workers were reportedly required to come in for the entirety of lockdown whilst every manager stayed at home.

Further afield, in Malaysia, migrant workers with work visas tied to their employer had no choice but to work in electronics and other sectors producing high demand goods, operating at full capacity, whilst Malaysian citizens were mandated by law to stay at home and abide by lockdown rules. For example, it is alleged that workers' health and safety has been put on hold in factories making component parts for ventilators. In other sectors in Malaysia, where demand fell, thousands of migrant workers were deported back home.

### The Top Glove Scandal

**Inescapably supplying the NHS and other public sector suppliers, Top Glove is the world's biggest rubber glove producer supplying 26% of global production. Now a name synonymous with both protecting lives and causing modern slavery<sup>5</sup>, the US Customs and Border Protection currently has an import ban<sup>6</sup> on two of its subsidiaries due to 'signs of' forced labour. Showing how campaigning, Government sanctions and persistent bad publicity works, in October 2020, Top Glove revised its compensation to migrant workers who had paid hefty recruitment fees to unscrupulous agents in their home countries to secure jobs at their factories. They will pay RM136 million over the next 10 months<sup>7</sup>. Yet despite repeated leaked reports of migrant worker abuse and poverty pay of just over £1 an hour coming from its Malaysian factories during the pandemic, Top Glove's profits have more than quadrupled compared to last year<sup>8</sup>.**

**At the time of writing this report at the end of November, due to COVID-19 cluster rapid spread (around 44% positive), the Malaysian government has now ordered the complete closure of most of Top Glove's 28 migrant labour intensive gloves making facilities in Malaysia covering 13,000 workers<sup>9</sup>. Leaks from workers report that workers are squeezed into dormitories where some rooms allegedly continue to hold more than 30 workers in limited space with poor food and hygiene standards. Glorene Das, Chief Executive of labour and migrant workers' rights NGO Tenaganita, an Electronics Watch Monitoring Partner told the BBC “During these times employers have a huge responsibility towards them but we are hearing of cases where they are not providing workers with sufficient food or even withholding their wages<sup>10</sup>.”**

5 <https://www.channel4.com/news/revealed-shocking-conditions-in-ppe-factories-supplying-uk>

6 <https://www.theedgemarkets.com/article/top-glove-making-improvements-effort-reverse-import-ban-says-us-customs>

7 <https://www.theedgemarkets.com/article/top-glove-pay-rm136m-migrant-workers-remediation-recruitment-fees>

8 <https://uk.reuters.com/article/topglove-results/malaysias-top-glove-quarterly-profit-soars-on-virus-driven-demand-idUKL4N2GE1DC>

9 <https://www.theedgemarkets.com/article/covid19-teratai-cluster-linked-top-glove-workers-has-positive-rate-438-1067-new-confirmed>

10 <https://www.bbc.co.uk/news/world-asia-55053846>

### **North Koreans used as forced labour in China**

**At the time of writing, the Guardian Newspaper released a report<sup>11</sup> evidencing how the British Government has sourced PPE from factories in the Chinese City of Dandong where hundreds of North Korean women have been secretly been making hundreds of thousands of protective coveralls in conditions of modern slavery. It is claimed that the women work for up to 18 hours a day, under constant surveillance, unable to leave the factory and that about 70% of their monthly wages (£240 – 310) are seized by the North Korean state. This is a practice labelled state-sponsored forced labour by the United Nations International Labour Organisation (ILO). Coverall and gown production are labour intensive and so because of the Forced Labour, it is possible to produce it at a low cost and therefore make a healthy profit.**

However, some positive examples were reported. For example, at the beginning of the pandemic, in a bid to control the virus, Chinese authorities allowed FoxConn workers to quarantine for two weeks with pay before returning to work. They also ensured workers had access to one room each in their dormitories, where usually 5-6 workers sleep in one room.

### **Procuring during a global pandemic: Capitalising on the good**

COVID-19 has brought many challenges to procurement and sustainability departments in the public sector but not everything has been bad. Interviewees and respondents reported an upside to some virtual meetings. For example, they are easier to set up, are less likely to be cancelled and have lower costs. And it is possible to hold successful meeting with long-term suppliers where good relations already exist.

A crucial positive impact of the crisis is that collaborative working among purchasers, something already on the rise, sped up. Organisations and individual departments have their own habits, ethos and cultures. Getting staff to work cohesively internally can be difficult. One NHS

respondent said that prior to COVID-19, numerous efforts to end silo working were unsuccessful until the pandemic. Further, the specialist reported not only improved collaboration with clinical staff, but also more effective cooperation between the five NHS trusts. Especially sharing expertise and resources. She dubbed this collaboration as a type of *'mutual aid'*, which has enabled more meaningful conversations.

A respondent who chairs the procurement group of a significant number of teaching hospitals, agrees with this assessment. The NHS contains eighteen Integrated Care Systems (ICS), which share collective responsibility for patient care between the NHS, local councils and voluntary organisations with the aim of increasing *'joined up care'*. They cited the work of their own ICS as crucial to collaboration during this period due to its role in procuring collaboratively across their geographical area. This shows the pandemic acted as a catalyst that improved the effectiveness of collaborative structures. Consequently, as one NHS Procurer stated, 'it's been really positive, and I definitely want to keep this aspect'.

Moreover, many interviewees stated that COVID-19 led to a feeling of a 'common purpose' and 'we can do this'. There was an emphasis on teamwork. During the first wave, especially in health care, it became easier to cooperate among NHS Trusts. Collaboration with external organisations also grew. An interviewee explained how a group of similar, privately contracted providers facilitated collaboration and how this led to *'a sense of community and the public sector coming together'* in the face of such difficulties.

### **Scrambling for PPE and other fast-tracked products**

Procurement for goods and services in highest demand were fast-tracked. Access to PPE was the watchwords for all interviewees. As 85% of survey respondents confirmed, in the first few months of the pandemic, many public sector organisations needed to source PPE (more than any other product category) to operate safely. This contrasts with only 33% who would continue to use it after COVID-19. One NHS respondent identified *'a huge step up'* on PPE not simply for clinical staff but also for dentists and other staff seconded to set up critical care beds. A local authority interviewee agreed but highlighted how councils were unable to get sufficient amounts.

11 <https://www.theguardian.com/global-development/2020/nov/20/uk-sourced-ppe-from-factories-secretly-using-north-korean-slave-labour>

In the scramble to provide the necessary duty of care to UK employees and the public, existing ethical procedures were dropped.

Many interviewees doubted that normal ethical processes were followed, and all interviewees stated that for fast-tracked PPE orders, no ethical considerations were made. One respondent stated how PPE was *'brought off the shelf'* without any normal contract procedures. An Environmental and Sustainability Manager at a county Ambulance Service, stated that procurers who bought products from China or Taiwan didn't follow due diligence because there simply wasn't enough time given the fierce competition for PPE from the rest of the world.

In the first months of the outbreak, the Government's Cabinet Office was responsible for all NHS procurement. This made it hard for NHS staff to know what procedures were being used. One respondent said that procurement was so tightly controlled by the Cabinet Office that at times hospitals were unable to get hold of promised stock as it was redirected elsewhere. Whilst they acknowledge this aided the ability to secure greater quantities at reduced price, the respondent doubted that quality and social value was valued. There were also reports that procurement sustainability staff in procurement teams were furloughed whilst procurers kept on.

In addition to PPE, other products were fast-tracked. These included a range of electronics such as laptops and tablets, for homeworking. A university purchasing consortium interviewee highlighted how schools and universities bought large amounts of tablets for homeworking for low-income students but reported minimum disruption to the manufacturer because they simply switched streams from desktop computers to laptops. Despite this demand-led lower impact, when suppliers were pressured to answer questions about working conditions, they were reluctant and consistently cited other work pressures.

Electronics Watch, a non-governmental organisation with affiliation from public sector institutions worldwide also highlighted concerns about how suppliers fast-tracked electronics orders. Their affiliates reported that electronics ordering occurred with very little to no oversight and that for most organisations, ethical considerations in contracts are still closer to an *'afterthought'* than the *'standard'*.

When a company is in crisis mode and has to make huge orders of one or two products, labour rights standards are neglected.

With the ever increasing hospitalisation rates from the second wave of COVID-19 in the autumn/winter of 2020, as well as other crises in the near future, public sector bodies need to think carefully how to avoid dropping social and other standards during extreme time-pressure situations and fast-tracked orders. This is particularly pertinent to electronics, demand for which will continue to rise as work from home and distance learning increases in the next year.

### **Maintaining engagement with suppliers**

The challenges suppliers face when orders are fast-tracked begins to explain the trouble buyers experienced engaging with their suppliers.

Over 50% of survey respondents reported that COVID made engaging suppliers more difficult.

The main reasons given for struggling to engage with suppliers were mostly logistical e.g. internal time pressures, travel restrictions and other organisational constraints as well as decreased priority on supplier's ethical performance. Further, it was suggested that the opaque nature of activity at sub-supplier levels, makes it harder for buyers to gain information on the worst abuses of workers' and human rights. An interviewee from SKL Kommentus, the central purchasing body for the Swedish regions, argued they have a strong due diligence process with their direct suppliers but cannot get further down the supply chain. This has worsened during COVID-19 as to meet demand, suppliers have contracted a wider variety of sub-suppliers without proper vetting. Electronics Watch concurred explaining how the greater the number of items in a product, the worse the problem is.

*"Our time to engage [with suppliers] is always limited, and this has been reduced. It is the same with suppliers, I believe."*

Interviewees and survey respondents also highlighted that the switch to online meetings had inhibited the quality of conversations and ability to gain commitment on workers' rights with new or potential suppliers e.g. the ability to have meaningful conversations and outcomes during market engagement is reduced.

## **Supplier monitoring: The weakest link?**

UNISON's first research report Towards Ethical Procurement discovered that contract management monitoring commitment, processes and implementation were the weakest links in ensuring the public sector put workers' rights at the heart of public procurement. The latest research reconfirms this. Most survey respondents (over 50%) commit to monitor labour rights through publishing codes but do not implement it and 40% rely on suppliers to self-monitor. The 12% that do their own supplier monitoring and 25% that monitor through a third party reported that restrictions on face to face meetings have made monitoring harder.

This hands-off approach to monitoring through reliance on codes alone, or supplier self-compliance makes it unsurprising that most interviewees could list very few examples of exploitation and didn't notice a change in their organisations' monitoring operations. This was confirmed in the survey where 58% of respondents believed monitoring of labour rights performance remained the same.

At the same time, the 25% that monitor through a third party or 12% who do their own monitoring reported, along with labour rights NGOs that significant adverse changes had taken place in their ability to successfully monitor factory practices. Whilst third-party auditing is a very limited tool, interviewees highlighted some of its uses. For example, strengthening supplier commitment to labour rights and indicating potential 'red flags' in factories. Therefore, its absence is felt. This all points to a substantial absence of genuine monitoring.

Further, some of those that engage in genuine monitoring raised concerns related to national and international legal standards. Most suppliers simply comply with the national law in the country of production and refuse to commit to higher international standards such as those of the International Labour Organisation. In one example, it was stated that Chinese local law allows great flexibility to cope with key industry demands. Consequently, a 60-hour working week is legal if 'needs must' and therefore during the first wave, suppliers had a lot of legal leeway. Another responded saying they were shown shocking pictures of cramped and unhygienic working conditions in China but said that this had been presented positively by suppliers, as a way of showing they were following Chinese national law. As

one interviewee put it, suppliers had a 'get out of jail free card' to say their monitoring showed they were acting within the law. Given the pressure buyers were under and how ethical considerations are not given primacy, suppliers able to provide much needed goods were not turned down.

Furthermore, government restrictions, for political reasons, in some producing countries have compounded monitoring difficulties. For example, in response to increased international press scrutiny at the start of the pandemic, the Chinese government further tightened citizen access to the internet. This cut off an important source of evidence of workers' rights abuses as workers could no longer post social media posts about what's happening. Without this, it was difficult to get any information from China at all. Electronics Watch also reported how they are seeing '*governments [...] are even less interested in supporting any grievances coming from workers.*

Finally, the survey confirmed that few procurement staff use trade union workplace presence as a tool to understand workers' rights in their supply chains despite most of them operating in workplaces benefitting from collective bargaining agreements.

## **How buyers can increase cooperation and good engagement with suppliers**

*"When they [buyers] push for short lead times, they may contribute to a negative impact in the supply chain. Hence the need for planning and thorough preparations".*

Deeper root cause analysis and documentation of the past is essential, followed by the development of risk assessments and mitigation strategies if today's mistakes are to become tomorrow's successes. Gaining supplier commitment in a crisis is not easy but interviewees provided many examples how.

Finally, the survey reconfirmed that the use of trade union workplace presence as a key tool to understand workers' rights in supply chains is heavily underutilised, despite most staff working in workplaces that benefit from collective bargaining agreements. This also reconfirms the need to equip members with the right tools to risk assess, monitor and aid remedy within



the supply chains that are key to enabling our public services to function safely and effectively.

An experienced interviewee emphasised how effective focusing on increasing the number of labour compliance points in contracts was. Another agreed, saying their PPE contracts reserved around 20% scoring for ethical and sustainable considerations, something they think should happen across all contracts, not just the highest risk ones. Similarly, an NHS sustainable procurement specialist believes that social clauses are well written but are not given enough weighting. In an ideal world, they would like to see a 25% weighting across the board.

Some believe that prompt payment helps supplier relationships during a crisis. For example, a county NHS group brought in seven-day payment terms for their suppliers and a local authority purchasing consortium now pay their suppliers in 10 rather than 30 days on the condition that they also pay their suppliers promptly. Both highlighted this as crucial to ensure that suppliers can continue to pay their workforce. The NHS group interviewee stated that this initiative, along with a helpline for suppliers, meant they only received one request from suppliers for payment without products being delivered.

Finally, termination clauses should only ever be a last resort. Interviewees concurred that prevention is better than cure and that proactively building supplier improvements before an incident happens works better than relying on the threat of termination. Some feel that inserting termination clauses at tender stage is counterproductive and not as helpful as adding labour rights performance clauses. However, Electronics Watch's 2019 addition<sup>12</sup> of the option to invoke a suspension (first) and termination (second) clause into their suit of clauses available to affiliates have been effective final tools to achieve change once all other stages of engagement have been exhausted.

## **A lens on the future**

With the Government already contradicting itself in policy and practice and the economy facing a double dip recession, the future of sustainable procurement

doesn't look bright. 74% of respondents felt that the COVID-19 crisis will have a long-term negative effect on procurement. After what one respondent called '*an endless supply of money*', uncertainty leans towards cuts and the pressure for price to take further precedence over social and environmental factors will follow.

A heavy pinch is already being felt in councils which rely on business rates as a key financial stream. At least one purchasing consortium indicated they expected their savings-rate Key Performance Indicator to be prioritised in the future. They said, '*the council will be saying 'right you've got a budget for x and it will only cost you y so we're taking the original budget away'*'. This kind of pressure may create a '*bubble of fear*' among buyers over price and start a race to the bottom in the long-term.

However, budgets are not the only challenge for ethical procurement. Contract management was already a significant weak spot in ensuring labour rights are respected in supply chains. With COVID-19 significantly impacted on travel and in-person meetings and events, it harder to build pro-worker leverage with buyers and suppliers at all stages.

*"What does resilience mean if it doesn't mean an integrated approach to understanding aspects of who makes the things we buy and how that relates to the health of an economy and the health of the people."*

Survey respondent

Despite these serious and urgent challenges, increased attention to the resilience of supply chains could bring a sliver of lining. After struggling to source vital PPE many more working in and around procurement understand the need to build durable future supply chains. Consequently, more also now understand what is meant when ethical procurement campaigners make the case that supply chain labour rights, including workers' health and safety, are integral to the safety of the end-users. And scandals such like Top Glove's can help raise broad awareness that supply chain workers' rights should be part of the "new normal".

UNISON will take on board all these findings as we develop our work to put supply chain workers at the heart of public sector procurement.

<sup>12</sup> [https://electronicswatch.org/electronics-watch-contract-conditions-with-guidance-for-contractors\\_2570069.pdf](https://electronicswatch.org/electronics-watch-contract-conditions-with-guidance-for-contractors_2570069.pdf)









