

EAST AYRSHIRE COUNCIL

BEST VALUE SUB COMMITTEE OF THE POLICY AND RESOURCES COMMITTEE – 11 OCTOBER 2000

Best Value in Local Government:- Next Steps - Response to the Scottish Executive Consultation Document

Report by Depute Chief Executive/Director of Corporate Resources

1.0 PURPOSE OF REPORT

- 1.1** To summarise the Scottish Executive Consultation Document on the next steps on delivering Best Value in local government and to request approval of the Council's response to the consultation document.

2.0 BACKGROUND

- 2.1** The Best Value Taskforce (which has representatives from COSLA, Scottish Executive and Trade Unions) submitted its final report to the Scottish Executive last December. This report dealt with long-term arrangements for Best Value in Scotland, including possible legislation.

The Scottish Executive recognises the substantial progress that is being made throughout the Councils to deliver best value. It has therefore decided to accept, in principle, all the recommendations from the best value taskforce.

Their consultation document invited views on how these recommendations should be implemented.

3.0 COUNCIL'S RESPONSE

- 3.1** A provisional response to the consultation document was agreed, by the Best Value Officer Implementation Group, following consideration of comments from senior council officers,

The provisional response was forwarded to the Scottish Executive by the due deadline of 30 September 2000 on the basis that this would be subject to final approval by this Sub-Committee.

A summary of the consultation document which posed a number of questions for consultees, some of which were very detailed (e.g on possible legislation where consensus exists) and some of which were very broad (e.g where several options were available) together with details of the provisional response to the questions raised is appended to this report.

4.0 LEGAL, FINANCIAL AND POLICY IMPLICATIONS

4.1 None.

5.0 RECOMMENDATIONS

5.1 it is recommended that the Sub-Committee:-

- i give consideration to the provisional response to the Scottish Executive Consultation document on the next steps on delivering best value in local government;
- ii Approve the provisional response to the consultation document, as detailed in the Appendix to this report as the Council's response; and
- iii Otherwise note the contents of this report.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources

29 September 2000

LIST OF BACKGROUND PAPERS

1 – Best Value in Local Government – The Next Steps – Scottish Executive Consultation Document

Anyone wishing to inspect the above document or seeking further information on this report please contact Douglas Campbell, Head of Corporate Development and Communications, Council Headquarters, London Road, Kilmarnock no 01563 576165

BEST VALUE IN LOCAL GOVERNMENT: THE NEXT STEPS

Initial Draft Response to the Scottish Executive Consultation Document

1.0 INTRODUCTION

This paper summarises the Scottish Executive consultation document on the next steps in delivering Best Value in local government. It highlights those areas where the Scottish Executive have asked specific questions of councils and it provides details of the provisional response for the consideration of the Best Value Sub-Committee of Policy and Resources Committee.

2.0 BEST VALUE: THE WIDER LOCAL GOVERNMENT CONTEXT

The consultation sets the long-term arrangements for delivering Best Value within the context of a number of initiatives, under the broad heading of Modernising Government. These initiatives include democratic renewal (the Macintosh Commission), Community Planning and modernising the finance system.

3.0 BEST VALUE: THE SCOTTISH EXPERIENCE

The Scottish Executive recognised that, whilst all councils have demonstrated their commitment to securing Best Value, the approach adopted across Scotland is varied.

The document implies that there is a style of service review that is proving most effective. However, no evidence has been given to justify this assertion.

There is a recognition that the Performance Management and Planning Audit process requires to be complementary to Best Value approaches and Audit Scotland are currently refining the audit detail in light of feedback from councils.

Proposed Response

The Council welcomes the consultation on the next steps in delivering Best Value in Scotland. Direct responses are given to the specific questions posed within the consultation document. However, the Council wishes to make the general point that the overall effect of any arrangements established following the consultation should be to secure consistency in meeting Best Value objectives across Scotland, not absolute conformity.

East Ayrshire Council believes that Councils should retain the flexibility to design approaches that meet local circumstances and structures, so long as the overall principles of Best Value are being observed and any additional guidance is met. The Council is therefore concerned that there is an assertion within the consultation document that one approach to service reviews (comprehensive, cross-cutting, long-term) is better than another approach (service specific). Each has its own merits and councils should be free to deliver an approach that is fit for purpose, utilising one or both of the styles as necessary.

4.0 AN INTEGRATED APPROACH – LEGISLATION

The Scottish Executive have indicated that they intend further consultation throughout the course of 2000, with the view to introducing any legislative changes that may be needed to deliver the Best Value/Modern Local Government agenda at the earliest opportunity.

The Scottish Executive also recognised that Best Value is comprehensive and covers all council services and is integral to achieving all policy goals.

The Scottish Executive have therefore undertaken to consider the relevance of views conveyed as part of the Best Value consultation for other legislative proposals, such as housing and education.

5.0 CONSULTATION FRAMEWORK

5.1 Duty of Best Value

The recommendations of the Best Value Task Force are as follows:

A legislative base be created for Best Value. It should be permissive.

There should also be a legislative provision for statutory guidance.

Any duty of Best Value should apply across the public sector. This might be defined by reference to bodies funded through the Scottish block.

A generalised duty of Best Value in legislation that should build on Section 122a of the Local Government (Scotland) Act 1973, but it should have regard to the key elements of quality, continuous improvement, customer/citizen focus, equality and public performance reporting.

The Scottish Executive agree that there should be legislation to underpin Best Value, that it should be permissive, and that it should leave much of the detail to secondary legislation or guidance. The Scottish Executive also accept the Task Force recommendation that the statutory description of the duty of Best Value should build on the wording in Section 122a of the Local Government (Scotland) Act 1973.

The Scottish Executive, are of the view, however, that it could be unnecessarily complex and confusing to include so many of the elements of Best Value within legislation. They suggest that many detailed arrangements for the implementation of Best Value can be dealt with in guidance.

The Scottish Executive indicate that they are prepared to consider all options and invite views on the nature and content of the Best Value duty to replace the existing section 122a Value for Money duty.

5.2 Statutory Guidance

The Scottish Executive propose that future guidance on Best Value should be developed through a new Best Value Advisory Body, similar to the existing Task Force. This process would involve all interest groups. However, the Scottish Executive indicate that, where no agreement can be reached between the Scottish Executive and the Advisory Body, Scottish Ministers would retain the power to issue guidance. In these circumstances, the guidance would be backed by secondary legislation to allow scrutiny by the Scottish Parliament.

It is also indicated that the final forum for agreeing any guidance must involve political leaders. To avoid creating new structures, this could be achieved within the Community Leadership Forum (Scottish Executive Ministers and council leaders) or the Local Government Forum (CoSLA, STUC and Scottish Executive). **Views are invited on this approach.**

5.3 Best Value Across the Public Sector

This section of the report deals with the progress that is being made in all sections of the public sector towards Best Value. The report indicates that, in some areas, local government is catching up with other public sector bodies while, in others, local government is clearly taking the lead. The Scottish Executive intend to improve the consistency of approach across the public sector to ensure that the key elements of Best Value relevant to each sector or body are properly identified and implemented.

However, while for local authorities the Scottish Executive accept the recommendation that there should be a statutory framework for Best Value, this is not necessarily the case for other public bodies that are subject to other, similar duties or constraints. **The Scottish Executive therefore invite views on the desirability of a common framework underpinning Best Value across the public sector in Scotland, and whether that might require a statutory base.**

Proposed Response

East Ayrshire Council agrees that there should be a legislative base for Best Value and a legislative framework for issuing statutory guidance.

Furthermore, the Council welcomes the commitment to extend Best Value on a consistent basis across the public sector in Scotland. This will avoid any unnecessary confusion in the eyes of the public and aid the Community Planning process. Furthermore, we believe that this approach will secure continuous improvement for all the agencies involved.

In light of this, we believe that there requires to be fundamental change to the current Section 122a of the Local Government (Scotland) Act 1973. These changes should:

1. State that public sector bodies, which are in receipt of direct funding from the Scottish Executive via the Scottish Block (including the voluntary sector), should be Best Value organisations;
2. That all Best Value organisations should have a duty to prepare, implement, monitor and report on systems that achieve continuous improvement in service outcomes and the delivery of services and in making these services responsive to the community at large, and
3. All Best Value organisations should have a duty to adhere to guidance on Best Value issued by, or on behalf of, the Scottish Executive. This guidance to be prepared on a joint basis by a new Best Value Advisory Body.

The Council supports the creation of a new Best Value Advisory Body and believes that the forum for agreeing Best Value guidance should be the existing Community Leadership Forum. This Forum is already effective in securing long-term and strategic thinking on the delivery of local government services and recognises the power of community initiative proposed for Councils.

5.4 Scrutiny and Performance Information

The Best Value Task Force recommended:

There should be a review of the best way to develop performance information to support Best Value. It should include a review of the Local Government Act 1992.

The Scottish Executive agree on the need for external scrutiny of Best Value and recognise possible overlaps between Public Performance Reporting frameworks being developed by councils and Performance Management and Planning audit being developed by Audit Scotland (on behalf of the Accounts Commission).

*The Scottish Executive expect future developments in both areas to be covered by guidance. However, some amendment to the Local Government (Scotland) Act 1973 and the Local Government Act 1992 would seem to be appropriate to ensure that Best Value is taken into account with regard to the Accounts Commission's duties to collect and publish statutory indicators on council's performance and to carry out VFM studies. **The Scottish Executive indicate that they propose to amend existing duties to have regard to the new duty of Best Value and invite consultees to comment.***

The Scottish Executive recognise the fundamental part that Public Performance Reporting plays in Best Value in the way that it places stakeholders at the centre of performance planning. They believe that PPR should not lead to unnecessary burdens falling on councils and that the collection of performance information assists progress towards Best Value. The new Joint Performance Information Review Group, which consists of the Scottish Executive, Audit Scotland, SOLACE and CoSLA, is cited as a good forum to develop a framework for assessing and improving management information.

*The Scottish Executive also recognise that, while there is a need for relevant audit and inspection bodies, there is an equal need to avoid excessive burdens or duplication. To balance these tensions, the Joint Scrutiny Forum has been established recently. Although it is likely that there will be further change to the regulatory functions of both Audit Scotland and Scottish Homes in due course, they believe that the Joint Scrutiny Forum offers an informal, flexible way of co-ordinating scrutiny issues. **The Scottish Executive have invited views on whether that approach should continue, or whether a more formalised approach would be better – and if so, what?***

The Scottish Executive also seek views on what aspects of the existing legislation governing scrutiny and inspection require modification and updating to take account of Best Value

Proposed Response

While the central role that the Accounts Commission, through Audit Scotland, can play in assisting Best Value organisations towards common goals within Scotland is recognised, it is East Ayrshire Council's view that the focus for performance information should not be the requirements of the Local Government Act 1992, but should lie within the framework of Public Performance Reporting.

The Council believes that Best Value organisations should be free to develop mechanisms for proper performance reporting that meet the needs of local people as well as satisfying the duty of Best Value.

There should not be a requirement to publish performance information in newspapers. Councils should be free to choose the most effective method of communicating this information, having regard to the views of citizens on how the information should be published.

The establishment of the Joint Performance Information Review Group is welcome, but the Council believes that there is more that this Group can do to ensure that any performance information that is required to be collected on a Scotland-wide basis is based on the canvassed needs of local people. On the whole, the current arrangements for statutory performance indicators are unfocused, do not fully support meaningful comparisons between authorities, and do not give stakeholders the information that they require. Neither do they provide management with the information they need to assist in delivering Best Value. Performance information should be tested with regard to its usefulness and value to the public before it's publication by a Council is required.

It is essential that the performance information required by the Accounts Commission is revised in light of Best Value to ensure that it meets the demands of all stakeholders, allows for meaningful benchmarking, and has a greater focus on service quality and quality of life. Locally developed priorities will require local performance reporting and any national guidelines on performance reporting must have the flexibility to include local issues. It may be that only a limited number of the current statutory performance indicators would survive such a review.

The Joint Scrutiny Forum has been a welcome first step in co-ordinating the efforts of various inspectorates. However, East Ayrshire Council is surprised at the lack of progress towards co-ordinating scrutiny interests. We believe that there should be a long-term goal of amalgamating various inspectorates and aligning the inspection process directly to the Best Value process. As community planning becomes the principal mechanism for the co-ordinated delivery of public services, the inspection spotlight should fall on the preparation and implementation of community plans.

5.5 Powers of Intervention

The Best Value Task Force recommended that:

A coherent and easily understood framework for intervention is needed to ensure that speedy action may be taken where an authority is consistently failing to meet Best Value, or where it is failing to take remedial action after failure has been identified.

The Scottish Executive recognised that, although intervention powers are available to Ministers, they are limited, they can be slow, and they are not suited to a graduated approach. When the Scottish Executive fulfils its commitment to repealing CCT in the 1988, 1998 and 1992 Acts, the powers to intervene in a restricted number of defined services will be removed. The Scottish Executive does not believe that the remaining general powers of intervention are suited either to Best Value or to the modern, efficient Scotland that they envisage. **Views are therefore invited on the formulation of suitable intervention powers.**

The Scottish Executive document outlines the intervention process in England and Wales that has been developed by the DETR and the LGA. However, it recognises that there are a range of options for intervention. **The Scottish Executive welcomes views on these options, including views on what might trigger intervention and what might be appropriate sanctions for dealing with poor performance.**

Proposed Response

The Council recognises that Scottish Ministers will wish some form of power of intervention to remain. However, we believe that it is in the general public interest if these powers of direct intervention are used as a last resort and that there should be mechanisms in place to identify instances where services are failing and approaches to deliver remedial action where necessary.

Repeal of the 1998 Act will remove sanctions and powers of intervention from certain activities and it is believed that any new power of intervention should be consistent and applied across all public services. A decision on whether intervention should take place in a Best Value organisations should be based on all available information including public performance plans, audit work, inspection visits, and financial performance. There should not be direct intervention without consideration of all of these aspects of performance and value.

Intervention should not be punitive. It should be about securing improvement. Therefore, if an inspectorate or audit body identifies under performance, the Best Value organisation should be invited to produce an improvement plan and given sufficient time and support to implement it.

Failure to achieve adequate improvement thereafter should be referred to the appropriate Minister for action. Before any formal notices are served, Ministers should indicate their intention to issue an improvement notice should specific elements of the default not be remedied within a set timescale.

The new process should therefore deliver a measured and graduated response that will secure improvement.

5.6 Competition/Freedoms for Local Authorities to Trade

This section deals with competition. It recognises that CCT was unpopular and has left an unhappy legacy. Because of this, there has been a natural reluctance in many places to encourage competition or competitive principles. While most people seek the repeal of CCT, there is a recognition that it did have some benefits in terms of specification and more business-like approach to local authorities.

5.7 Role of Competition within Best Value

The Best Value Task Force recommended that:

CCT legislation should be repealed as part of the Best Value legislative reform.

The Scottish Executive underlined the commitment to repeal CCT, but asserted the need for an even greater emphasis on competitive principles and approaches in the next stage of Best Value.

The Scottish Executive underlined their view that “what matters is what works”. Greater competition does not mean that every service should be tendered, out sourced, or privatised. The Scottish Executive prefer a “mixed economy”. Each council must find, and justify the mix appropriate to its area for each service. The role of service reviews in leading to decisions on the mix is recognised.

The Scottish Executive indicate that the first priority of any new Best Value Advisory Body will be to establish clear guidance on the ways of extending and applying competitive principles in council services.

The Scottish Executive is determined to ensure the openness and transparency of tendering and competition but recognised that many of these issues are reserved matters (TUPE and other employment issues). The Scottish Executive welcomes views on how to handle these sensitive issues. **For example, should this be part of the remit of the new Best Value Advisory Body or is it an alternative body (specifically focused on procurement, competition, and tendering issues).**

The Scottish Executive also welcomes views on whether any parts of the existing CCT legislation should be retained. For example, should legislation follow the Local Government Act 1999 for England and Wales which repealed Part 3 of the 1980 Act and Part 1 of the 1988 Act?

Proposed Response

East Ayrshire Council welcomes the repeated assurance that CCT legislation, as it currently stands, will be repealed as part the Best Value legislative reform. For its part, the Council is keen to underline its own determination that the option of competition will, where it is determined to be appropriate, be considered as part of its Best Value service review process.

We would welcome any further guidance that may be available on how competitive principles can be applied in Council services as outlined within the consultation document, particularly for those services which were not previously subject to CCT. Guidance on how far Councils should go to find or create a competitive market for particular services would also be welcomed, as would specific guidance on how equality issues and workforce planning can be taken into account. However, we do not believe that there is a need to establish yet another body to develop guidance in this area. The proposed Best Value Advisory Body could fulfil this function, with additional specialist support if necessary.

Finally, we do not believe that any element of the existing CCT legislation should be retained. For example while income and expenditure counting undoubtedly has a role in establishing a value for internal transactions, and a discipline in controlling overhead costs the requirement to maintain financial accounts for the business units currently covered by CCT legislation makes it more difficult to merge client and contractor organisations into seamless "Best Value" service organisations.

5.8 Freedoms for Local Authorities to Trade

The Best Value Task Force recommended that:

Authorities should have flexibility to pursue joint ventures and other delivery mechanisms consistent with Best Value and criteria including:

- *An explicit business case;*
- *Minimisation of risk to public funds, and*
- *No restriction of competition either in the short or longer term.*

Restrictions on the trading powers of local authorities should be reviewed. There should be a move from specified lists of permitted trading partners to more generic descriptions and the key characteristics of suitable organisations, companies and bodies.

Part 2 of the Local Government Act 1988 should be amended to allow workforce matters and equality issues relevant to Best Value to be taken into account.

The Scottish Executive recognised that local authorities require more flexibility to explore alternative ways of working if Best Value is to fulfil its potential. The Scottish Executive agree that workforce matters and equality issues relevant to Best Value should be taken into account in trading arrangements. Secondly, the Scottish Executive indicate that they are prepared to consider changes to the current arrangements where trading is permitted only with specified partners. Finally, the Scottish Executive recognise the pressure for power of general competence (or similar) and are consulting separately on this.

*In short, the Scottish Executive accept that current arrangements are now in need of review. **They invite views on the options for improving the freedom to trade of local authorities.***

The Scottish Executive also welcome views and comments on any additional legislative barrier to greater flexibility that councils have encountered.

Proposed Response

East Ayrshire Council believes that all Best Value organisations operating within the public sector should be free to trade with each other on a not-for-profit basis, so long as they are providing services that are closely linked to the work of a Best Value organisation. There should be similar flexibility that allows Best Value organisations the freedom to enter into trading or joint venture arrangements with organisations of their choice, so long as the principles of Best Value and open, transparent competition are met. Best Value organisations should also have the freedom to use existing capacity to provide goods or services to other bodies where an explicit business case exists and when there is minimum risk to public funds.

In overall terms, any new guidance or legislative amendment should focus on the outcomes of the intended trading rather than the characteristics of the trading partner or arrangement.

5.9 Financial Aspects of Best Value

The Best Value Task Force recommended that the Scottish Executive should not pursue the Beacon scheme in Scotland.

Scottish Executive recognise that there is no support for developing a Beacon style scheme (as in England) where performance is recognised within additional grants or flexibility in spending. However, they believe that there are other ways to provide incentives to improve services and deliver improvements.

The Scottish Executive believe that if councils are not set an incentive to deliver improvements they would benefit from a requirement to generate 'recyclable savings'. The Scottish Executive believe that it is reasonable that financial planning by councils should include an expectation to show what resources can be redistributed through the implementation of Best Value and to set an annual target for this at, say, 2%.

The Scottish Executive welcome views on whether these issues should be considered by the Ad-Hoc Joint Working Group established with CoSLA (on modernising the finance system).

Proposed Response

East Ayrshire Council does not believe that it would be helpful, or indeed any incentive towards Best Value, to set an annual target for recyclable savings from Best Value.

Best Value is about securing continuous improvement. Against a background of year on year cutbacks in Council funding in which there has been no recognition of the effects of increases in pay or inflation in the local government finance settlement, Councils are currently finding it difficult to maintain existing levels of service. Despite the recent announcement by the Finance Minister of increased resources for local government and a move towards three-year budgeting, and in view of the fact that considerable savings have already been made from those services which have been through competitive tendering, the Council can not support the proposals in respect of recyclable savings.

Indeed the Council feels that continuous improvement may well require additional investment in services and that improved services may cost more to run. If the Executive is serious about enabling authorities to offer better value they can not detach the issue from the parallel debate about local authority funding. At the very least the Executive should link best value to improved levels of capital funding. Many best value developments require investment for improved services in the future. This is virtually impossible under the current capital funding regimes. The main concern of the public is with our inability to invest in improved facilities for the future. Dramatically increased capital funding could provide the most effective financial incentive of all for improved best value in terms of service delivery improvement as a stimulus to efficiencies in revenue cost expenditure.

Best Value is not about pure issues of economy and efficiency and the Council is therefore surprised at the inclusion of this element within the consultation. Currently, the motivation for Councils to conduct service reviews and adopt Best Value principles is the belief that services would improve. If that is replaced with an obligation to secure savings, whatever the level and however notional, this would be a retrograde step.

We strongly believe that this proposal should be taken no further.

5.10 Other Issues

The Best Value Task Force recommended that:

The Scottish Executive and CoSLA should further consider the ways of supporting our continuous improvement service across the public sector in Scotland.

The Scottish Executive with CoSLA should consider and rationalise existing requirements for statutory and non-statutory plans and information, and take note of other policy initiatives that are producing similar recommendations.

The Scottish Executive agree and accept these recommendations. They confirm that continuous improvement in the public sector is being promoted under the banner of modernising government, and that this is driving a number of change agendas. The Scottish Executive highlight the funding support that they have given to CoSLA to develop an improvement service for councils. **The Scottish Executive welcomes views on the best way to deliver a continuous improvement service that is accessible by all public authorities.**

The Scottish Executive indicate that the Performance Information Review Group and the new Best Value Advisory Body will address the second issue (requirement to publish various plans).

Proposed Response

The new arrangements for Best Value in the whole of the public sector in Scotland should be matched with a new body charged with securing continuous improvement across the sector. It will be more appropriate for this body to be funded from the Scottish Block Grant than by local authorities, given that it is to apply across the whole of the public sector.

This could be a forum that shared best practice, provided training and support to elected members, board members, appointees and employees involved in the Best Value process. While CoSLA may be able to support local authorities in their moves towards Best Value, such a centrally funded organisation active across the sector as a whole, would have the standing and the ability to make a real difference to the delivery of Best Value within Scotland.

The council welcomes the Scottish Executive agreement on the need to rationalise existing requirements for statutory and non-statutory plans and information. No-one should underestimate the capacity for confusion and the barrier to progress towards Best Value, that competing initiatives and requirements for statutory plans presents. This is an area of work that will require urgent attention by the Performance Information Review Group and any new Best Value Advisory Body. In the meantime, the Scottish Executive should consider carefully whether any new initiatives that it may be contemplating contribute towards, or detract from, the move towards Community Planning.

Douglas Campbell
Head of Corporate Development and Communication
September 2000

AGENDA