

Scottish Trades Union Congress

RESPONSE TO THE DRAFT SECONDARY GUIDANCE ON: THE DUTY ON ACCOUNTABLE OFFICERS TO ENSURE ARRANGEMENTS ARE IN PLACE TO SECURE BEST VALUE

Introduction

The Scottish TUC welcomes the opportunity to submit comments on the draft Secondary Guidance on the Duty on Accountable Officers to ensure arrangements are in place to secure Best Value.

The STUC is Scotland's Trade Union Centre. Its purpose is to coordinate, develop and articulate the views and policies of the Trade Union Movement in Scotland, reflecting the aspirations of trades unionists as workers and citizens.

The STUC is a representative and democratic organisation, comprising of 43 affiliated trade unions, with a collective membership of 630,000. The STUC has in membership unions that represent employees in all of Scotland's public service organisations (PSOs). Trade union members in Scotland, and their families, are also users and financiers of Scotland's public services. This puts the STUC in a unique position to comment on arrangements for extending Best Value across the public sector in Scotland, as we do so both from the perspective of the employees who provide public services and the citizens who use them.

This Response has been prepared following consultation with the STUC's affiliated unions, particularly those with membership in the public sector in Scotland, and also reflects the policies on public service matters in general and specifically on the issue of Best Value adopted by our Annual Congress.

This Response is made in the context of the contribution made by the STUC and its local government affiliates to the development of the Best Value Regime for Scottish local government and our experience of its operation.

It is also made in the context of the continuing dialogue between the STUC and Scottish Executive Ministers and Officials on the issue of public service improvement.

This dialogue, which arose out of the Memorandum of Understanding agreed between the Scottish Executive and the STUC in April 2002, produced the STUC/Scottish Executive PPP Staffing Protocol. The STUC and the Scottish Executive are currently working on guidance that extends the principles contained in the Protocol to all potential contracting situations within Scottish local government, and it is anticipated that discussions on the application of these principles across the whole of the public sector in Scotland will follow thereafter.

It is, therefore, essential that the Guidance on the Duty of Accountable Officers to ensure that arrangements are in place to secure Best Value across the public sector in Scotland explicitly recognises the existence of the Staffing Protocol and the further guidance which is due to emerge, but also reflects the key principles that underpin it.

It is also essential that the Secondary Guidance is consistent with the Executive's key principles for public service improvement, included in which is a recognition that fair employment practice is central to ensuring effective, efficient and high quality public services and, therefore, the application of Best Value.

This principle has not only been reflected in statements made by Ministers, publicly and in discussions with the STUC, it is also part of current practice in various parts of the public sector.

The Memorandum of Understanding between the STUC and the Scottish Executive contains a commitment from the Executive to "support, as far as practicable, effective trade unionism, fair employment practice, and greater partnership between employers and trade unions." Furthermore, fair employment practice underpins the extensive partnership working arrangements between the health service unions and NHS Scotland employers and, in particular, the Staff Governance Standard and Audit framework.

Unfortunately, in our experience, fair employment practice and partnership working are not a priority for all PSOs, therefore, the Guidance needs to mention these explicitly. It should be recognised that the need for PSOs to adopt fair employment practices is of increasing importance because of demographic factors and the implications of these for recruitment and retention of staff.

As currently drafted, the Guidance fails to reflect fair employment practice and employer/union partnership working arrangements already in place, albeit not consistently across the public sector in Scotland.

If it is to be consistent with Executive policy on public service improvement, and with existing practice, and if a uniformity of approach is to be achieved across the public sector in Scotland, the Guidance will require to be substantially amended to reflect fair employment and partnership working principles.

Best Value in Local Government

From the beginning of the development of the Best Value Regime for local government in Scotland in 1997, the STUC has made numerous submissions to Government (the Scottish Office and Scottish Executive) and to the Scottish Parliament's Local Government Committee. Our approach is based on the general principle that high quality, efficient and effective public services will best be achieved by well resourced, motivated, trained and rewarded staff. We passionately believe that good employment practice is at the heart of the delivery of high quality public services and, therefore, must be placed at the heart of Best Value arrangements.

At the 1999 Annual Congress, the STUC adopted a position on Best Value that stressed the need for any statutory duty of Best Value to be defined in general terms but to emphasise the quality of public services rather than simply competition and cost factors and, in the context of supporting the provision of local government services by direct labour, called for the local government Best Value Regime to ensure full trade union staff consultation; a guarantee of trade union recognition; the protection of jobs, pay

and conditions; the existence of appropriate staff training; the maintenance of health and safety standards; and the promotion of equal opportunities.

Extension of Best Value across the Public Sector

In our Submission to the Scottish Executive consultation document “Best Value in Local Government: Long-Term Arrangements”, the STUC expressed the following view in relation to the extension of Best Value across the public sector in Scotland:

“Careful consideration should be given to the extension of the Best Value framework as developed by local government in Scotland to other parts of the public sector, bearing in mind the arrangements being developed elsewhere in the public sector to ensure the provision of quality services in a cost effective manner. The appropriateness of applying a statutory duty of Best Value in other parts of the public sector will depend on its definition. It may well be acceptable if defined in sufficiently general terms to allow its implementation to be customised for the specific requirements of each public service. For example, the best practice approach being developed within NHS Scotland in relation to the provision of support services, contains many of the elements of Best Value developed for local government in Scotland, and is being developed with the support of the trade unions and NHS employers. Defining Best Value prescriptively would undermine one of its key principles and may well create unnecessary difficulties in the development of appropriate regimes in other parts of the public sector.”

Our comments on the Draft Secondary Guidance are a development of these general views.

Comments on the Draft Secondary Guidance

The following are the STUC’s comments on the content of the Draft Secondary Guidance. For ease of reference, they follow the structure of the Executive’s document.

Introduction: Adopting Best Value

Paragraph 1:

To maintain consistency with the Scottish Executive's approach to public service improvement; the principles of the STUC/Scottish Executive PPP Staffing Protocol; the application of partnership working arrangements between unions and management within NHS Scotland; and the NHS Staff Governance Standard amongst other things, a third bullet point should be added to the description of the duty of Best Value. This point should describe the duty of best value as having at its core fair employment practice.

Paragraph 2:

We believe that the sentence "It is the outcome of these efforts that matters, and not the detail of the processes" should be omitted and the remainder of the paragraph amended accordingly. While we acknowledge that the Executive wishes to define Best Value in a permissive way, we do not believe that it is accurate to imply that the detail of the processes that contribute to quality public service provision are not relevant.

We believe that there is a fourth crosscutting theme that should be reflected throughout the Guidance, that of staff training and development. Staff training and development impacts on every aspect of Best Value. It is not only central to the provision of high quality services, it is essential to the process of achieving continuous improvement and, therefore, to an accountable officer's duty to "ensure arrangements are in place to secure Best Value".

Paragraph 3:

We accept that Best Value should be a permissive regime. However, we do not believe it should be entirely the responsibility of a PSO to decide its own priorities in moving towards adopting Best Value principles. We believe that, given the lack of consistency in the application of fair employment practice across the public sector and, in particular, proper approaches to staff

governance and partnership working between unions and management, PSOs should be asked to prioritise these matters.

Paragraph 5:

While the STUC accepts that self-assessment is an important part of any organisation's system of continuous improvement, it is not sufficient. We would ask the Executive to re-consider its approach to scrutinising the adoption of the Best Value principles by PSOs and, in particular, to establish arrangements for external scrutiny. We are also concerned that the Guidance is silent on the timescale over which PSOs are required to apply and progress Best Value. It is conceivable, under the Guidance as currently drafted, for much of it to be simply ignored by a PSO without the accountable officer transgressing his or her Best Value duty.

As a minimum, we believe that the Scottish Executive should develop an audit tool to assist PSOs with self-assessment and should require each PSO to prepare an action plan and timeline on its adoption of Best Value principles.

Paragraph 9:

Key Questions

Does the Draft Guidance help to clarify for accountable officers what is required of them under the duty of Best Value?

Without explicit reference to fair employment practice within the Guidance there is likely to be considerable confusion amongst accountable officers whose organisations have fair employment as an integral part of their organisational development approach. We would not wish to see, for example, managers within NHS Scotland downgrade the importance of the Staff Governance Standard and the partnership working approach because the issue of fair employment practice did not feature explicitly in Best Value guidance.

What types of on-going support to allow exchange of learning, good practice and networking would consultees envisage as being most helpful?

Opportunities must exist for PSOs to learn from each other and exchange good practice. Opportunities must also exist for PSOs to learn from the experience of public service workers. The trade unions have an important role to play in this respect. The Scottish Executive should put in place arrangements that allow unions and PSOs to come together on a regular basis to discuss public service improvement issues and the development of Best Value.

The STUC has supported the establishment of the service improvement function for local government, in principle, and believes that there may be merit in extending this to cover all PSOs. However, in doing so it will be important to ensure that the improvement function has an appropriate policy direction and structure and that its relationship to existing agencies and the role of trade unions in its operation is clearly defined. It is also essential that it supports the fair employment agenda and allows for learning and exchanges of good practice on employment matters.

Characteristics of Best Value Arrangements

Commitment and Leadership

As stated above, it is the view of the STUC that one of the key characteristics of a Best Value organisation is its adoption of an approach to strategic decision-making founded on the principle of partnership with its staff and the trade unions that represent them.

There is a growing body of literature demonstrating the productivity and organisational benefits of a partnership approach in both the public and private sectors. Partnership approaches have been used to drive through effective change in the public sector in a range of countries, including parts of the public sector in Scotland. PSOs in Scotland should be seeking to learn lessons from the partnership models applying in NHS Scotland where the partnership approach extends to involving employees in strategic and operational decisions on service delivery. Executive and non-executive leaders in PSOs require the confidence to involve staff and trade unions in decision-making in order to achieve continuous improvement in performance and service outcomes.

This point should be reflected throughout the Guidance and the section on Commitment and Leadership should be amended accordingly.

The STUC would suggest that points 12 and 13 in this section be re-drafted to reflect the importance of partnership, together with transparency and accountability, in strategic decision-making, and that these points should be given greater emphasis by being included nearer the beginning of this section.

In point 2, and indeed throughout the Guidance, the STUC would prefer to see a distinction made between customers and citizens. PSOs should be responsive to the commercial customers with whom they contract to receive and provide services. However, the relationship with individual public service users is not of the same nature. Users of public services are citizens whose engagement with PSOs is fundamentally different from the commercial, market based relationship customers have with the private sector. Users of public services have citizens' rights. They have the right to receive services that meet their needs and to have the opportunity to shape service provision in ways that extend beyond the purchaser/provider relationship. This point requires to be addressed throughout the Guidance, particularly in the following section, Responsiveness and Consultation.

The STUC would make the following additional comments in relation to the points made in this section.

Point 2 – This should include an additional principle “the need to have regard to fair employment practice”. No public sector organisation or executive and non-executive leadership within a PSO should have a vision which does not address this point.

Point 6 – This point should include specific reference to staff as well as financial matters. It is not sufficient to include staff under the term “other resources”.

Point 7 – This point should explicitly mention trade unions as the representatives of staff. There is significant evidence that the involvement of trade unions in organisational development activity improves outcomes.

Responsiveness and Consultation

This section should be amended to take account of the points made above about the importance of partnership between management in PSOs and the staff and their trade unions, as well as the relationship between PSOs and the citizens that use their services. PSOs must not forget that, irrespective of their structure or status, they are ultimately under the same requirement for democratic accountability as elected bodies such as local authorities, and must operate as such.

The STUC would make the following comments in relation to the points made in this section.

Point 2 – There should be a specific reference to innovation in relation to consultation by PSOs.

Point 4 – Trade unions, and the STUC, represent their members as both workers and citizens. This is a point acknowledged by the Scottish Executive in its Memorandum of Understanding with the STUC, and this should be reflected in the Guidance. An organisation that adopts Best Value principles will be one which is able to demonstrate that it operates in partnership with the trade unions representing its staff in making strategic and operational decisions, and consults with the wider trade union community as legitimate representatives of citizen interests.

Sound Governance at a Strategic and Operational Level

Principle A

The issue of staff governance needs to be explicitly mentioned in this section of the Guidance. Traditionally, corporate governance in the public sector has been defined in terms of financial governance and with regard to service quality. The third element of governance, staff governance, has largely been ignored. However, the pioneering approach within NHS Scotland of the development of the staff governance standard and audit framework, is an example of good practice that should set the standard for governance arrangements across the public sector in Scotland.

The STUC would make the following comments in relation to the points contained in this section.

Point 3 – This point must reflect the principles contained in the STUC/Scottish Executive PPP Staffing Protocol and its application to other contracting arrangements between PSOs and external providers. Explicitly, it should refer to the roles and responsibilities that PSOs have in ensuring that all public service providers operate fair employment practice, including arrangements that eliminate the two-tier workforce consequences of contracting.

Principle B

It is of course the case that Best Value organisations should have effective performance management systems. However, there is more to effective performance management than is included in the points in this section of the Guidance as it is currently drafted.

This section of the Guidance should be re-drafted to reflect an approach to performance management which is supportive and corrective, holistic rather than simply concerned with performance indicators, and which goes beyond financial and corporate governance and addresses staff governance. It must also acknowledge that performance management is also about more than the measurement of performance against pre-determined targets. It must be sensitive to inputs as well as outcomes, recognising that addressing outcomes is fraught with the difficulties of identifying cause and effect and the influence of the policies and practices of other organisations.

It must consider the impact performance measurement systems can have on staff, ensuring that they avoid stress and harassment for staff and do not act as a hindrance to innovation.

Most importantly, performance management systems must be established and implemented in partnership with staff and the trade unions that represent them.

Sound Management of Resources

Principle A

The STUC would make the following comments in relation to the points contained in this section.

Point 3 – Staff and trade union involvement in strategic decision-making, in partnership with management, should be mentioned.

Point 6 – This point should be explicit about fair employment and the risks involved for PSOs in violating their statutory obligations, for example, in relation to equal pay.

An additional point should be included in this section in relation to learning and development which should include reference to the importance of involving staff and the trade unions in determining need and planning provision.

Point 9 – Fair employment practice should be include in the list of factors to be covered in an organisational strategy for procurement and the management of contracts and contractors. This should reflect the principles of the STUC/SE PPP Staffing Protocol.

Point 12 – The phrase “minimum possible burden” should be replaced with the phrase “appropriate responsibilities”.

Point 13 – A similarly worded paragraph on staff stewardship should be included. If not, it will be perceived by organisations and by their staff that financial stewardship is of greater importance to an organisation which adopts Best Value principles. It is not. At the least, it is of equal importance to financial stewardship.

Principle B

The first part of Principle B should be amended to explicitly refer to fair employment practice.

Publicly funded organisations should not only seek to meet public expectations with regard to competitive practice, it should seek to meet public expectations in relation to fair employment practice. It is clearly the intention that competition rules as determined by the EU and implemented by the UK Government should be mirrored by the requirement that organisations adopt fair employment practices.

Use of Review and Options Appraisal

This section of the Guidance must reflect the principles adopted in the STUC/Scottish Executive PPP Staffing Protocol. Staff, through their trade unions, must be fully involved in exercises undertaken to review and appraise options in relation to service delivery. Paragraph 9 is insufficient in this regard.

This section must also reflect the concept of a public sector ethos. A Best Value organisation is one which, if engaging with external providers, will require of these providers certain standards of conduct and practice that match the concept of a public sector ethos as set out in the Nolan Principles.

Public services should be run on ethical lines and be based on principles such as selflessness, integrity, objectivity, openness, accountability, competence and equality. Any providers of public services must be able to demonstrate a commitment to these principles, including organisations in the voluntary and private sectors.

A Contribution to Sustainable Development

This section should be amended to strengthen the emphasis on sustainable development.

It is perhaps inevitable that such general phrases as “to contribute to” and “taken into account” should be used in the sort of permissive context in which the Guidance has been drafted. However, the STUC would suggest the use of the phrase “to make the maximum possible contribution to” instead of “to contribute to” and “applied rigorously” rather than “taken into account” as a means of raising the level of emphasis on the sustainable development principle of a Best Value organisation.

Equal Opportunities Arrangements

The STUC would make the following comments on the points contained in this section.

Point 1 – The use of the term “actively promote” should be used instead of “encourage”.

Point 3 – Additional bullet points should be included to cover the need for all staff to be trained in mainstreaming equalities, and not only in equal opportunities, and that arrangements be put in place to monitor mainstreaming practices.

Point 4 – Exclusive reference to working with trade unions on equal pay matters should be included given the evidence that trade union involvement and support are important contributors to successful equal pay activity.

Point 5 – Best Value organisations should require to do more than simply meet their obligations in relation to equal opportunities legislation, they should be striving for best practice.

Joint Working

Joint working to improve service delivery is more successfully achieved if taken forward in partnership with staff and their trade unions. This section should be re-drafted to reflect this point. Specifically, effective joint working is dependant on its staffing implications being properly addressed. The Guidance should, therefore, make reference to the need for a PSO to have a strategy to deal with the staffing consequences of joint working, including terms and conditions issues, training and development, equal opportunities and health and safety.

Accountability

Principle A

Principle A should be re-drafted to make specific reference to the involvement of staff, through their trade unions, in performance reporting activity, with the nature of this set in the context of effective partnership working between management and trade unions.

There should also be reference in this section to how often PSOs are expected to report on performance and proposals for future activity.