



Briefing 11-53 September 2011

This briefing outlines the new Best Value guidance issued on the 14 September and the 'Duty to Involve'

To APSE main contacts throughout England and to Wales, Scotland and Northern Ireland for information

- This briefing replicates the recent Best Value Guidance issued by the Coalition Government
- Readers may also wish to note the contents of APSE briefing 11-52 which explains more fully the new Community Right to Challenge to which this briefing refers.

Introduction

Government announced its intentions to roll back prescriptive guidance and regulation as part of the Coalitions initial joint policy statement and in 2010 made clear its ambitions to reform the myriad of guidance notes and regulations surrounding Best Value including withdrawal of the two tier code of practice on workforce matters (see APSE briefing 10-69).

Government has now issued new Best Value Guidance and the scope of the new guidance and the Best Value Statutory Guidance are replicated below followed by APSE commentary.

Scope of the Guidance

1. This Government is acting to remove barriers to more open and efficient local public services by freeing local authorities from targets, prescription and duties. We want to encourage public agencies and civil society to collaborate more, including greater involvement for voluntary and community organisations ⁽¹⁾ as well as small businesses in the running of public services.
2. To this end, we have already revoked guidance on workforce matters which formed part of the Best Value regime, namely the *Handling of workforce matters* in contracting and the *Code of practice on workforce matters* in local authority service contracts ('the two tier code'). We have also revoked the whole statutory guidance *Creating Strong, Safe and Prosperous Communities*, which included general Best

Value guidance on commissioning. We also plan to repeal the two main remaining statutory duties covered in that guidance (the Duty to Involve and the Duty to Prepare a Sustainable Community Strategy).

3. In this context, this short statutory guidance on the Best Value Duty sets out some reasonable expectations of the way authorities should work with voluntary and community groups and small businesses when facing difficult funding decisions. It allows them the flexibility to exercise appropriate discretion in considering the circumstances of individual cases, without Government trying to predict every possible variable. It gives a new, clear prominence to requirements on dealing with the voluntary and community sector and small businesses, helps build the confidence of these organisations in holding public agencies to account, and is explicit about the scope for Best Value authorities to consider social value in their functions. It does not replace Local Compacts between local authorities and the voluntary and community sector.
4. This guidance, taken together with measures such as Community Right to Challenge in the Localism Bill, reduce the barriers that often prevent voluntary organisations competing for local authority contracts. Both measures aim to promote local authority leadership in providing a level playing field for all, including local voluntary and community organisations.
5. Government is committed to the principles in the renewed National Compact - the agreement which aims to ensure that Government and civil society organisations work effectively to achieve common goals and outcomes for the benefit of communities and citizens in England. This guidance does not supersede any part of the Compact but sets out expectations of Best Value authorities making difficult funding decisions under the Best Value Duty. All central government departments and non Best Value agencies of departments are also signed up to the fair standards set out at paragraph 5 of the guidance.

1. The reference in this document to voluntary and community sector also includes social enterprises.

Best Value Statutory Guidance

1. Best Value authorities ⁽²⁾ are under a general Duty of Best Value to *“make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”* ⁽³⁾
2. Under the Duty of Best Value, therefore, authorities should consider overall value, including economic, environmental and social value, when reviewing service provision. As a concept, social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves.
3. To achieve the right balance – and before deciding how to fulfil their Best Value Duty – authorities are under a Duty to Consult ⁽⁴⁾ representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services. In the interests of economy and efficiency, it is not necessary for authorities to undertake lifestyle or diversity questionnaires of suppliers or residents.
4. Authorities should be responsive to the benefits and needs of voluntary and community sector organisations of all sizes (honouring the commitments set out in Local Compacts) and small businesses.
5. Authorities should seek to avoid passing on disproportionate reductions - by not passing on larger reductions to the voluntary and community sector and small businesses as a whole, than they take on themselves - and in particular:
 - An authority intending to reduce or end funding (where ‘funding’ means both grant funding and any fixed term contract) or other support to a voluntary and community organisation or small business should give at least three months’ notice of the actual reduction⁽⁵⁾ to both the organisation involved and the public/service users.

- An authority should actively engage the organisation and service users as early as possible before making a decision on: the future of the service; any knock-on effect on assets used to provide this service; and the wider impact on the local community.
- Authorities should make provision for the organisation, service users, and wider community to put forward options on how to reshape the service or project. Local authorities should assist this by making available all appropriate information, in line with the government's transparency agenda.

(2) A local authority; a National Parks authority; the Broads Authority; police and fires authorities, the London Fire and Emergency Planning Authority; a Waste Disposal Authority, Joint Waste Authority, an Integrated Transport Authority; Transport for London; the London Development Agency. See Section 1 of the Local Government Act 1999, economic prosperity boards established under section 88 and combined authorities established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

(3) Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007).

(4) Section 3(2) of the Local Government Act 1999

(5) Where on the basis of past practice the organisation might have some basis for expecting the funding or contract to be continued.

APSE comment

This guidance has been expected for some time and, as outlined in APSE Briefing 10-69, aligns statutory guidance to the policies of localisms and public service reform highlighted in the open public services white paper and the localism bill. The overriding Duty of Best Value still remains but the Duty to consult contains explicit references to consulting with 'representatives of local voluntary and community organisations and small businesses'.

The guidance also introduces consideration of overall value including 'economic, environmental and social value' when reviewing service provision'. APSE has already produced numerous research reports to support its member authorities on this very issue including the use of community benefits in procurement, and the production of a sustainable procurement toolkit. Details of these are available on the APSE website and may help member authorities in the implementation of the new Best Value guidance.

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