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'Best Value' and Waste Management in Local Authorities:

An Independent View

**A report for the IWM's
'Best Value in Waste Management'
Seminar**

My name is Paul Mobbs. I am an independent environmental consultant based in Banbury, Oxfordshire. I trained in the engineering industry before setting up my current business in early 1992, although I had a long experience of doing technical research for voluntary groups before that. Since 1992 I have been working across the UK as a consultant to community groups, local authorities, the media and small businesses in the fields of planning, waste management, sustainable development, pollution and risk assessment.

This review of 'best value' in waste management is based on my experiences working primarily for community groups, parish council and the larger environmental campaign groups. I hope that in looking at the issue from a different perspective I can introduce a few new ideas into the best value debate.

My interest in the *Best Value Initiative* is two fold: Firstly I am looking forward to the opportunities that the review of local services may bring to communities, and to national sustainable development objectives. My second interest is more academic - I am interested in best value as an example of an ideologically driven government policy that has the capacity to fail or succeed purely on the basis of how those involved interpret the motives of the policy. As such it could provide a useful insight into how local authority's approach the need for change, and adapt to serve it.

Defining Best Value

'Best Value' is *potentially* a means to fundamentally review public services; how they are provided, and what value the public attach to them. I say 'potentially' because our first problem is defining what '*best value*' means. Is it a single unified concept that can be applied nationally, or will every local authority provide their own interpretation reflecting their own local peculiarities and biases.

In considering what the concept of best value means we limited by our ignorance. The Government is driving this process as part of its review of local government, and from my point of view the obstacles are only being considered as they arise. We've all boarded the '*Modernising Local Government*' train - unfortunately John Prescott has not marked the station where we get off on our ticket.

We also have to consider the role of the general public in this process. Seemingly the whole purpose of 'best value' is to improve public services. Unfortunately it is my experience that most people have never heard of best value; and even if they have heard of best value the denigration of local councils under the previous government makes them very suspicious of any scheme which seeks to '*improve efficiency*'.

So how did we get here? I thought it useful to include a chronology as many people are still in the dark about how the best value policy arose:

- June 1997 - 'Best Value' is announced as part of the government's commitment to remove CCT from local government services. The form of best value is outlined in 12 main points¹, and gave notice to local authorities that pilot bids would be sought.
- In July details of how CCT will be reformed are outlined in the consultation paper, '*Compulsory Competitive Tendering: Changes to Regulations and Guidance*'² (responses were sought by 5th September). This also invited bids for best value pilots. Over 150 local authorities responded with bids³.

- The draft regulations to reform CCT, and introduce best value, are laid on 21st November⁴.
- In December 35 successful pilot projects are announced⁵. Braintree, Brent, Camden, Leeds, Northamptonshire, Warwickshire, Watford and York all have schemes which cover waste in some form⁶.
- In March 1998 the Government produced a consultation paper, '*Improving Local Services Through Best Value*'⁷. This outlined the Government's thinking on the issues, and sought comments.
- In early July the White Paper on local government, '*Modern Local Government In Touch with the People*'⁸, was launched. Chapter 7 of the White Paper deals with best value.
- In late July the House of Commons Environment, Transport and Regional Affairs Select Committee issued their review⁹ of best value.
- In September six new 'partnership' best value projects were announced¹⁰. These differ from the earlier projects in that they cut across local authorities, and include private sector partners.
- In October the Government's response¹¹ to the Select Committee report is published.

In less than eighteen months then the 'best value' concept has been taken from a rough idea to an operational policy. More interestingly, all the local authority bids to operate best value pilots were initiated before the scheme was subject to formal public consultation. However, the overall aims of the best value framework have changed little since they were first announced. In fact the general content of the July 1998 White Paper has change very little from the March 1998 consultation document. The House of Commons Select Committee have raised concerns about the clarity of the proposals so far, along with queries on how far the principle should be applied, and the need to speed legislation in support of best value in order to avoid legal challenges to local authority decisions.

In my view there exists sufficient guidance to inform our view on what the concept of 'best value' is. The challenge lies in developing a uniform implementation of those principles by local authorities.

Best Value and Waste Management

Best value, as a concept, works very well for the many council services that are the sole responsibility of local authorities. In considering how we define best value for services it is very simple to extend current contract management practices to suit the needs of best value. But this is not the case in waste management because responsibilities are divided:

- Planning responsibilities are split in two-tier local authorities;
- There are separate and sometimes conflicting responsibilities for waste collection and waste disposal;
- There is still a discontinuity between the functions of local authorities and the Environment Agency that makes it difficult to discharge the legal obligations under the EC Framework Directive on Waste¹²;
- The actual provision of waste services is now primarily a private-sector occupation.

When considering best value in waste management we are therefore faced with two

challenges:

- We have to meet the legal obligations before the quality-driven aspects of best value can be considered. There are also the wider national policy objectives on waste such as sustainable development.
- We have to find ways of implementing best value across public and private organisations. This could throw up particular problems for bodies like the Environment Agency or private waste contractors if local authorities operate varying standards and practices to implement best value.

The legal restrictions

I urge people to read the report of the House of Commons Environment, Transport and Regional Affairs Select Committee when considering the content of the recent White Paper on local government. It provides a measure of caution which is not present in the Government's position. In particular we have to consider how we make best value work within the existing legislative system for waste management. The concern here is not just the problems of legal challenge from those providing contract services, we could also see challenges to the process from the public. Litigation on delegated decisions is increasingly becoming the most effective campaign tool the public has.

In terms of waste collection and disposal the implementation of best value seems fairly simple. Local authorities have an obligation to collect and dispose of domestic wastes. But how do local authorities choose what form of disposal they consider 'best value'. Many local authorities will already be aware of the problems in developing publicly acceptable waste management strategies, and agreeing the different options selected in those strategies. In fact the 'long-term' duty to protect the well-being of the public is soon to be extended as indicated in the White Paper:

- "8.8 *The Government intends to introduce legislation to place on councils a duty to promote the economic, social and environmental well-being of their areas and to strengthen councils' powers to enter into partnerships.*
- 8.9 *This new duty will provide an overarching framework for local government. It will enshrine in law the role of the council as the elected leader of their local community with a responsibility for the well-being and sustainable development of its area.*
- 8.10 *It will ensure that councils must, at all times, consider the long-term well-being of their area. It will put sustainable development at the heart of council decision making and will provide an overall framework within which councils must perform all their existing functions. So, in taking decisions affecting their area or its people, councils will have to weigh up the likely effects of a decision against the three objectives - economic, social and environmental - and if necessary strike a balance to ensure that the overall well-being of their area is achieved."*

I believe that best value will have the effect of amplifying the existing debate on waste management by giving the active members of the community to another stick beat the backs of local authorities. Local authorities must therefore decide whether they wish to hold-out against change, or capitulate with public opinion. The emphasis in best value on community participation, and the strength and openness of the review procedure, will provide a very public arena in which these issues can be fought.

I do not wish to talk about the specific virtues of any one waste technology in this seminar, but the resource and pollution implications of waste management are as significant in best value as is the overall financial cost. Current legal obligations on local planning authorities require them to consider the health and pollution implications of waste management proposals. By implication, the planning decisions of local authorities have relevance to best value.

For many local authorities this is an anathema, and the standard answer I receive is "*it's not our problem, ask the Environment Agency*". This view is in error - waste planning is the one area of environmental law and town planning where there is a legal requirement for the local planning authority to consider pollution issues. The Part 1, Schedule 4 of The Waste Management Licensing Regulations 1994¹³ makes planning authorities the 'competent body' for the taking of '*any specified action*' in discharging the 'relevant objectives' of the Waste Framework Directive. The recent Bolton case¹⁴ makes local authorities responsible for determining what constitutes the '*best practicable environmental option*' (BPEO) for waste proposals. To make things even more onerous, recent cases¹⁵ mean that the local authority must consider public concern in planning decisions - to what extent will the views expressed to the local authority in the 'best value' consultation have materiality in this assessment?

Of course the greatest impact on how we assess best value for waste management will be the effect of the EC Landfill Directive¹⁶. I do not wish to touch on the detail of this but even if Britain secures the 4 year extension under Article 5, by 2009 to 2012 waste collection will have to completely change in order to meet the requirements of the Directive for the segregation of biodegradable waste. Segregating for biodegradable waste alone is not practical, and therefore the waste disposal side of the operation will also have to change in order that other materials can be reclaimed.

The response from many local authorities, and currently from DETR, is that incineration will be a way around the problems posed by the Landfill Directive. In practice, I do not think that is the case. It is my experience that incineration of waste is not acceptable to the public - we only have to see the problems caused to the waste strategies in Hampshire and Greater Manchester to see that. How will local authorities resolve such disagreements over waste policy in the implementation of best value? Such issues of contention could also be the means by which the best value process is discredited.

Public and private sector partnership

This, I believe, is the issue that still has to be solved. If best value were simply a matter of contract management I don't think this issue would arise. But because waste management spans local authorities, other public bodies and the private sector, some means has to be found to accommodate the different standards that almost certainly will arise in the implementation of best value.

Benchmarking would be a way to streamline the process initially, but as best value proceeds 'in depth' how do we resolve the inconsistencies that result from different local authorities taking different views on service provision. In a way we already have this issue with waste local plans and recycling plans - different standards on waste disposal and recycling are adopted by different local authorities. Even within bodies such as the Environment Agency different standards are practised between different regions and areas, not just in regulation but also in data collection (although the system is getting better).

I can give you no simple options to solve this. We either have a rigidly enforce national policy - which defeats the whole notion of local accountability - or we provide sufficient protection against the actions of obdurate local authorities.

Public consultation

This is one of the points where local authorities are going to have problems in making the 'total concept' of best value work. I have to admit to having little confidence in many of the informal public consultation procedures that local authorities practise today. The actual process of consulting the public may produce useful information which can guide policy making. The problem is that too often this information is ignored in the face of 'political', 'financial' and 'procedural' obstacles that determine how local government operates. The failure of the Government to proscribe a minimum standard for public consultation is unfortunate - particularly as the Government claim to be committed to greater public involvement.

We also have to consider the effect that a more informed population has on local democracy. As individuals and campaign groups become more experienced can local authorities expect to have the same level of power to make decisions unfettered, or must they begin to devolve some of their power to communities. For example, are 'Citizens Juries' or the more standard local authority consultation reports a sufficient response to the issues raised by best value?:

- Firstly there is the issue of '*informed consent*'. It is not possible to expect a reasoned decision from the public if they do not understand the process - and from my position at the moment they do not understand best value. It is also not possible to make an informed decision where there are no options present. It is my experience that local authorities sometimes present options, but it always seems that the one they want is the only one which is given serious attention.
- Secondly there is the issue of how local authorities handle the more professional input from members of the community or campaign groups. This is not just a matter of *how* local authority officers initiate the consultation. It is also a matter of officers having the ability to properly understand complex technical and legal arguments. In relations to issues like waste management, especially where the submissions of the public lead to conclusions that differ from established practice or from the industry's view, how do we reconcile the 'democratic' principles enshrined in best value with 'authority led' policy-making systems of the past.

When I am quizzed by members of the public on whether they should take part in a consultation process my first response is, "*are the opposition there*". Any consultation where the opposing side (for example the waste industry) has decided that it's not important to take part in cannot command much authority. But if the opposing side are present, how will local authorities resolve the philosophical, technical and legal difficulties that arise between the parties?

In conclusion

I welcome best value. But at the same time, as someone who professionally represents communities, I can see problems in how the process will work. The public has become too sophisticated for council's to hold and open day on proposals and expect compliance. Best value, in my interpretation, will provide an additional route for public lobbying. As such it will

become as politically charged as any of the formal consultation processes that exist at the present. If local authorities do not accept this and provide appropriate flexibility in the options presented to the public, and the procedures to evaluate the response, the process will become discredited. While public consultation is the aspect of best value that can provide greater legitimacy to the provision of local services, it could also be the point on which the process founders.

While I believe that there is enough information available to decide what best value is, I have reservations about how different authorities will implement it. Unless we can ensure some sort of minimum financial, technical and environmental quality standard bodies outside of local authorities will find it difficult to relate to the inconsistent implementation of best value.

Most importantly, we have to find ways to implement best value while having regard to the current and future legal obligations that exist on local authorities. It is not just a matter of avoiding legal challenges - unless we can anticipate future trends in public policy and legislation we will not be able to provide reliable public services in a cost-effective manner.

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¹ Department of the Environment Press Release 197, 2nd June 1997.

² *Compulsory Competitive Tendering: Changes to Regulations and Guidance*, Department of the Environment, Transport and the Regions Consultation Paper, July 1997. See also DETR press release 229/ENV, 25th July 1997.

³ Department of the Environment, Transport and the Regions press release 385/ENV, 2nd October 1997

⁴ Department of the Environment, Transport and the Regions press release 468/ENV, 21st November 1997

⁵ Department of the Environment, Transport and the Regions press release 498/ENV, 4th December 1997

⁶ Department of the Environment, Transport and the Regions press release 153, 3rd March 1998

⁷ *Modernising Local Government - Improving Local Services through Best Value*, Department of the Environment, Transport and the Regions Consultation Paper, March 1998. See also DETR press release 153, 3rd March 1998.

⁸ *Modern Local Government In Touch with the People*, Department of the Environment, Transport and the Regions, July 1998. See also DETR press release 571, 8th July 1998.

⁹ *Implementation of the Best Value Framework*, House of Commons Environment, Transport and Regional Affairs Committee Eleventh Report, 1997-8 Session, July 1998. (HC705). See also DETR press release 664 (31st July, 1998) for the Government's immediate response.

¹⁰ Department of the Environment, Transport and the Regions press release 782, 24th September 1998

¹¹ *Memorandum of Inquiry by Select Committee on the Environment, Transport and Regional Affairs, Implementation of the Best value Framework: Government Response*, DETR October 1998. See also DETR press release 849, 15th October 1998.

¹² EC Framework Directive on Waste, 75/442/EEC, as amended by Directives 91/156/EEC and 91/692/EEC

¹³ Waste Management Licensing Regulations 1994, SI. 1994/1056.

¹⁴ R. v Bolton Metropolitan Borough Council ex. parte Roger Arthur Kirkman

¹⁵ - Newport Borough Council v SoS Wales and Browning Ferris Environmental Services Ltd [1998] JPL 377

- West Midlands Probation Committee v. Secretary of State for the Environment and Walsall Metropolitan Borough Council [1998] JPL. 388

- See also *'Public Concern - The Decision Maker's Dilemma'*, Neil Stanley. JPL [1988] 919-934

¹⁶ Latest draft - *'Common position (EC) No. /98, Adopted by the Council on 4 June 1998 with a View to Adopting Council Directive 98/ /EC on the Landfill of Waste'*, Council of the European Union, 24th September 1998.