

The Move Towards Trusts

The process that a number of councils have adopted in creating a local trust

1. Background

In the 1990's very few Trusts were established in the UK, although as time moved on the concept of savings against non-statutory services became more and more appealing to many local authorities.

In the 1990's CCT (Compulsory Competitive Tendering) 'Invitations To Tender' and 'Specification' documents required submissions based on Operational Philosophy including Quality Management Systems, e.g. Badges of Excellence, (I.I.P., Charter Mark etc.), supported by Programming, Core Activities, Pricing (including Concessions), Cleaning and Health and Safety, Maintenance, H.R., Marketing, Administration, and Financial and Management Information. This core or base information did not change much over the following 25 years. However, the quantity and quality of the information to be submitted became more and more comprehensive as the competition in the market place increased, i.e. the development of Pre-Qualification Questionnaires or PQQs, which follow the principles of the Official Journal of the European Union (OJEU) competitive dialogue route.

Compared to the current position progress on such major change in the 1990's and early 2000's was generally very slow. With reviews taking many years and guidelines from the government to local authorities constantly changing the Best Value process and its descendants led to a never-ending debate between the '3 E's' of Economy, Efficiency and Effectiveness. In modern times the drive towards austerity and a desire to see continued external investment into the local communities has led to the expansion of a number of Trusts or organisations across swathes of England and Wales.

What did not change was the way in which any of the 'current way' of thinking, such as Best Value (BV) or Comprehensive Performance Assessments (CPA) was open to interpretation by individual local authorities.

2. Best Value Reviews

For many Council's the concept of externalisation commenced with the appointment of consultants whose first decision was to review, recommend and decide on which services were to be included and which to be excluded. The process was full of jargon and abbreviations that to many was confusing and bewildering.

The Challenge

By the turn of the century some Council's had formed Working Groups, for the implementation of Best Value, for example to review whether their Leisure Services provision and Parks and Open Spaces should be a combined or separate contracts. These findings, or 'Review Outcomes', usually included the results of their analysis of the 'Challenge, Consult, Compare and Compete' process, which were then identified or incorporated into a 'Scope and Outline Plan' for wider Council consideration. Each plan was expected to have specific tasks that were challenging and identified the 'Options for Change'.

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Consult

The Consult element was expected to include a wide-ranging primary and secondary consultation and up to date market research. Ranging from generic market research to in-house surveys and user group meetings the process was expected to be comprehensive.

Compare

The Compare element included extensive benchmarking against other providers in each region, involving the identification of 'Best Practice' and many comparisons against other similar parties 'Performance Indicators' or 'Key Performance Indicators'.

Many authorities had an impressive volume of provision with some significant potential. Often there was a significant backlog of repairs and the need for investment which had not been tackled for many years, as such there was often a need to carry out modernisation to many facilities.

Compete

The Compete element looked at Alternative Service Providers and the many small Private Sector Services for Leisure Provision. At the time it was generally held that the major companies were looking for long-term commitment where either a local authority subsidises certain activity areas, whilst the service deliverer concentrates on generating income, or where there were gaps in more lucrative markets.

With the market reasonably settled and often a small number of expressions of interest, in an advertised CCT contract, the external providers were often not as competitive as the 'in-house team' or Direct Service Organisation (DSO). Often no external bids were submitted and it was felt that the market was "unlikely to change in the next few years".

Unsettling the market at the time was the increase in leisure or sports buildings provision at school sites, and the focusing of National Lottery funding for such schemes. This meant that the major local competition could often be from other local authority provision and included school sites that were not previously subject to or part of 'Dual Use' facilities and hence outside the scope of CCT. Generally, there were six well-known companies providing contract management and therefore the competition was limited. These private companies were either able to pick and choose which contracts they bid for or to focus their resources on the most rewarding, usually the larger facilities.

Improvement Plans

A long list of options could be drawn up and include a 'Five Year Improvement Plan'. This plan would include priorities to determine the full impact to deliver change, for example the creation of a newly created Trust or 'Not for Profit Distributing Organisation' or **NPDO**.

The options

If the NPDO option route was chosen a number of areas then appeared, such as: -

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- The specific Trust vehicle or options for the organisations governing rules and how much involvement would be available to or expected to come from the local authority
- How much independence or control would there be from the local authority
- The need for whatever legal vehicle to improve investment in the services and facilities, as in the structure and scope of any NPDO
- The need for: -
 - operational change and efficiencies
 - cultural change
 - new ways of partnership working and the involvement of other Voluntary Agencies
 - community benefit
 - Improving the lot for the Deprived/Disadvantaged areas, including people with disabilities and minority groups
 - The preparation of a strategy for implementation

3. Implementation

In order to deliver and coordinate the above areas some Councils returned to the buoyant consulting market and the selection and reappointment of the existing or new external consultants. As such any singled focused body, e.g. as an Industrial and Provident Society or a Company Limited by Guarantee, could be able to obtain: -

- NNDR Relief and possible exemption from VAT
- A long lease of up to 25 years to underwrite private finance

As with many authorities the structure of Council departments and the creation of any new body involved debate and resolution to central overheads, which included finance and HR functions, which were not part of most Leisure Services portfolios.

4. The beginning of change

Where Trusts were established many first projects included improvements to the size and quality of the gyms, including new gym equipment. Subsequent investment took place to upgrade other buildings and equipment. Alongside a range of improvements to the service with reduced staff costs, flexibility of staffing and the introduction of a sales team, change was taking place.

In the mid 2000's high year on year increase in fuel costs took place focusing investment into fuel efficiency projects. By 2012 the London Olympics and Paralympics had arrived and this provided an ideal opportunity to encourage more able and less able sports participants.

OJEU Restricted route

By the end of the first decade of the new century many contracts from the 1990s were coming up for renewal and many other Councils were looking at how the market was developing. As identified above, the procurement process was expected to follow the OJEU Restricted route. Involving the completion of a Pre-qualification questionnaire (PQQs) interested parties were sent to any party expressing an interest in the OJEU notice. Following evaluation of responses

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to the PQQ, a shortlist of bidders was selected to participate in the Invitation to Tender (ITT) phase, which would follow the principles of this route.

OJEU Competitive Dialogue route

Subject to the identification of unique circumstances it was possible to follow a Competitive Dialogue route, i.e. less prescriptive and with far more discussion with a few selected tenderers. This procurement process commenced with a pre-qualification phase. Pre-qualification questionnaires (PQQs) would be sent to any party expressing an interest in the OJEU notice. Following evaluation of responses to the PQQ, a shorter list of two or three bidders would be selected to participate in the Invitation to Tender (ITT) phase, which involved discussions around the opportunities to be offered by all parties that were based around the uniqueness of their contract.

Non-Competition Route

Throughout all of the above it remained possible for Council's to identify specific circumstances to establish their own Trusts with long leases and not to undertake any procurement procedure.

5. Number and spread of Trusts

According to the Sporta website in May 2017 (Sporta is the national association of leisure and cultural trusts for England, Wales and Scotland and excludes commercial operators and from 2019 was branded as '**Community Leisure**'), Scotland has the largest number of individual trusts at 21.8%, despite Scotland only having 8.6% of the relative population, whereas London and the South East has 21.0% with 27.4% of the population. This identifies that there is a significant regional variation with England Central plus London and the South East having less individual Trusts per capita.

Community Leisure (Sporta) Trust Members May 2017

	No. of Trusts	% of Trusts	% of overall population
Scotland	27	21.8%	8.6%
England Central	22	17.7%	26.0%
London and South East	26	21.0%	27.4%
North East and Yorkshire	15	12.1%	12.8%
North West	17	13.7%	11.5%
Wales and South West	17	13.7%	13.6%
	124		

6. Conclusion

In both the restricted and dialogue routes it was usual for the evaluation of the PQQs to cover four areas of compliance checks; preliminary checks; financial evaluation and a technical evaluation. Depending upon the scoring and

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weighting attributed to each section it became far easier to become included in the next stage, i.e. the Invitation to Tender short list, for those organisations with a larger turnover in excess of five times the value of each contract or at least £15m to £20m. This in itself generated a cumulative and narrowing approach in the market that meant that the creation of fewer larger contractors, around 10 to 15 who had not only the turnover, but also the breadth of contracts, economies of scale and a full time team of staff specifically focused on contract procurement. It also meant that smaller organisations, or host trusts, were becoming increasingly at risk at each contract renewal stage.