



ACCOUNTS COMMISSION

**S.R. 2000/5**

**DUMFRIES AND GALLOWAY COUNCIL  
EXTERNALISATION OF RESIDENTIAL HOMES  
FOR OLDER PEOPLE**

**A REPORT BY THE CONTROLLER OF AUDIT TO THE ACCOUNTS COMMISSION IN  
TERMS OF SECTION 102(2) OF THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973**

**DUMFRIES AND GALLOWAY COUNCIL**

**EXTERNALISATION OF RESIDENTIAL HOMES FOR OLDER PEOPLE**

**1. INTRODUCTION**

- 1.1 In December 1997 Dumfries and Galloway Council resolved to enter into contracts with two providers from the independent sector for the provision of residential care for older people in residential homes owned and formerly run by the Council. Under the contracts, the Council agreed to purchase all the beds available in the homes for a period of five years. It was a condition of the contracts that the new providers invested significant capital sums to upgrade or replace the homes, all of which were in a poor state of repair and fell below acceptable standards of accommodation. The process of transferring the provision of the service is described as 'externalisation'.
- 1.2 The Council's action generated significant local interest and was the subject of several complaints to my office. The main focus of the complaints was that:
- the requirements of the tendering process had discouraged participation by local home owners
  - the final terms of the externalisation differed significantly from the proposals outlined to prospective bidders
  - the Council had failed to achieve value for money from the externalisation of the service
  - the Council had set an illegal budget as a consequence of entering into block purchase contracts in relation to the externalised homes.
- 1.3 This report has been prepared under section 102(2) of the Local Government (Scotland) Act 1973. Its primary purpose is to identify those aspects of the externalisation process which demonstrate the opportunity to follow better practice in future similar exercises, whether undertaken by Dumfries and Galloway Council or other local authorities.

1.4 My report has been compiled from information contained in a preliminary report by the Council's external auditors. I have also undertaken further enquiries, examined a wide range of documents relating to this matter and discussed my findings in detail with the Director of Social Services and the Chief Executive.

## **2. OVERVIEW**

2.1 The terms of the contracts entered into by the Council give the contractors an option to purchase five of the 11 homes at £1 for each home. These five homes were valued at £2.03m in February 1997. In accordance with section 74 of the Local Government (Scotland) Act 1973, the consent of the Secretary of State was obtained for the transfer and ultimate disposal of the homes (if that takes place) at less than best price. Under the contracts a further five homes were to be replaced by homes built at the contractors' expense, while the final home, which was in the poorest state of repair was to be excluded from the externalisation.

2.2 Council employees working in the homes transferred to the new providers under European legislation governing the transfer of undertakings. The contracts between the Council and the new providers included a condition that the employment terms and conditions of the transferring employees would be preserved for at least two years. This protected the employees' rights beyond the minimum statutory requirements and was seen as being conducive to the continuity and stability required to smooth the transition process for residents.

2.3 The Council's decision to externalise the service committed it to significant expenditure in the form of payments to the contractors of approximately £28m over five years, on a 1997/98 price base. The contractual rates negotiated include a partial contribution towards the contractors' capital investment albeit this element is not separately identified in the contract rates. In addition, the rates for the first two years include an unidentified element in recognition of the cost to the contractors of maintaining, for that period, the existing terms and conditions of the employees transferring. The contracts provide for annual increases based on the Retail Price Index.

### **3. RECORD OF KEY EVENTS**

- 3.1 The externalisation process was complex and extended over a long period. This report does not attempt to describe the full details of the process; rather it summarises the key events.
- 3.2 In April 1996 the Council's Social Services Committee held a seminar on the future of residential services for older people. The objective of the seminar was to provide members with relevant information on residential services within Dumfries and Galloway and other parts of the UK in order to facilitate discussion on the future provision of residential services by the Council. Following the seminar a report was presented to the Social Services Committee on 28 May 1996 summarising the main issues discussed and seeking members' views on the way forward. The report identified the provision of combined residential and nursing care as a key initiative that required development.
- 3.3 The report indicated that capital expenditure of approximately £3m was required to enable the Council's eleven residential homes for older people to meet health and safety requirements and registration standards. In addition, it was estimated that a further £2m was required to provide en suite facilities and dementia care provision. This investment would give rise to increased loan charges, thus increasing the Council's already high unit costs. The report identified the existing unit costs for the Council homes as being £382 per week compared with £239 - £265 per week paid by the Council to the independent sector. This differential is increased significantly by the DSS benefits system under which the Council receives higher benefit payments for residents placed in independent sector homes. The report indicated that the gap between unit costs in the Council and independent sectors was gradually reducing because the independent sector was seeking higher fees from the Council and unit costs for Council homes were being reduced. It was noted in the report, however, that staff costs accounted for 75% of the unit costs of Council homes and that, to make any real impact on costs, these would have to be reduced.

3.4 Three options for the future of residential care provided by the Council were presented to members:

- to retain the statutory sector (ie the eleven homes owned and run by the Council) with guaranteed capital investment to meet service needs, while continuing existing service levels and pay/conditions of service for employees and, therefore, acknowledge and approve the continuing price differential
- to retain the statutory sector with guaranteed capital investment to meet service needs and authorise officials to review the service, including a reduction in unit costs and possible consolidation of units eg fewer homes
- to acknowledge that cost differences and lack of available Council capital funding determine that the future of statutory sector services is outwith the direct management of the Council and that options relating to the externalisation of services should be initiated as a matter of urgency.

3.5 In May 1996 the Council's Social Services Committee called for an appraisal of options for externalising the service. The consultants who were commissioned to undertake the options appraisal examined the retention of the homes in house as part of their appraisal, but rejected it on the basis of the arguments which members considered made it non-viable ie the large capital investment required to bring the homes to an acceptable standard and the high cost of running the homes. The consultants' report also indicated that the sums required to maintain and run the homes would mean that service developments to provide more appropriate accommodation for the frail elderly, and developments in community services and respite care, would not be affordable. As a result, the consultants recommended that the homes should be externalised. Because issues of service quality were as important as cost, they recommended a market testing approach, incorporating a negotiated procedure.

3.6 As an in-house bid was not considered to be viable, the consultants recommended that the Council set up an external organisation to bid for the provision of the service. This option would facilitate access to funding sources not available to the Council. They recommended that the bid from the new organisation set up by the Council should be prepared by the current in-house providers.

### **Tendering: First Stage**

3.7 Based on the consultants' recommendations the Council's Social Services Committee of 3 December 1996 decided to proceed to a market testing exercise. The consultants undertook the market testing exercise on behalf of the Council and a firm of solicitors was engaged by the Council to advise on the legal aspects of the externalisation process. An officer was seconded from the Social Services department to set up a company and prepare a bid.

3.8 Procedures for the procurement of services by local authorities are governed by the Public Services Contracts Regulations 1993. The Regulations exclude health and social services from many of the detailed requirements of the EU procurement regime. Consequently, it was within the discretion of the Council to determine the form of tendering procedure used in the externalisation process. The Council opted for a form of negotiated procedure, on the basis of the consultants' recommendation.

3.9 The Council placed notices in the Official Journal of the European Community (OJEC) in March and April 1997 advising that a market testing exercise would be undertaken for the provision of welfare services for older people delivered through residential homes currently owned and managed by the Council. A more detailed notice was placed in the OJEC in May 1997 indicating that a negotiated procedure would be used for the externalisation of the homes. The notice intimated that a bidders' conference was to be held for prospective bidders in May 1997. An information pack was available to prospective bidders giving further details of the service and the proposed bidding procedure.

## **Information Pack**

- 3.10 The information pack was issued by the Council to those attending the bidders' conference and to other parties who requested it. Approximately 50 organisations received the information pack, including a number of small scale and local providers. The pack contained a pre-qualification questionnaire to be completed by prospective bidders. This would be subjected to an evaluation process from which a selection of preferred bidders would be identified. The pack also gave an indication of the Council's view of the future direction of the service and the future level of demand for residential and nursing home care. The Council emphasised the need for bidders to be flexible and anticipated that future requirements would be for homes registered to provide both residential and nursing care. (Councils do not run nursing homes, although they are responsible for purchasing places for older people in such homes.) The Council also wanted the service to be comprehensive, covering respite/short stay provision and other services as needed. Accommodation standards were to be high with en-suite rooms becoming the norm. Council officers have indicated that the intention was to foster a partnership relationship with new providers for the development of the service to meet changing demands, such as establishing community based services within the homes to support people choosing to live in their own homes. I have been advised that the Council's requirements were expressed in a manner which was intended to encourage bidders to produce innovative ideas.
- 3.11 The information pack stated that bids would be considered for all eleven homes, for any combination of the homes or for individual homes. The Council was proposing to sell the homes and associated land but indicated it might be willing to consider leasing arrangements. The Council indicated that it would consider proposals which included closure or redevelopment of existing homes, providing continuity of care was adequately maintained. All bidders were to be subject to the same evaluation procedure irrespective of the number of homes for which they were bidding.

- 3.12 The information pack indicated that it was a requirement that the externalised services were well placed in the market and could operate competitively with other independent sector providers. The pack listed the current rates per week paid by the Council to the independent sector for single room accommodation as £261 - £307 per week in a residential home and £305 - £342 in a nursing home. Given the Council's stated intention that unit prices should be minimised and that services should be competitively priced, the implication was that the current rates quoted were an indication of what the council was expecting to pay the externalised providers.
- 3.13 The information pack indicated that a list of bidders meeting pre-qualification criteria would be drawn up and invitations to negotiate would be issued to the successful bidders, based on the evaluation of the completed pre-qualification questionnaires. Between the issue of the invitation to negotiate and submission of bids the Council and its representatives would meet with bidders to discuss technical, financial and legal matters. Bidders were to determine the number and frequency of meetings required.

#### **Pre-qualification Stage**

- 3.14 The Council received ten completed pre-qualification questionnaires, including one from the company which it had set up and three from local providers. According to the consultants' report on the pre-qualification process the main reasons for non-return of questionnaires were the costs of upgrading and the viability of continued trading, and the level of detail required.



3.15 The evaluation of the pre-qualification questionnaires was undertaken by the consultants and Council officers. Bidders were assessed on their financial standing and ability to raise finance; their vision for the future of the service and their ability to realise it; their management experience; and the quality of their submission. Bidders were rejected if they failed to meet either of the financial criteria or more than two of the other criteria. The bidders who were eventually awarded the contracts for the homes came first and second in the pre-qualification ranking. The submission from the arm's length company set up by the Council was of very poor quality and contained little detailed information. It was ranked last in the pre-qualification evaluation and was eliminated at that stage.

3.16 Following the pre-qualification evaluation a sub-committee of the Social Services Committee decided that invitations to negotiate should be issued to four potential bidders: two large scale providers and two smaller operators. The invitation to negotiate stated:

'The Council currently purchases [residential services for older people] on the basis of 'spot contracts', in other words it purchases such care as an individual needs as and when they need it. The intention is that all purchasing should continue to be on this basis in the short term but the Council may be prepared to consider offering bidders a guaranteed minimum take up level for a period. Block contracts may be negotiated in the future. In any event the Council will continue current levels of financial support for existing residents of homes for older people.'

The Council had revised its pricing framework for residential and nursing home places to reflect different levels of need and resulting different levels of care. The revised range of prices was £260 - £300 per week for residential care and £290- £330 per week for nursing care. The Council indicated that it was not its intention to accept prices outwith this range.

3.17 The invitation to negotiate was issued on 4 July 1997 and negotiations were to take place prior to the submission of final costed bids on 30 September 1997. The preferred bidders were to be selected in October. One of the large scale providers withdrew from the bidding process due to concerns about the level of capital investment required and the funds available. One of the smaller companies withdrew due to its perceived uncertainty regarding making the transition from a nursing care market to one providing both residential and nursing care. As a result the Council's choice of bidders was reduced to two; a large scale provider of residential and day care for people with special needs and a small scale local provider. The smaller provider's interest was limited to two of the eleven homes.

### **Negotiated Bids**

3.18 Negotiations with the two providers who were eventually awarded the contracts took place before the submission of final costed bids. The negotiations primarily related to ensuring pay and conditions would be preserved beyond the statutory requirements under European legislation for Council staff who were transferring to the new providers and that account would be taken of the cost of the capital investment being made by the providers. In the case of the small local provider the negotiations continued after the submission of bids due to the Council requiring suitable pension arrangements to be made for transferring staff. The larger provider qualified for admission to the Local Government Superannuation scheme as an 'admitted body'.

3.19 Staff transferring from one employer to another where a complete service or business is being taken over by a new owner have guaranteed rights under European legislation, encompassed in UK law by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE). The Regulations applied to the externalisation of the residential care service by the Council. The Regulations require the new owner of an undertaking to continue to employ the existing workforce under the terms and conditions of employment existing at the time of the transfer. However, the Regulations permit employment contracts to be terminated where changes in the workforce are for business reasons not connected with the transfer.

- 3.20 The Council negotiated an agreement with the contractors to retain all existing staff on existing terms and conditions for at least two years from the start of the contract, irrespective of business needs. This was intended to minimise the disruption to residents over the transition period, when building works would be taking place, and to maintain staff support. The reasons for wishing to protect staff rights and the legal basis of the Council's decision to provide protection for staff beyond the minimum required by TUPE were not documented, although it is understood that verbal assurances as to the legality of the arrangement were given by the Council's legal advisers. The final unit costs agreed with the contractors took account of the additional cost of maintaining the terms and conditions applicable in the Council sector. These costs were reflected in the price per bed payable under the contract and were to be phased out after two years. The tender prices included a contribution for the proposed refurbishment of existing homes and for building new homes to replace those which were deemed uneconomic to refurbish.
- 3.21 At its meeting of 8 December 1997, the Social Services Committee resolved to award the contracts for the provision of residential care, previously provided directly by the Council, to the two remaining selected bidders. The decision was based on information presented to members by officers and the consultants and provided for the block purchase of all the beds available in the homes for a period of five years. At this stage negotiations were still on going with the small scale provider relating to pension provisions for staff who were transferring. A financial model was presented to the Committee showing the final negotiated cost for the large scale provider and estimated costs for the smaller provider. The financial model was designed to show whether the Council could afford the externalisation options on the basis of all the available funding sources.
- 3.22 An updated financial model was presented to the Social Services Committee on 7 July 1998 which reflected the final contract terms and adjusted the annual cost to take account of delays in the handover process arising from the negotiating process and from the timing of new beds coming on stream. The contracts came into effect from 1 June 1998 for one of the providers and 15 September 1998 for the other.

#### **4. FINDINGS**

4.1 The early stages of the externalisation process took place in the period immediately following local government reorganisation when the structures for the new Council were still being established. This fact, and the innovative nature of the process, require to be taken into account in any consideration of the findings which have emerged from the audit enquiries into this matter.

##### **Needs assessment**

4.2 At the outset of the externalisation exercise the Council undertook an assessment of the estimated future level of demand for residential and nursing care and formed a view of the total capacity which it required to secure to meet that demand.

4.3 While there may be no wholly scientific methodology for calculating projected demand I would have expected to find a worked calculation showing how the impact of developments in the pattern of care, such as the trend towards supporting residents in their own homes, had been taken into account in estimating demand. Within the various reports produced on the externalisation process there were statistics showing, for example, the expected age profile of the population in different areas of the Council and estimates of the level of demand which these would create for residential care but there was nothing to show how this had been derived from the population statistics.

4.4 The projection of future care needs appears to have been based solely on estimated demand with no account taken of the level of care which the Council could actually afford to fund. At a time when the Council was having to operate within severe financial constraints it was unrealistic, in my opinion, to base future levels of care provision solely on demand without taking account of the level of care which the Council would be able to fund.

4.5 The initial needs assessment was that, by the year 2000, the Council would purchase 600 places from the independent sector. At the date of this report the number of places actually being purchased was approximately 470. The difference may be due, in part, to the introduction of new criteria for assessing need and to changes in the pattern of care but in deciding initially what level of overall demand to provide for under the externalised arrangements, in my opinion, the Social Services Department should have taken more account of what it was likely to be able to afford to purchase.

### **Options appraisal**

4.6 Procedurally the decision to approve the externalisation of the Council's residential homes was properly taken but, in my opinion, the alternatives to externalisation were not adequately explored. For example, the possibility of making greater use of the capacity of the independent sector does not appear to have been fully examined despite recognition in several reports of the lower unit costs of that sector. The Council should, in my opinion, have consulted more fully with the existing independent sector providers to assess whether there was any significant unused capacity within that sector that might have obviated the need for all 11 Council homes to be included in the externalisation process. Also the PFI option was not explored on the basis of advice to members that "it is unlikely that homes as small and widespread as the 11 in Dumfries and Galloway would be attractive to private finance developers, particularly if no new construction is involved." In the event there was new construction involved, in the form of new homes at Stranraer, Dumfries and Lockerbie, but the PFI option was never revisited.

4.7 The decision to externalise appears to have been taken substantially on the basis of the capital and revenue position of the Social Services Department rather than in the wider financial context of the authority. There appears to have been no formal assessment at corporate level of the possibility of finding the capital spending consent necessary to upgrade the homes, from the overall Section 94 consent available to the authority or of seeking additional consent from the Secretary of State. Similarly the financial impact of externalisation on the Council's overall budget does not appear to have been adequately considered.

4.8 The costs which were included in the early reports presented to members were, unavoidably, fairly tentative but are likely to have been influential in shaping members' views in favour of the externalisation option. As it became clear what form the externalisation process was likely to take and what the costs of the project were likely to be there would have been advantage, in my opinion, in undertaking a further options appraisal and giving members an opportunity to consider their preferred option in the light of the more accurate and reliable information which was then available.

### **The tendering process**

4.9 The procedures followed by the Council for the invitation and evaluation of expressions of interest were, in my opinion, satisfactory. I found no evidence that opportunities to participate in the tendering process were restricted. Ultimately, four bidders progressed to negotiation stage but two of these voluntarily withdrew leaving only two bidders with whom to conduct negotiations. However, as the bidders who remained in the process were, substantially, interested in different groups of homes there was effectively only one bidder for each group. In addition there was no in-house benchmark against which to compare external bids, as the arm's length company which was set up to prepare a tender was excluded from the bidding process because of the poor quality of the pre-qualification questionnaire which it submitted. While it is not possible to assess whether the restricted number of bidders left in the process ultimately affected the competitiveness of the prices negotiated the absence of alternative bidders is likely, in my opinion, to have disadvantaged the Council's negotiating position.

4.10 As the negotiations progressed they moved away from the original assumptions on which the decision to externalise was based. For example, it became clear that there would be an element of new build involved and that, by negotiating prices in excess of £400 per week, the Council was willing to depart from its stated intention (expressed in the Invitation to Negotiate) not to accept prices above certain parameters (£260 to £300 for residential care and £290 to £330 for nursing care). The Director of Social Services has advised that the two bidders who withdrew from the negotiation process were aware of the Council's willingness to exceed the stated parameters and this was not a factor in their withdrawal. While this may be so, had the form of externalisation and the Council's willingness to be flexible in relation to the contract prices it was willing to pay been known at the time original expressions of

interest were sought, this may have generated interest from other providers and given the Council a wider choice. In my opinion, the Council ought to have considered more fully whether it was prudent to proceed to contract stage with only two bidders left in the field, each of whose interest was, substantially, in respect of a different group of homes.

### **Quality of information**

- 4.11 The externalisation process took place over an extended period and involved several reports to members on the basis of which key decisions were made. The complexity of the proposals and the magnitude of their impact on the Social Services budget required the financial information to be presented to members in a format that was clear, consistent and readily comprehensible. This would have facilitated members' consideration of the financial implications of the choices they were required to make.
- 4.12 My review of the information submitted to members indicated that there was a lack of consistency in the format in which it was presented to members. In addition, some of the terminology used was open to different interpretations and should have been more clearly defined to avoid ambiguity. For example an early report had, as one of the criteria against which options would be evaluated, the requirement that externalised services should be provided at the same price as the independent sector, without making it clear that this was an aspirational objective which might only be achievable in the medium to long term, rather than one which was achievable immediately. Similarly when reporting the cost implications of various options the term 'surplus' was used without making it clear that this represented a reduction in the existing budget contribution rather than an overall surplus.
- 4.13 The adoption and consistent adherence to a standard cost unit, such as the unit cost per week, would have made the 'bottom line' impact of the financial information more readily understandable and would have afforded comparison as the various cost projections developed. The variety of reporting formats adopted resulted, in my view, in a lack of clarity in the information presented to members.

- 4.14 It is a fundamental requirement that any information presented to members should be balanced. In the key report presented to members in December 1997 only the benefits of externalisation were included. The inclusion of possible disadvantages arising from the need to enter into block purchasing arrangements for five years, including the impact on budgets and resources, and the possible risk of long-term dependence on a limited number of providers, would have given a more balanced picture.
- 4.15 The reporting process would also have been improved if the risks and uncertainties of externalisation had been identified more explicitly. For example, the ten-year financial model presented to members, in my opinion, did not adequately illustrate the uncertainty attaching to the figures in respect of years six to ten which are outwith the period covered by the block contracts. Similarly, no sensitivity analysis was presented to members in December 1997 showing the impact on the overall financial projections of variations in the financial assumptions on which the model was based. Some of this information was provided subsequently, by the Corporate Finance Department in July 1998, after the key decision to proceed with externalisation had been taken.
- 4.16 I was advised that the Corporate Finance Department did not play a key role in the early stages of the process in compiling or scrutinising financial information but did become more involved in the later stages. In making this observation I acknowledge that the early stages of externalisation coincided with local government reorganisation when the Corporate Finance Department was in the process of being established from the former five authorities within Dumfries and Galloway region. This would have limited the role which it was able to play in the immediate post reorganisation period.



- 4.17 Although the negotiated contract unit prices per week were over £400 and significantly exceeded the indicative prices which had been reported earlier to members I am not aware that the final unit prices were ever formally reported to members.

#### **Monitoring the outcome of the externalisation process**

- 4.18 The contract prices agreed by the Council for the externalisation of its social work homes included an unidentified element by way of a contribution towards the contractors' capital investment in refurbishment and re-build. The estimated cost of this investment was £8.2m. The Director of Social Services has indicated that the property services department of the Council was satisfied that this was a reasonable estimate of the cost of refurbishment and re-build. He has also indicated that his Department has not attempted to check that the cost of the actual capital investment is in line with that estimated at the time the contract prices were negotiated, largely because it regards the standard of the facilities delivered by the new providers as satisfactory.
- 4.19 The contract documents provide a facility for the Council to examine the actual cost of capital investment in respect of the homes transferred. As the estimated capital investment would have been a factor which influenced the contract prices negotiated, in my opinion, the Council should have made use of this facility to satisfy itself that the quality and cost of capital works undertaken was, generally, up to the level agreed through the negotiation process.

#### **Budget for purchasing residential care**

- 4.20 There have been allegations that the Council's budget for purchasing residential care was set illegally. For this to be the case there would need to be evidence that in setting its budget the Council deliberately provided for a lesser sum than it intended to spend on residential care.

- 4.21 The Council's normal method of fixing its budget is to take the previous year's budget figure and uprate it in accordance with any policy decisions regarding what the Council can afford to spend in the forthcoming year. In the course of reviewing decisions which it took when it fixed its 1999/2000 budget, the Council approved a decision to place persons in residential care in the independent sector on the basis of one person placed for every three vacancies occurring. The decision was taken to achieve savings of £600,000 which had been identified as necessary when the 1999/2000 budget was fixed, in order to operate within the budget target for that year. In fixing its budget the Council undoubtedly had to operate within tight spending constraints but I have found no evidence that it acted unlawfully.
- 4.22 There is a wider issue about whether the cost of purchasing care from the externalised sector has had an impact on the level of purchasing from the independent sector. The Director of Social Services considers that the cost of purchasing from the externalised sector is a separate issue from purchasing from the independent sector and that any difficulties which the Council has experienced in funding places within the independent sector are due to general budget constraints and to the Council's policy of fixing its care purchasing budget below the Grant Aided Expenditure assessment level.
- 4.23 In my view it is unrealistic to regard the budget for purchasing from the externalised homes as being separate from, and having no impact on, the budget from the independent sector. Both budgets are for the same type of service and, together, represent the total funding available for purchasing residential care. In my opinion it follows that, in the situation where there is a finite limit to the overall funding available, the amount allocated to one part of the budget will directly affect the amount available for the other part.

## **Value for money**

- 4.24 Under the terms of the externalisation process the estimated capital investment in the externalised homes was to be £8.2m, with the new arrangements providing 326 beds, 48 more than the existing total. Within the contract prices agreed by the Council there was an unidentified element representing a contribution towards this investment for the five-year period of the contract. It is not possible to quantify accurately the total value of the contribution over the five-year period but it will be considerably less than the total estimated investment of £8.2m.
- 4.25 The prices paid under years one and two of the contract were considerably higher than those being paid for the purchase of care from the independent sector because they included contributions towards the cost of capital improvements and the cost of preserving the conditions of staff who transferred from the Council's employment. From year three onwards, when the contribution towards the preservation of conditions drops out, contract prices are likely to become progressively lower than the cost if the Council had continued to provide the service in-house, albeit still higher than the prices being paid to independent sector providers.
- 4.26 When the existing contracts expire after five years the externalised homes will be part of the wider independent sector from which the Council will purchase care. The extent to which the externalisation process yields value for money will, to a significant extent, depend on the prices at which the council can purchase care from the externalised homes at that time. If it can do so at rates which are in line with those prevailing in the remainder of the independent sector this will enhance the prospect of achieving value for money but that judgement cannot be made in the short term.

## 5. CONCLUSIONS

- 5.1 It is for individual Councils to decide what method of service delivery meets their policy objectives best. Where a Council decides to change the way in which it delivers a service it is for that Council to evaluate the different options available and select its preferred choice. The process in which Dumfries and Galloway Council engaged to secure adequate investment in its residential homes and raise the standard of residential and nursing care was a major and complex exercise. To my knowledge no other Scottish Council had undertaken such an exercise. Consequently there was no existing reservoir of knowledge or experience on which the Social Services Department could draw. In addition, the innovative nature of the option selected presented a major challenge for the newly formed authority. Despite these factors the externalisation process was completed, and the transition to the new arrangements achieved, smoothly and sensitively, with minimum disruption to residents and with the new facilities being delivered to the expected standard and to the expectations of residents.
- 5.2 I am satisfied that, procedurally, the decision to approve the externalisation of the Council's residential homes was properly taken and that the process for the invitation and evaluation of expressions of interest was satisfactory and did not restrict participation in the tendering process. I am also satisfied that the Council acted lawfully in setting its budget for residential care.
- 5.3 I would have expected the Council to have been able to demonstrate more clearly that, in considering its future arrangements for the provision of residential care, it had taken account of the government's policy on care in the community. In reviewing how the Council had estimated the future demand for residential care it was not readily apparent how the impact of care in the community had featured in the Council's long term assessment.
- 5.4 From my enquiries I have identified a number of other aspects of the Council's procedures where better practice could have been followed. These are referred to in detail in the 'Findings' section of my report and include the need:
- to be able to demonstrate the basis of calculating the overall demand for residential care

and that adequate account had been taken of all relevant factors, including what the Council could afford to fund

- for a more detailed initial review of the various options available and reconsideration of all options when more accurate and reliable information became available later
- for fuller consideration of whether the tendering process should proceed to negotiation stage when only two bidders were left in the process
- for improvement in the quality of financial and other information and in the manner in which it was presented to members
- for more thorough examination of the quality and actual cost of the capital works completed by the contractors
- for the involvement of a multi-disciplined project team to ensure that an adequate breadth of expertise was available
- to ensure that the proposals were assessed from a corporate perspective as well as from a departmental perspective.

5.5 There are valuable lessons to be learned from the experiences of Dumfries and Galloway Council in terms of the fundamental procedures which, in my opinion, should be followed when any Council embarks on a review of its method of service delivery. I have summarised and included these as an appendix to this report.



**Harris Wells**  
**Controller of Audit**  
**31 July 2000**

SR 2000/5

**FUNDAMENTAL PROCEDURES TO BE OBSERVED WHEN REVIEWING AND/OR CHANGING METHODS OF SERVICE DELIVERY**

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- A council should be able to demonstrate the basis on which the future demand for the service has been calculated and that the calculation has taken all relevant factors into account.
- In calculating the future level of service capacity to be provided account should be taken of estimated available funding in order to avoid the creation of capacity which the council cannot afford to purchase.
- Where a decision is taken to externalise a service hitherto provided by the council the extent to which existing capacity within the external sector is able to meet the estimated demand should be fully explored.
- Where a council proposes to move away from its existing pattern of in-house provision all potential alternative formats for delivering the service should be fully explored.
- Any proposed change in the method of delivery of a major service should be examined by a multi-discipline team to ensure that an adequate breadth of expertise is available.
- Any proposals should be evaluated from a corporate, as well as a departmental perspective.
- The impact of any change in the method of delivery of a major service should be fully assessed both in relation to the financial position of the department concerned and to the council's overall financial position.
- All key information should be recorded and retained to facilitate any subsequent scrutiny of the process.
- Any decisions taken when proposals, or the associated financial information, are tentative should be reviewed when the proposals have been more clearly defined, or the information has been more accurately calculated, to ensure that the original decisions remain valid and the council's preferred option.

- In a tendering situation where a council is left with a restricted number of providers with whom to negotiate it should consider whether to re-tender to attract further bidders in order to improve the competitiveness of the negotiating process.
- Where a council is providing the existing service in-house it should, where possible, produce a meaningful in-house bid to act as a comparator against which to assess any external bids.
- Information presented to members as a basis for taking key decisions should be in a format which is clear, consistent and balanced.
- The new service delivery arrangements should be monitored closely once they become operational to ensure that commitments entered into by providers are being fully delivered in accordance with the contractual terms and conditions agreed.
- An effective system should be put in place for monitoring the assumptions and projections made when the new method of service delivery was selected, including any value for money projections, to assess whether they are being achieved in practice.