

THE EDUCATIONAL INSTITUTE OF SCOTLAND

PPP/PFI

1. **Introduction**

- 1.1 The following resolution was approved by the Institute's Annual General Meeting in June 2004.

“That this AGM reaffirm its opposition to the use of the Public Private Partnership/Private Finance Initiative in Scottish schools and resolve to campaign vigorously against any extension of such schemes. This campaign to include:

- (i) support for members whose working conditions and health and safety are being adversely affected;
- (ii) support for a publicly funded building programme for the renovation of existing schools and the construction of new schools.”

The Executive Committee confirmed the reaffirmation of Institute policy with regard to the use of PPP/PFI schemes in the rebuilding and refurbishment of Scottish schools. It was also decided to monitor the situation across the country and to report back to the Executive Committee and Council at appropriate intervals.

2. **Background**

- 2.1 Current Institute policy derives from the paper entitled “Capital Projects and Facilities Management in Local Authority Services” which was approved by the Annual General Meeting in 2002 and, for ease of reference, is included as Annex I to this paper.
- 2.2 Essentially, the Institute's position with regard to the “Private Finance Initiative” and the later “Public Private Partnership” schemes, was one of opposition both as a matter of principle and from a practical and operational perspective. In terms of the provision of capital to provide the investment in school infrastructure, the Institute regards existing PPP schemes to be based on too restrictive a regime of local government borrowing and that these restrictions should be relaxed to permit alternatives to PPP schemes to be introduced. Further detailed examination should, therefore, be given to the so-called “not for profit” schemes some of which have already commenced in parts of Scotland. In particular, detailed consideration should also be given to systems such as “Prudential borrowing” as an alternative means of providing local authority investment in the schools estate.
- 2.3 The Institute has also, continually, opposed the deleterious effects which PFI/PPP schemes have had on employment contracts, particularly those of non-teaching staff. In addition there remains wider trade union concern about the creation of a two-tier workforce as a consequence of the effects of TUPE on employees with longer service (ie prior to the transfer of contract to the private provider). The Institute also remains concerned that the principles underpinning the best value

regime are, in fact, undermined by the creation of the long term contracts between councils and private sector companies involved.

2.4 The recent EIS/Royal Incorporation of Architects survey of new and refurbished schools (May 2004) highlighted a number of problems related to operational and project management, in particular concerns about the lack of meaningful consultation at both local authority and school level and a failure to give adequate consideration to important health and safety issues, particularly where schools are undergoing refurbishment, while the attendance of pupils and teachers continues.

2.5 In summary, the findings of the 2004 survey demonstrated that the main problems associated with rebuilding and refurbishment programmes under PFI/PPP were as follows:

- Only 27% of teaching staff felt their comments had an impact on the plans for the school.
- Only 30% of teaching staff believed that their new school represented good value for money.
- Only 20% of teaching staff felt they had been properly consulted regarding recreational facilities for pupils.
- Only 30% of teaching staff felt they had been given proper input on Resource areas such as libraries.
- Only 25% of teaching staff felt they had been properly consulted on health and safety issues.
- Teachers felt that consultation on teaching and learning environment has been particularly lacking – only 7% of teachers felt they were properly consulted on heating, only 8% felt properly consulted on lighting, only 18% felt properly consulted about corridor space and only 23% felt that they were properly consulted about the correct size for classrooms.
- However, 72% of teachers responding thought that their new/refurbished school had a positive impact (rated ‘very good’, ‘good’ or ‘adequate’) on teaching and learning.
- 53% of teachers believed that new/refurbished schools would be able to adapt to future changes such as planned reductions in class sizes.
- 67% of teachers rated their school’s new gymnasias, games hall or other PE facilities as ‘very good’, ‘good’ or ‘adequate’. But, only 13% felt positive about the school’s swimming facilities.

3. **Next Steps**

3.1 While the Institute continues to oppose the notion that PPP/PFI schemes should be regarded as the only show in town, it is important to seek to identify alternative means of raising capital for school rebuilding and refurbishment. In the first instance discussions should be initiated with the Scottish Executive and with

COSLA with a view to encouraging the use of a range of capital raising methods (eg Prudential borrowing) and to ensuring the publication of a full and detailed analysis of the effectiveness of these alternative schemes *vis-à-vis* the PPP/PFI model.

- 3.2 From a political perspective the Institute should continue its opposition in principle to the use of PPP/PFI schemes for the rebuilding and refurbishment of Scottish schools and this position paper should form the basis of the Institute's position in discussions with the Scottish Executive, COSLA, MSPs, MPs etc.
- 3.3 The joint survey between the EIS and the Royal Incorporation of Architects in Scotland which was published in May 2004 gained considerable media and public interest and consideration should be given to repeating this exercise at an appropriate time in the future in order to capture schools which were not included in the first EIS/RIAS survey.
- 3.4 One of the major areas of concern identified throughout the period since the introduction of PPP/PFI to rebuild and refurbish schools has been important health and safety considerations. With particular reference to refurbishment, consideration should also be given to ascertaining examples of best practice which can be circulated to all local associations to assist in their discussions with local authorities where PPP/PFI will be the vehicle for school refurbishment.
35. Information should also be sought from local associations with a view to collecting and collating data on the use of PPP/PFI schemes and the extent of meaningful consultation at both council and school level. A draft questionnaire for possible use in this context is included at Annex II.

THE EDUCATIONAL INSTITUTE OF SCOTLAND**CAPITAL PROJECTS AND FACILITIES MANAGEMENT IN LOCAL
AUTHORITY SERVICES**

[As approved by the 2002 AGM]

Background

Local authority services, including education, have been starved of capital expenditure for some thirty years, particularly under the eighteen years of Conservative Party rule at Westminster. Treasury control of public borrowing remains tight and is still below the 1996/97 level.

In response to this situation, the present Government has promoted the use of Public Private Partnerships (PPP) – a variant on the previous government’s Private Finance Initiative. These schemes seek to raise the capital for public works in the private sector while keeping that expenditure off the public borrowing balance sheet.

The Institute, alongside the rest of the trade union movement, has long been an opponent of both PFI and PPP schemes. The basic premise of these schemes is to provide building or initial capital in return for the transfer of service provision or facilities management over long term contracts. We believe this undermines the public sector ethos, as well as being both expensive and damaging to democratic accountability. We have joined with others in raising these concerns locally and nationally, through campaigns and directly with the Ministers and Committees of the Scottish Parliament.

This paper seeks to develop that long held opposition in principle into a critique of PPP itself and of bad practice in capital project management and facilities management whatever the source of finance.

Part One – Raising Capital

- 1.1 The current need for capital projects in education cannot be addressed by simple loosening of normal borrowing. It has been estimated that £2.3 billion is needed in Scotland to bring the school system up to scratch – a sum which represents four times the total annual local authority borrowing consent. Local Councils as well as educational interests are desperate to address this historic deficit quickly, and this has partly fuelled the drive to find new sources to fund capital projects in education.
- 1.2 There is no disagreement that the Treasury must control public borrowing. Such control has a largely beneficial effect, and helps produce stability and security in the financial market which in turn leads to lower levels of interest being charged for public borrowing – commonly some 4%-5 % lower than private borrowing. Treasury control also ensures more transparency and accountability in the borrowing process, and allows for policy decisions to be applied in the types of projects supported and so on. In the vast majority of cases, public borrowing will be to fund capital projects that are carried out by private sector companies, whether in building or other infrastructure areas.

- 1.3 Treasury control of public borrowing under the current government is too restrictive. While EIS would support prudence in this area in order to ensure a balanced budget over economic cycles, national debt in Britain is currently running at some 31% of national income - well within the self-imposed rule of 40%. This overly restrictive policy is often presented as in part due to pressures to conform to European fiscal requirements, in particular the requirements of Euro entry. We reject this view. We support the establishment of a secure and stable European monetary system. Such stability is the necessary prerequisite of public investment and properly financed public services; however, this does not require this stranglehold on public spending. EIS shares the view of others in the public sector that the method of calculation of public sector debt in the UK (Public Sector Net Cash requirement) fails to distinguish between productive expenditure and consumptive expenditure – a crucial distinction in capital building projects. We believe that this system should be scrapped and Scotland brought into line with the rest of Europe through the adoption of the General Government Financial Deficit. This method of calculation allows much greater flexibility in making decisions on public debt and allows for meaningful assessment of the use of private and public capital.
- 1.4 While we would like to see these changes in Treasury rules generally, we would like to see the development of alternatives to the use of PPP by local authorities. The simplest and easiest change that could be made is the relaxation of those restrictions that are applied to borrowing by local authorities for capital building purposes through the operation of Section 94 of the 1988 Local Government Act. Relaxation of such restrictions on capital borrowing for new build, together with relaxation of controls over the use of capital receipts by Councils, would have an immediate effect of providing much more flexibility in the arrangements available to Councils. These immediate changes could be effected through the proposed Local Government Bill.
- 1.5 In our view, Public Private Partnerships do not offer an efficient or an economic way for Councils to raise capital finance for building projects. PPPs work on the basis that initial private finance is repaid by streams of income through the provision of public services financed by the public purse. The initial capital investment does not enjoy the more attractive rates of interest available to the government, and there are inevitable larger overheads associated with this form of capitalisation. In addition, we are concerned that in order to make individual PPP contracts more attractive to bidders there has been scaling up of PPP projects with a view to maximising the available initial capital. In our view, the evidence shows that this in turn means larger start up costs and overheads as well as more and more areas of local government services coming under PPP contracts. We are critical of the enormous sums being spent by local councils, often with Scottish Executive subsidies, to fund consultants at this initial stage. The Scottish Executive should seek to establish its own source of expertise, either using its own resources or through pooling the shared experience of councils in this area. While such measures would cut the consultancy fees and start up costs of PPP, in the longer term it must be recognised that PPP is buying capital much more expensively than it would be available to Councils through the Exchequer or even on the private finance market. Councils should have alternative sources of capital available to them, and this can be achieved without damage to the more general economic, fiscal or European policies of the government.
- 1.6 There are other compelling economic arguments against the use of PPPs. First among these is the basic premise of PPP whereby initial capital expenditure is repaid through

subsequent payment for services received. The difficulties associated with facilities management and transfers of responsibility for service provision are discussed below, but economically this process has the effect both of radically increasing the drain on the revenue budget overall and, because of contractual protections and guarantees built in to the schemes, radically reducing the ability of local authorities to control their spending priorities in future years over the length of the PPP contract. Where better value provision of services becomes available to Councils, this cannot be accessed due to contractual responsibilities within the PPP contract – producing a less flexible and more expensive product in the long run.

- 1.7 A further economic argument against PPP relates to the transfer of risk. A significant portion of the risk associated with a capital project must be transferred to the private sector if accounting standard FRS5 is to be complied with – failure to comply with the standard means that the expenditure will remain on the public sector balance sheet and count towards PSNCR. Risk can be expressed in terms of planning, costs escalation, obsolescence and other ways, however there is a growing body of evidence that risk transfer in practice has been limited, or has been compensated for by the scaling up of PPP projects. Cost comparisons used in making risk assessments during PPP tendering (comparison with a notional Public Sector Comparator) are not published, and the methodologies and assumptions used are selective. It has been reported that in the Glasgow schools scheme, the PSC was around £35 million cheaper than the PPP scheme, until such time as a notional £70 million risk ‘transfer’ was deducted from the PPP scheme costs. In our view, the reliance on risk transfer is unsound. The PPP contract turns a public capital asset into a rented facility, and turns the procurement of a school building into the provision of educational facilities. The local authority cannot renege on the provision of such statutory services, and it cannot afford to provide those services through other means once the PPP contract is in effect. In short, there can be no question of a Council defaulting on their side of the contract, and any risk to the private contractor is largely removed.
- 1.8 We have argued above that changes must be made to the overall position of access to capital for Councils. In addition, we believe that other methods of funding must be encouraged to remove the perception of PPP as ‘the only show in town’. Not for Profit schemes and similar procedures should be explored as interim measures, together with the legislative changes mentioned earlier. In this way, the long overdue needs for decent schools and facilities can be addressed without the prohibitive costs of PPP.

Part Two – Contractual Issues

- 2.1 The contractual position arising from PPP and other similar projects can lead to immense difficulties in the subsequent operation of those contracts and the provision of facilities management in schools.
- 2.2 The growth of the ‘contract culture’ in the provision of public services is regrettable. Public services are not commodities in an open market. They rely on less tangible factors such as quality, trust, commitment and professional expertise. There are fundamental issues of democracy and accountability associated with PPP, in particular the position of subsequent administrations and electorates that must honour these contracts. This situation is exacerbated where some authorities have cloaked their negotiations on these matters in the guise of ‘commercial confidentiality’. The EIS commends those authorities that have approached the issue of contract negotiation

- openly, with involvement of staff representatives, and with proper consultations with the community.
- 2.3 The EIS calls for union involvement in initial contractual bargaining and contract specification in PPP schemes. This should stand alongside involvement of school management and staff and parent and community interests, particularly where the overall scheme may involve school reorganisation and closures.
 - 2.4 There are fundamental issues of integration associated with PPP schemes, particularly given the lengthy nature of the contracts involved. While we recognise that it is the nature of the cycle of continuous improvement that certain parts of an education service will have newer and better facilities than others, every effort should be made to ensure proper overlap and integration between PPP contracted services and other authority services.
 - 2.5 Of particular concern in this respect are staffing and employment issues. The EIS rejects the use of PPP contracts to drive down employment conditions of local authority workers. We reject the general claim, often made in some quarters, that private sector management is necessarily better or more efficient than the public sector. Too often it has been the experience of public sector workers that private sector management efficiency is only achieved through the derogation of public sector workers' terms and conditions. Any added value to public services through PPP schemes should derive from the injection of fresh capital and resources. Despite TUPE regulations and other statutory protections, the experience of PPP for many workers has been at best uncertainty and at worst wholesale diminution in their employment conditions or actual loss of employment.
 - 2.6 The EIS is particularly concerned to avoid the creation of a two-tier workforce in the provision of local authority services. We believe there should be no transfer of staff employment from the local authority as a result of PPP contracts, and that pension and other accrued rights must be respected and protected. There are other more gradual and pervasive impacts in this process we believe. We are concerned that the nature of the service and facilities contracts involved in PPP mean that these schemes impact particularly on women, and we would call for a gender impact study to be undertaken as part of each public procurement option appraisal. More generally, local authorities considering PPP should be conscious of the potential impact on local economies and levels of social exclusion of adopting private solutions to public need.
 - 2.7 There are important issues beyond the economic involved here. Public services are provided for the common good, and should not mimic the operation of a cartel or monopoly within the private sector. We are increasingly concerned to see the same private companies becoming responsible for the provision of larger and more varied areas of public services, from roads to schools to hospitals. This raises fundamental democratic issues of control over public services and the ability of private companies to influence public policy.
 - 2.8 In addition, increasing reliance on PPP contracts by a council over a long period – with the preferential creditor clauses of such contracts operating throughout that period - must necessarily limit the flexibility of councils to change public service provision or to support innovation or continuous improvement. These concerns must be addressed in PPP contract tendering procedures.

- 2.9 The area of Best Value is of particular importance to PPP contracts and schemes. The EIS supports Best Value in the provision of local government and public services, and believes that PPP must be subject to the same BV determinants as any other procurement option. Too often, authorities are placed in the position that PPP seems to be the only finance route available, and in our view this has led to other considerations such as BV or the wishes of stakeholders taking second place. This is incompatible with long term proper planning and control in the provision of services. Best Value stresses cyclical review and continuous improvement. This cannot be achieved if the terms of the PPP contract do not allow for fundamental change in the way the contract is delivered. Clauses guaranteeing performance outcomes are no substitute for the ability of Councils to change the character of service delivery.
- 2.10 The EIS believes that within educational PPP schemes the contractual triangle – contractor, authority & school – is crucial. We are critical of those authorities that have seen their role as contract negotiator then left school management to deal with issues and problems which arise in the day to day carrying out of the contract. Rather, partnership and involvement must be stressed and seen to be practised throughout the process. We have already stressed the need for full involvement of staff representatives, school management and staff and local parents and community interests in the planning and contracting of PPP schemes. This should include school management and union involvement in contract specification, and proper consideration of facilities management issues that will exist for the duration of the contract. In our view, facilities management under PPP contracts should offer as little disruption to the educational process as possible.
- 2.11 We commend those authorities that are investigating the provision of PPP through not for profit arrangements, and commend also the involvement of authorities in joint ventures that then subcontract the provision of services and facilities management back to the Council itself. While this latter device may need adaptation and tweaking in the particular circumstances of individual contracts, it seems to offer greater safeguards and protections for the terms and conditions of the workers involved, and also for the standards of the services involved, while allowing access to much needed capital finance.
- 2.12 PPP contracts are long term and complex. Their fundamental impact on the provision of educational services underlines the need for school management and union involvement in contract monitoring at school and authority level over the life of the contract. Such contract monitoring must have teeth. It must be possible for authorities to insist on changes to the contract as well as adherence to contractually agreed performance outcomes. In this respect, EIS commends the use of three year and five year break clauses in PPP contracts, and these breaks should be used to carry out normal BV and market testing on service provision.

Part Three – Operational and Project Management Issues

- 3.1 The management of capital projects and, in particular, building projects in schools is an area of great concern for the EIS. This is of relevance both in PPP projects and those where capital has been accessed through other means. Capital building should improve services for both the community and the staff involved. One very simple rule has to be applied – the quality of facilities has to be better at the end of the day, both in terms of the actual build and day to day operational facilities. This process will be

enhanced through the maximum involvement of staff and the community in the planning, design and contracting process.

- 3.2 Responsibilities for project management should be clearly defined in PPP contracts, particularly as they affect individual schools. There must be clearly defined responsibilities for project management at differing levels within the authority and the school. We commend the practice of several authorities which have made on-site staff secondments at school level, additional to the staffing complement, as well as appointing overall project managers from an educational background rather than building services. However, even where best practice has been followed, there must also be a clear definition of the relative roles and responsibilities of project management as against normal school management and directorate.
- 3.3 Of central concern in this area is the health & safety impact of the management of building projects in a school environment. This is of particular concern where schools are being refurbished or facilities enhanced while teaching continues. Very clear management arrangements, together with arrangements for monitoring, reporting and correcting of problems which arise on a day to day basis have to be in place. These arrangements have to be well-publicised and known to staff, pupils in the school, as well as parents and casual users of the school, and should be regularly reviewed by project managers locally. Particular attention has to be paid to the terms of equal opportunities legislation, such as the Disability Act, both in terms of statutory and voluntary compliance. In addition to legislation being recognised specifically in PPP contracts, there should also be future proofing in the area of equal opportunities to allow changes to be instituted in response to future legislation or council policy.
- 3.4 The health and safety concerns outlined above also apply to the impact of building projects on learning & teaching. Again, clear definitions of management responsibility, communications with staff and others and critical monitoring of arrangements are very important. Also, arrangements in this area must take account of the long lead times and preparation required in curricular and timetable matters, and must respect normal staff consultative arrangements at school and departmental level. Lastly, availability of specialist resources and accommodation must be kept in mind where closure of parts of a school building or other facilities is being contemplated.
- 3.5 It is the experience of many in council management that the much-vaunted expertise of the private sector in these areas can be both matched and outdone by in-house staff. Investment in staff time and expertise to establish and operate these contracts can be both costly and time-consuming. Such experience should be shared between councils, and there should be greater pooling of expertise in the provision of PPP and other capital building projects in education through the Scottish Executive.
- 3.6 One final and overall concern applies to the whole process of project management. Staff morale and union involvement should be to the fore in the thinking of managers at all stages and at all levels of the project. Projects of this kind inevitably disrupt and adversely affect the work of staff and pupils. While a project may be temporary and the new facilities excellent, any damage to a pupil's attainment or subsequent effect on their certification can have very serious consequences for that individual. Proper consultative arrangements should be established with unions and staff at authority and school level, and regular and informative communication with staff at all levels should be attempted.

7. If the answer to 6 above was Yes, please outline the nature of the health and safety concerns which have come to your attention, please list them below.

8. Are there any other concerns which have come to your notice since the introduction of PPP/PFI projects (eg the role of PPP coordinators, consultation at establishment level) yes
no

9. If the answer to 8 above was Yes, please outline those concerns below.

10. Please identify any other matters associated with your authority's PPP/PFI scheme below.

_____ Local Association _____
Secretary

_____ Date

**Please return to K Wimbor, Organisation Department, EIS, 46 Moray Place, Edinburgh EH3
6BH
by Monday 31 January 2005 at the latest**