

Consultation on statutory guidance for local authorities on Best Value duty

A submission by:
The Chartered Institute of Public Finance and Accountancy

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CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. CIPFA shows the way in public finance globally, standing up for sound public financial management and good governance around the world as the leading commentator on managing and accounting for public money.

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1. Executive summary

- 1.1 Local authorities are accountable to their communities for how they spend their money and ensuring they deliver best value. This spending must also represent value for money. While the majority of local authorities adhere to these principles, at CIPFA we recognise the fact that in recent years a small number have fallen short of these standards.
- 1.2 At CIPFA we welcome the opportunity to comment on this consultation, which we consider to be very timely in light of current challenges, and look forward to further discussions with the department.
- 1.3 As we formulated the Institute's response, we discussed both the overall strategic direction of the guidance as well as the detailed questions asked by the department. Therefore, we have divided the response into two sections:
 - overview and strategic direction
 - response to consultation questions.

2. Overview and strategic approach

- 2.1 The department must take care with the presentation and content of this guidance to ensure that it is positioned as a supportive document and not an inspection regime. We are fully aware that there is no intention to reintroduce previous approaches such as the Audit Commission's key lines of enquiry (KLOE) but there are areas within this guidance that move in this direction.
- 2.2 It is important to remember that local politicians and officers operate within a local governance framework consisting of checks and balances to ensure that decision-making is lawful, informed by objective advice, transparent and reflects appropriate guidance and good practice.
- 2.3 In CIPFA's view it is also essential that this guidance is aligned to other relevant frameworks such as the value for money arrangements for local audit. Local authorities must be confident that all frameworks that have a role in judging performance and service delivery within the sector operate in a cohesive manner with similar criteria and evidence requirements. Local authorities will want to be judged on the same thing, not differing requirements.
- 2.4 While the consultation is quiet on the exact nature of evidence that will be required, it should be noted that some of the characteristics and indicators are difficult to measure and highly subjective. It is important that scarce resources are not used unnecessarily in satisfying the requirements of this guidance. Attention must be given to those users of local authority services who are most at risk.
- 2.5 The guidance has been released at the same time as the initial discussions about the role and responsibility of OFLOG are taking place. The role of this new office will be critical in the success of this guidance. We would like the department to reassure the sector that this synergy has been recognised.
- 2.6 Questions such as question 16 raised in the consultation regarding the importance of certain indicators or characteristics are a cause for concern. There is a risk that if certain indicators or characteristics are given greater importance this may result in perverse behaviours as local authorities focus their attention and limited resources in

these areas to the detriment of others. We would urge the department to ensure that context is always a key consideration.

3. Response to consultation questions

- 3.1 Q5. Do you agree that the principles in section 4 should apply to all best value authorities?**
- 3.2 CIPFA agrees that the best value principles should apply to all best value authorities. This allows for a consistent understanding and approach across organisations. CIPFA recognises that following this consultation the principles may be subject to change.
- 3.3 Q6. This statutory guidance has been developed principally for local councils, including combined authorities. However, all best value authorities should be mindful of the principles set out in this document. Would further published guidance be welcome for other best value authorities to set out the application of best value duty given their specific responsibilities, structures, and context?**
- 3.4 This has previously been a consideration for CIPFA in our own publications and we recognise that there are advantages and disadvantages to both approaches. The feedback from this consultation should be used in reaching any conclusion. We would also suggest that a mapping exercise would be helpful to see how this guidance fits with the [Fire and Rescue National Framework](#) to provide additional information before deciding on an approach.
- 3.5 Q7. Do you agree with the seven principles proposed in section 4?**
- 3.6 The principles described in the guidance are recognisable within the sector and CIPFA supports a principle-based approach to guidance allowing local politicians and officers to operate within a local governance framework.
- 3.7 Paragraph 17 on local accountability could be strengthened by mentioning the ways in which a best value authority is accountable such as financial statements and the annual governance statement (AGS). This guidance provides an opportunity to link the AGS with best value as the AGS includes an opinion that arrangements are 'fit for purpose' which fits alongside the best value objective.
- 3.8 CIPFA supports the view in paragraph 21 that this guidance is not an exhaustive list. This approach is like the approach taken by CIPFA in the development of the CIPFA Resilience Index and notes that the role of OFLOG will be an important part in early engagement as the guidance evolves.
- 3.9 Q8. Do you agree with the seven best value themes? (Diagram 1, Section 5)**
- 3.10 CIPFA notes that there is a high degree of familiarity with these seven best value themes and does not disagree with them. However, it is important to recognise any overlap with other key documentation. For example, the seven best value themes are similar to the seven principles of CIPFA's Good Governance Framework and the principles with the CIPFA Financial Management Code.
- 3.11 Q9. Do you agree with the suggested key characteristics of a well-run authority and key indicators of failure in relation to continuous improvement? (Table 1, Section 5)**

- 3.12 While addressing questions 9–14 CIPFA would like to reiterate the concern set out in the executive summary that it is essential that this guidance does not become a proxy inspection regime or tick box exercise. It is also important to repeat that some of these indicators are currently difficult to evidence and additional discussions would be helpful to add clarity around what information may be used to support the best value work.
- 3.13 The inclusion of scrutiny within this theme of continuous improvement would strengthen the description as effective scrutiny is a core element within a well-functioning authority. There is also an opportunity to strengthen the role of the AGS and its links to best value.
- 3.14 Q10. Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to leadership? (Table 2, Section 5)**
- 3.15 CIPFA's work with struggling local authorities has clearly identified that failure in leadership is a key indicator of potential failure. This is particularly true where the relationship between the statutory officers is weak. However, some of these characteristics and indicators are difficult to measure and are a sense of personal judgement. As a result, early engagement can be difficult.
- 3.16 Referencing the CIPFA Financial Management Code under the characteristics of a well-functioning authority "regarding strong financial management and reporting" would provide additional depth and context.
- 3.17 A well-run authority will operate a recruitment process that is transparent, inclusive and meets the current and emerging needs of the organisation. While recognising the unique nature of local authorities it is our view that appointments should be professional rather than political for all positions other than Chief Officer roles.
- 3.18 There is no mention of member development or leadership training within the leadership theme, for example specialist training for some roles such as cabinet members, committee chairs, audit and scrutiny or leadership development. We would consider this to be part of a well-functioning authority.
- 3.19 Q11. Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to governance? (Table 3, Section 5)**
- 3.20 Good governance is an essential part of a well-functioning authority but along with culture is more difficult to measure and often subjective. In addition to the characteristics mentioned in the consultation we would also include a reference to public reporting on performance, value for money and stewardship of resources to stakeholders in a timely and understandable way (from Governance Framework Principle G).
- 3.21 There is opportunity within the governance theme to explore how the characteristics of a well-functioning authority would include a clear understanding of the difference between audit and scrutiny.
- 3.22 For additional support and guidance, signposting to the CIPFA audit committee position statement and reference to the CIPFA guidance on council-owned companies would provide additional resources. We would draw particular attention to

the CIPFA view that independent membership of audit committees is a measure of a well-run authority.

3.23 Q12. Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to culture? (Table 3, Section 5)

3.24 While the characteristics and indicator covered in this table are appropriate and relevant it is notoriously difficult to measure culture without it being a subjective judgement and therefore open to dispute. It will be important that there is a clear understanding within the sector regarding the appropriate and proportionate levels of evidence that may be required.

3.25 In our view, a well-functioning authority will always deal openly with the public about difficult decisions, showing a willingness to acknowledge the challenges and provide local leadership and this should be reflected in the characteristics list.

3.26 Q13. Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to use of resources? (Table 4, Section 5)

3.37 The potential indicators of failure should include 'late publication of the financial statements, or any audit opinion that is not unqualified (where this has not been caused by a failure in audit supply) and lack of response to audit recommendations.'

3.28 CIPFA would agree that the reserves position is a crucial influencing factor in the ability of an organisation to remain financially sustainable.

3.29 Issuing a Section 114 notice would usually indicate serious failures in either governance, financial management or planning. It is our understanding that if this guidance has operated effectively, early engagement would have taken place prior to this action.

3.30 We would argue that a local authority should follow the CIPFA position statement and guidance on audit committees. CIPFA will be pleased to discuss its position on a longer-term move to legislation to make the committee mandatory and include independent members.

3.31 Q14. Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to service delivery? (Table 5, Section 5)

3.32 From our experience we would strengthen two areas:

- When discussing savings as a failure the narrative should also include over-optimistic plans and a lack of delivery history or poor track record of delivering savings and efficiencies.
- The characteristic of service plans linking to priorities could be strengthened by reference to longer-term planning – the needs of future generations as well as current needs and taking account of sustainability and technological advances.

3.33 Q15. Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to partnership and community engagement? (Table 6, Section 5)

- 3.34 For commercial partnerships (whether a shared arrangement with a public sector partner or a commercial partner) there should be a robust business case that has been shared widely and assessed and management agreements. These business cases should transparently model the impact of potential “worst case” scenarios.
- 3.35 Q16. The seven themes have a description, characteristics of a well-run authority and indicators of potential failure (Tables 1–7, Section 5). Which, if any, of the proposed characteristics and indicators of failure do you think are priorities and the strongest indicators of best value?**
- 3.36 No one single indicator or characteristic should be taken in isolation; they must all be seen in context to understand the true picture of the authority. However, a single indicator may effectively highlight an area of the authority that needs further scrutiny. Following the work carried out by CIPFA over the past 24 months the most common areas that have needed further scrutiny have been governance, reserves, over-optimistic savings plan, commercial arrangements, investments, and leadership.
- 3.37 There is a risk that if certain indicators or characteristics are weighted as more important this may result in perverse behaviours, as local authorities focus their attention and limited resources in these areas to the detriment of others.
- 3.38 Q17. Many of these indicators are measured by metric but there is scope to identify more to assess best value more accurately. What do you think are the topmost appropriate quantitative metrics for monitoring best value, against the indicators in section 5?**
- 3.39 Our observation is that while some of these indicators are measured by metrics this is not the case for them all. A robust comprehensive assurance framework may be useful to provide this assurance both to the leadership teams of authorities and to the public. CIPFA would support further sector-led discussions.
- 3.40 Q18. The guidance sets out a number of characteristics and indicators across the seven themes in section 5. If certain characteristics or indicators were to be identified as key, and more important than others in achieving best value, what would the risks be to this approach? The department is mindful of proportionality and the need to ensure the full context and circumstances of each case is taken into account, and is clear that no single characteristic or indicator automatically results in actions relating to the use of best value powers. How could any risks be further mitigated?**
- 3.41 Reiterating our response in Q16 there is a risk that if certain indicators or characteristics are weighted as more important this may result in perverse behaviours as local authorities focus their attention and limited resources in these areas to the detriment of others.
- 3.42 Q19. Are you happy with the level of clarity and detail in the description of statutory and non-statutory best value notices? (Section 6)**
- We are happy with the level of clarity.
- 3.43 Q20. Besides those mentioned in section 5, are there other ways in which the government could engage earlier with individual local authorities to prevent any challenges experienced from escalating?**

- 3.44 At CIPFA we see early intervention as crucial in supporting local authorities at risk of potential failure. A programme to build a good relationship of trust between DLUHC and the sector sits at the heart of this. While a comprehensive set of indicators provides assurance they must be combined with informal conversations and support.
- 3.45 Going forward it will be important to understand the role OFLOG will play in early intervention particularly with local authorities that isolate themselves from the sector and choose not to engage.
- 3.46 Q21. Based on lessons learned from interventions to date, the guidance proposes that where authorities are unable to correct failure in specific services, such as social care or education, for two years, this is potentially symptomatic of wider governance and leadership failure and the department should consider the authority's compliance with the best value duty. Do you agree that two years is a reasonable timeframe to consider whether an authority's service performance may impact its ability to deliver best value? (Section 6, para 32)**
- 3.47 Two years may be considered too arbitrary where there is recognised failure. It may be more helpful to have scope for enhanced monitoring rather than rigid triggers based on a broader understanding of the wider context. Waiting two years may be too late for some, but too early for others.
- 3.48 Q22. Is the description of a best value inspection sufficiently clear? (Section 7 and Annex A)**
- 3.49 We would agree that the description is clear but as DLUHC has found assurance reviews valuable (paragraph 44) there may be merit in all authorities being subject to an assurance review prior to any further intervention. This could result in sufficient information to make further intervention less likely.
- 3.50 Q23. Is the description of independent reports sufficiently clear?**
- We consider this sufficiently clear.
- 3.51 Q24. Are the models of intervention described in this guidance clear in terms of description, purpose and scenario when they would be applied? (Section 8)**
- 3.52 We would agree that the descriptions are clear however some improvements could be made to the flow chart in diagram 2. It is a good idea but is not as clear as it could be eg issue of a Section 230 letter.
- 3.53 Q25. Do you agree with the position that interventions should end as soon as an authority can demonstrate that it can independently sustain its journey of continuous improvement without support? (Section 9, para 50)**
- 3.54 CIPFA would support the idea of a critical friend. There may be a new team in place so it would be understandable to provide an external critical friend role for 12 months – CIPFA along with others in the sector could be able to offer that through experienced CFOs/CEOs.
- 3.55 Q26. Are there any areas missing from the statutory guidance that you think would be helpful to include?**
- Our reflection is that there is little sense of a longer-term vision and planning within this document. Financial pressures drive authorities into short-term decision making

but long-term best value relies on longer-term vision and strategy, which must be complimented by a longer-term financial settlement that allows local authorities to make better decisions.