



STATUTORY GUIDANCE ON BEST VALUE DUTY FOR LOCAL AUTHORITIES IN ENGLAND

Issued 15 August 2023

ICAEW welcomes the opportunity to respond to the consultation dated 4 July 2023 by the Department for Levelling Up, Housing and Communities (DLUHC) on a proposed update to the statutory guidance on the Best Value Duty for local authorities in England, a copy of which is available from this [link](#).

We support the proposed update to the statutory guidance on best value duty

- Weak governance and poor accountability have contributed to recent authority failures.
- Accountability does not happen by accident. There is need for ‘accountability events’ and so we suggest adding indicators of potential failure in section 1 (continual improvement):
 - No presentation on financial performance and position to members.
 - No proper consideration and adoption by full council of the annual financial report.
- We believe a ‘comply or explain’ approach should be used when reporting on how local authorities have had regard to the guidance.
- Councillors need training, information and support to hold leaders and officers to account.
- Performance management must encompass the balance sheet and financial risks.
- Internal audit has a key role to play in assuring governance arrangements are in place.
- Local councillor codes of conduct need to be updated to reflect best value duty guidance.
- Promised legislation mandating independent members of audit committees needs action.

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This response has been prepared by ICAEW's Public Sector team in consultation with ICAEW's Public Sector Advisory Group. ICAEW's Public Sector team supports members working in and with the public sector to deliver public priorities and sustainable public finances, including over 10,000 in ICAEW's Public Sector Community. ICAEW engages with policy makers, public servants, and others to promote the need for effective financial management, audit and assurance, financial reporting and governance and ethics across the public sector to ensure public money is spent wisely.

For questions on this response please contact us at representations@icaew.com quoting REP 76/23.

KEY POINTS

We welcome the proposed update to the statutory guidance on best value duty

1. The difficulties faced by many local authorities in recent years in ensuring their governance arrangements are in line with best practice highlight the need for updated guidance.
2. We support the seven principles set out in the proposed guidance starting with local accountability and the seven best value themes of continuous improvement, leadership, governance, culture, use of resources, service delivery, and partnerships & community engagement.
3. We would be very happy to discuss our feedback in more detail if you believe that would be of assistance.

Weak governance and poor accountability have contributed to recent authority failures

4. A common feature of recent well-publicised local authority failures that have led to significant financial losses has been weaknesses in governance arrangements.
5. We therefore concur with paragraph 3 of the proposed guidance that good governance is key to securing best value and we welcome the strengthening of the guidance to focus on the need for adequate governance arrangements.
6. We believe another feature of recent failures has been inadequate accountability, with members not being properly equipped to hold leaders and officers to account for unwise debt-leveraged investment strategies, poor individual financial decisions, and inadequate governance arrangements. In most cases members were not fully aware or did not fully understand the scale of the risks that were being assumed and the consequent financial implications for their local communities.
7. The emphasis throughout the proposed guidance on improved transparency is welcome. Our [vision for local financial reporting and audit](#) sets out steps we believe are necessary to improve the quality and rigour of the financial information provided to councillors to enable them to be effective in holding their local authorities to account. It also sets out steps to strengthen local audit to assure that information.
8. We submitted evidence on 17 April 2023 to the House of Commons Levelling Up, Housing and Communities Committee setting out how we believe [financial reporting and audit in local authorities](#) can be improved.

Accountability does not happen by accident

9. Our experience is that for accountability to be effective there needs to be formal 'accountability events' at which those responsible for holding an organisation to account are equipped with sufficient information to be able to provide appropriate challenge to the leadership of that organisation.
10. There is already an accountability event – the annual budget approval – where councillors hold leaders and officers to account with respect to financial plans for the coming financial year and for medium and long-term financial strategy.

11. The proposed guidance should help improve the quality of the budget accountability event by providing better transparency of investment strategies and clearer communication of risks.
12. However, our view is that one financial accountability event is not sufficient on its own, and that two more are required.
13. Firstly, we believe that there also needs to be an accountability event with respect to outturn performance and the financial situation following the end of each financial year.
14. Such an event should ideally be held in the first four months following the conclusion of each financial year and should include an analysis of financial performance and position, discussion of insights gained from the events and experiences of the financial year, the implications for the ability of the authority to achieve its strategic and operational objectives, and the opportunities for improvement (lessons learned) that have been identified and how they are being, or will be, implemented.
15. We therefore propose an **indicator of potential failure** should be added to section 1 on continual improvement as follows:
“There is no formal presentation by the leader/mayor, chief executive, and section 151 officer to members on the financial performance and position of the authority following the conclusion of each financial year, together with insights gained on the authority’s ability to achieve its strategic and operational objectives, and how improvements identified are being or will be delivered.”
16. Secondly, our view is that the primary tool designed to help members hold their organisation to account – the annual financial report – is not being used as effectively as it could or should be.
17. We therefore believe it is essential that the proposed guidance makes it clear that a well-run best value authority should have an effective accountability event at or following the completion of the external audit with respect to each financial year.
18. Such an event provides an opportunity for members to be properly briefed on the contents of the annual financial report and to be able to challenge the leadership and officers of the local authority on its principal components – including the financial statements and accompanying narrative, audit reports, and on statements regarding governance, best value duty and responsibilities for the preparation of the financial statements and internal financial control.
19. Accordingly, we propose an **indicator of potential failure** should be added to section 1 on continual improvement as follows:
“There is no proper consideration and adoption by members of the annual financial report and its principal components, including the financial statements and accompanying narrative report on financial performance and position, audit reports, and statements on governance arrangements, on regard for the statutory guidance on best value duty, and on responsibilities for the preparation of the financial statements and internal financial control.”
20. There is a role for audit and other scrutiny committees to support members in carrying out this responsibility, including providing reports to members on the work undertaken as part of governance and oversight arrangements, and we welcome the proposed inclusion in the characteristics of a well-functioning authority in section 3 (governance) the statement that *“Full Council alongside the Audit Committee takes an effective overview of the systems of control, audit and governance”*. We believe that formal consideration and adoption of the annual financial report by members is a prerequisite to members being able to exercise an effective overview of these systems.

We propose a duty to ‘comply or explain’ how authorities have regard for best value duty

21. We believe the proposed guidance is likely to be more effective if there is transparency about how local authorities have had regard to its contents.
22. We think this would best be achieved through a Cadbury-style ‘comply or explain’ statement that would provide members with clarity about how local authorities believe they have complied with the guidance during the course of each financial year, with explanations

provided where leaders and officers have chosen not to apply, or have been unable to comply with, individual elements of the guidance.

23. This approach would enable members to consider whether any deliberate choices, made by the leadership and officers of a council to meet their statutory best value duty in a different way to that set out in the guidance, are reasonable.
24. Members would also benefit from explicit disclosures where local authorities believe they have not been able to meet the standards expected in the best value guidance, enabling a proper debate about how such failures can be addressed and future failures prevented.
25. The appropriate place for a ‘comply or explain’ statement is in the annual financial report, with specific consideration of the best value duty statement as part of an accountability event each year when the annual financial report is presented to full council.

Councillors need training, information and support to hold leaders and officers to account

26. Paragraph 4 of the proposed guidance states that the Local Government Association provides a programme of improvement support to local authorities as organisations. We believe that their programme of training for councillors should also be referenced given how important it is that councillors are adequately equipped to fulfil their responsibilities as leaders or cabinet members, as members of decision-making committees such as on planning, as members of oversight and scrutiny committees, or in their overall role in holding their local authorities to account.
27. We welcome the proposed statement in the characteristics of a well-functioning authority in section 3 (governance) that, “*Committees and individuals charged with governance have the appropriate experience, skills and expertise to perform their role*”.
28. We also welcome the proposed statement in the characteristics of a well-functioning authority in section 5 (use of resources) that there is, “... *training for all members on finance*”.
29. However, we believe there is a need for a specific reference to the need for all councillors to be able to participate in holding their local authorities to account. We recommend adding an additional **characteristic of a well-functioning authority** within section 3 on governance as follows:

“Members are provided with sufficient training, information and support to be able to hold the leadership and officers to account for how the authority is being run and its finances are managed.”
30. The Local Government Association has already developed training materials that are relevant to this requirement, although our experience is that many councillors say they are not comfortable that they properly understand the finances of their local authorities. We believe the Department and the Local Government Association should consider whether further improvement support could be provided to enable the development of online courses for all councillors, especially in relation to understanding authority finances.

Performance management must encompass the balance sheet and financial risks

31. Recent governance failures have highlighted the importance of monitoring the balance sheet as well as income and expenditure in ensuring that financial risks and exposures are properly understood and managed appropriately.
32. We recommend making the importance of the balance sheet explicit in the guidance by rewording the proposed “performance management” characteristic of a well-functioning authority in section 3 (governance) as follows:

“Performance management information **effectively** measures actual outcomes, ~~effectively~~ **balance sheet exposures, and financial risks, and is frequently interrogated.**”

Internal audit has a key role to play in assuring governance arrangements are in place

33. One omission from the guidance is the importance of an effective internal audit function in ensuring governance arrangements are in place and are operating effectively, as well as in supporting continual improvement.

34. We suggest adding a point to on this as a characteristic of a well-functioning authority in section 3 (governance) as follows:

“The internal audit function regularly assesses governance arrangements and advises on how they and their operation can be improved.”

Local councillor codes of conduct need to be updated to reflect best value duty guidance

35. Local authority codes of conduct for councillors are often derived from, or take inspiration from, a template prepared by the Local Government Association, the [Model Councillor Code of Conduct](#).
36. Although the Model Councillor Code of Conduct states that all seven of the Nolan principles of public life apply to councillors, there is relatively little guidance included on how councillors should apply the sixth principle: “I exercise reasonable care and diligence” and the seventh principle: “I ensure that public resources are used prudently in accordance with my local authority’s requirements and in the public interest”.
37. The proposed best value duty guidance provides a more comprehensive framework for how councils should operate, for example in terms of governance arrangements. This will have significant implications for the standards expected of individual councillors in how they conduct themselves, whether they are in a leadership position, involved in governance and scrutiny, or collectively in holding their local authority to account.
38. We therefore recommend that local authorities update local councillor codes of conduct to reflect the implications of the proposed best value duty guidance on individual councillors, and that the Department accordingly works with the Local Government Association to update the model code.

Promised legislation mandating independent members of audit committees needs action

39. The government has announced its intention to introduce legislation to mandate at least two independent members on local authority audit committees.
40. We believe this legislation needs to be introduced as a matter of priority if audit committees are to be able to properly play their fundamental role in the system of governance operating in local authorities.
41. We believe at least one independent member of each audit committee should be a ‘financial expert’, which is typically a qualified accountant with recent and relevant experience with public interest entities or other large organisations, for example as a board member, in a senior management position, or as an auditor.

ANSWERS TO SPECIFIC QUESTIONS

42. We have attached a table containing answers to the specific questions raised in the consultation in the following pages.

Q1 <i>What is your name?</i>	Alison Ring OBE FCA, ICAEW Director for Public Sector and Taxation
Q2 <i>What is your organisation?</i>	The Institute of Chartered Accountants in England & Wales (ICAEW)
Q3 <i>Answering the consultation</i>	I am answering on behalf of ICAEW and not in a personal capacity.
Q4 <i>Where are you based?</i>	ICAEW is a national organisation with members working in the public and private sectors in all regions of England, the rest of the UK and overseas.
Q5 <i>Do you agree that the principles in section 4 should apply to all best value authorities?</i>	Yes.

<p>Q6 <i>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?</i></p>	<p>Yes, we believe guidance would be particularly helpful for larger best value authorities such as fire and rescue services and sub-national transport authorities, including the London Fire Commissioner and Transport for London.</p>
<p>Q7 <i>Do you agree with the seven principles proposed in section 4?</i></p>	<p>Yes.</p>
<p>Q8 <i>Do you agree with the seven best value themes? (Diagram 1, Section 5)?</i></p>	<p>Yes.</p>
<p>Q9 <i>Do you agree with the suggested key characteristics of a well-run authority and key indicators of failure in relation to continuous improvement?</i></p>	<p>Yes, although we believe that two additional characteristics should be added as indicators of potential failure as set out in paragraphs 15 and 19 of this response.</p>
<p>Q10 <i>Do you agree with the suggested key characteristics of a well-run authority and potential indicators of failure in relation to leadership?</i></p>	<p>Yes.</p>
<p>Q11 <i>Do you agree with the proposed characteristics of a well-run authority and potential indicators of failure in relation to governance?</i></p>	<p>Yes, subject to adding additional characters of a well-functioning authority as set out in paragraphs 29 and 34 of this response and amending the performance management characteristic as set out in paragraph 32.</p> <p>We also stress the importance of appointing independent individuals to audit committees, at least one of which should be a 'financial expert'.</p>
<p>Q12 <i>Do you agree with the proposed characteristics of a well-run authority and potential indicators of failure in relation to culture?</i></p>	<p>Yes.</p>
<p>Q13 <i>Do you agree with the proposed characteristics of a well-run authority and potential indicators of failure in relation to efficient use of resources?</i></p>	<p>Yes.</p>
<p>Q14 <i>Do you agree with the proposed characteristics of a well-run authority and potential indicators of failure in relation to service delivery?</i></p>	<p>Yes.</p>
<p>Q15 <i>Do you agree with the proposed characteristics of a well-run authority and potential indicators of failure in relation to partnerships and community engagement?</i></p>	<p>Yes.</p>
<p>Q16 <i>Which, if any, of the proposed characteristics and indicators of failure do you think are priorities and the strongest indicators of best value?</i></p>	<p>We believe the proposed characteristics and indicators of failure listed under 3 (governance), 1 (continual improvement), 5 (use of resources), 2 (leadership) and 4 (culture) are the most important.</p>

<p>Q17 <i>What do you think are the top-most appropriate quantitative metrics for monitoring Best Value?</i></p>	<p>We do not have a view of specific metrics as they will vary by service line and by the individual circumstances of each authority concerned. What is important is that there is benchmarking across authorities and (where relevant) with private sector best practice to help inform decision-making and highlight areas of potential improvement.</p>
<p>Q18 <i>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?</i></p>	<p>The principal risk of centrally determining characteristics or indicators as key is that this could result in other characteristics or indicators that are important in the circumstance of an individual authority, or a class of authorities being inappropriately ignored or not focused on when they should be.</p>
<p><i>How could any risks be further mitigated?</i></p>	<p>We believe that if there was to be a general identification of some characteristics or indicators as key and more important than others, that there should be an accompanying 'catch-all' requirement to designate other characteristics and indicators as key where appropriate to the individual circumstances of the authority concerned and to de-designate where they are not relevant or are immaterial.</p>
<p>Q19 <i>Are you happy with the level of clarity and detail in the description of statutory and non-statutory Best Value Notices?</i></p>	<p>Yes. We understand the need not to be over-prescriptive.</p>
<p>Q20 <i>Are there other ways in which the government could engage earlier with individual local authorities to prevent any challenges experienced from escalating?</i></p>	<p>Yes. We believe that Oflog should obtain and review a comprehensive financial dataset on at least a quarterly basis to be able to understand financial trends across local authorities. Oflog should also have access to the Whole of Government Accounts dataset submitted by local authorities, as well as draft and subsequently audited financial statements.</p>
<p>Q21 <i>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?</i></p>	<p>Yes, although circumstances will vary and sometimes a shorter or longer period may be appropriate.</p>
<p>Q22 <i>Is the description of a Best Value Inspection sufficiently clear?</i></p>	<p>We do not have a view on this.</p>
<p>Q23 <i>Is the description of independent reports sufficiently clear?</i></p>	<p>We do not have a view on this.</p>
<p>Q24 <i>Are the models of intervention described in this guidance clear in terms of description, purpose and scenario when they would be applied?</i></p>	<p>We do not have a view on this.</p>
<p>Q25 <i>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?</i></p>	<p>Yes.</p>
<p>Q26 <i>Are there any areas missing from the statutory guidance that you think would be helpful to include?</i></p>	<p>Yes, see our comments above.</p> <p>We believe there needs to be an obligation on local authorities to report each year in their annual financial reports on how they have had regard to the best value duty guidance. This should include statements setting out how they have complied with the guidance together with explanations where they have not been able to comply or have chosen not to comply.</p>