

# Revised Statutory Guidance on Best Value Duty

## District Councils' Network consultation response

August 2023

### About the District Councils' Network

The District Councils' Network (DCN) represents 167 district and unitary councils covering 53% of England in market towns, new towns, cathedral cities, coastal communities and rural areas across England. District councils deliver a wide range of essential local government services to over 20 million people.

### Summary Response

The District Councils' Network strongly believes in the value of local democracy and giving local authorities the powers and discretion to deliver services for their residents in the way they judge will be most efficient and effective. Local councillors are accountable for their decisions at the ballot box.

Nevertheless, we recognise that there are occasions when councils run into difficulties and may need assistance. It is right that there should be a framework to govern how central government should act in those circumstances, to define reasonable thresholds for intervention and to help local authorities address the problems they face.

It is important that intervention by central government is rare and, when required, that is proportionate. It should not be possible for central government to intervene on grounds that are flimsy, overly subjective or politically motivated.

On the whole, we agree that the revised statutory guidance on Best Value Duty achieves the right balance. In our view it will be helpful for local authorities. It usefully sets out the hallmarks of best value and identifies indicators of potential failure.

More widely, we note central government's increasing focus on seeking assurance about the performance of local authorities. For example, this is also evident in the creation of the Office for Local Government and the tightening of restrictions on councils' ability to borrow and invest commercially. The desire to protect the taxpayer and the Exchequer is understandable. But we urge the Government to remember that the vast majority of councils are well run and to consider ways in which councils can be given greater freedom and discretion to deliver their services. We strongly agree with the principle of local accountability outlined in the guidance: *"Accountability should primarily be to local residents and businesses. Statutory intervention will only be used when there are significant and extensive indications of failure and authorities are not delivering to the high standards which their local communities have a right to expect. As far as possible, Government will look to existing local checks and balances in the system to mitigate risks of failure."*

In the same vein we note that Best Value was introduced in 1999 as an improvement tool for local councils and **not** as an intervention tool. By focusing heavily on intervention in the new guidance, the Government misses a good opportunity to revise guidance on all of the 4 Cs at the centre of the original Best Value approach (challenge, compare, consult and compete).

It is vital that the regime for assurance, including Best Value Duty, dovetails with local government's own self-improvement and performance schemes, including Corporate Peer Challenges and sector-led benchmarking. We urge the Government not to neglect improvement tools (which will benefit all councils) with a disproportionate focus on intervention (which will benefit relatively few councils).

We would like to make several comments about the revised guidance:

- It should apply to all best value authorities without exception.
- We support the seven principles governing the Best Value Duty.
- We agree that the seven best value themes are appropriate and collectively cover the range of circumstances that indicate whether or not a local authority is likely to be fulfilling its Best Value Duty.
- The description of the best value themes, the characteristics of a well-functioning authority and indicators of potential failure seem to us to be clear and comprehensive. However, there are two caveats:
  - The list of potential indicators of failure should be treated as comprehensive and should not be purely illustrative. The Secretary of State should not be able to intervene for any other reasons. If there are indicators that the Department has overlooked, they should be added to the guidance rather than giving the Secretary of State license to intervene for reasons that are not included.
  - The guidance should be even clearer that the Department should not intervene if only one or a very small number of indicators of failure are engaged. Counting the number of indicators alone is not a sufficient basis for intervening.
  - The guidance should be clearer that formal intervention should always be a last resort when problems are not capable of being expediently resolved by other means and when meaningful early dialogue with the local authority has taken place.
- It is vital that central government engagement with any local authority it deems at risk of failing its Best Value Duty happens early and is constructive. The draft guidance says that, where the Department becomes aware of indicators of potential failure being met, it "*may look to engage constructively with the local authority.*" In DCN's view the guidance should be stronger and stipulate that the Department **must** engage constructively. The guidance should also explicitly state that early engagement between the Department and a local authority must happen in private and that any concerns should not be put in the public domain at least until the local authority has had the time to give an initial response to the concerns.
- We have concerns about the concept of a "non-statutory Best Value Notice". Our concern is that a Best Value Notice would be issued by a senior civil servant and may require the local authority to take action. No unelected official should have the power to require action of a democratically elected authority by means of a non-statutory letter. As a minimum, it should be explicit in the guidance that any such letter could be sent only following explicit direction by a minister.

- The flow chart describing different pathways for intervention generally looks suitable. However, we feel that, if the answer to the question “Is there evidence of Best Value failure?” is “No”, there should be an additional option of “No further action”. We fail to see why in that situation there would always need to be one of three types of non-statutory intervention (non-statutory best value notice, non-statutory improvement board, sector-led intervention).