



## New Best Value Statutory Guidance Consultation Summary of responses and Government response



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September 2011  
Department for Communities and Local Government

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# Introduction

1. On 13 April 2011, the Secretary of State for Communities and Local Government announced a new fair deal for voluntary and community groups facing funding cuts, wrapped up with cutting reams of red tape on local authorities.
2. In this context, DCLG launched a consultation on the draft statutory guidance on the Best Value Duty. It sets out some reasonable expectations of the way authorities should work with voluntary and community groups and small businesses when facing difficult funding decisions. The guidance allows authorities the flexibility to exercise appropriate discretion in considering the circumstances of individual cases, without Government trying to predict every possible variable. It underlines support for voluntary and community sector organisations and small businesses by giving a new, clear prominence to requirements on dealing with the voluntary and community sector and small businesses, helps build the confidence of these organisations in holding public agencies to account, and is explicit about the scope for Best Value authorities to consider social value in their functions.
3. Views were invited on the content of the new guidance. As the consultation was launched as part of a package of DCLG announcements on removing barriers and burdens on local authorities, we also received comments on revocation of the statutory guidance *Creating Strong, Safe and Prosperous Communities* and on the repeal of the *Duty to Involve* and *Duty to Prepare a Sustainable Community Strategy*. It is important we clarify that the guidance is not a replacement for the duties.

4. The consultation asked three questions:

- 1. Is the guidance clear, specific and proportionate?**
- 2. Is there anything else that we should cover in order to provide more clarity to councils, contractors and the voluntary and community sector?**
- 3. Are there any other issues you wish to raise?**

5. As the questions were deliberately posed in an open-ended way, we have summarised responses according to key points raised by respondents in relation to the paragraphs of the draft guidance rather than by question.
6. The consultation process closed on 14 June. We are grateful to the organisations and individuals who took the time to respond. We are also grateful for input by the Voluntary and Community Sector Partnership Board. We have now considered all responses received by the closing date.

# Summary of responses and Government response

## Table of respondents

Respondent	Total Number of Respondents	Percentage of the Total Respondents
Voluntary and Community Organisations	107	57.22%
Local Government	64	34.22%
Individuals	5	2.67%
Private Sector	5	2.67%
Parish Council	3	1.60%
Local Strategic Partnerships	2	1.07%
MP	1	0.53%
<b>TOTAL</b>	<b>187</b>	<b>100%</b>

## Overview of main findings

7. On balance, the new draft Best Value statutory guidance was positively received with the majority of respondents considering it clear, specific and proportionate. The light touch approach was particularly welcomed by local authorities, allowing them discretion within guidelines and voluntary and community organisations welcomed the intention of government to provide clear expectations of authorities where they were facing difficult funding decisions.
8. We particularly sought feedback on whether the draft guidance was broadly specific, clear and proportionate. Of those that commented:
  - seventy per cent thought the guidance was clear
  - fifty-seven per cent thought the guidance was specific; and
  - fifty per cent thought it was proportionate.
9. However, a number of discrete issues were raised concerning the need for further clarity, in particular on the terms 'social value' and 'disproportionate cuts'. Anxiety over the minimum notice period required when making funding cuts was also cited. Further concerns regarded alignment with the National Compact and relationship to Local Compacts, as well as links to the Equality Duty 2010 and how the guidance would be enforced.

## **Government response**

### ***Overall reaction***

10. In general we are encouraged by the tone of the responses. Respondents have welcomed the focus on supporting effective partnership working between Best Value authorities and the voluntary and community sector and small businesses. The draft statutory guidance has successfully set out the principles that authorities should use when considering cutting funding to voluntary and community organisations and small businesses.
11. On the whole, the draft guidance is seen to achieve this in a clear and concise way, without prescription, thereby allowing Best Value authorities the flexibility to exercise appropriate discretion in considering the circumstances of individual cases.

### ***Our approach to suggested changes***

12. In determining how best to respond to the suggestions and concerns that were raised in the consultation, we have borne in mind the following:
  - our commitment to issuing light touch guidance as part of our wider commitment to localism, growth and the Big Society
  - 'good practice' will vary by locality and the guidance aims to set clear expectations for Best Value authorities across the country
  - the guidance is on the Best Value Duty and provides users with guidelines on how to comply with the duty; it does not make the law. Local authorities have to have regard to it and could be challenged to show they have done so

### ***Key points***

#### *Paragraph 1 – Overall value, including environmental and social value*

13. Key point: 28 per cent of respondents commented that a definition of 'social value' was needed to help Best Value authorities consider this effectively as part of overall value when reviewing service provision.

#### *Comments*

14. Respondents were pleased to see reference to social value in considering 'overall value' but asked for clarity on how Best Value can promote social value and a definition of the term to enable Best Value authorities to make informed decisions.

**Government response:** Best Value requires an authority to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of *economy* (costs), *efficiency* (throughputs) and *effectiveness* (outcomes). Under Best Value, decisions are made not just on any one of these, but a combination of all three – so this allows social value to be a key consideration.

In general we are of the view that setting out a detailed definition of 'social value' is not the right role for central government and would inevitably stifle local creativity. We need to provide the latitude for Best Value authorities to work out the detail of what 'social value' means locally for themselves. However, we have amended the text in the final guidance to provide more clarity on what social value means as a concept. This is in line with the Chris White Private Members Bill - Public services (social enterprise and social value)

*Paragraph 2 – Consult a wide range of local persons*

15. Key point: 28 per cent of respondents commented that clarity was needed on the definition of 'wide range of local persons' under the Best Value Duty. In addition, there was a request for clarity on when consultation should happen with those affected by any cuts.

*Comments*

16. Respondents were concerned that consultation with a 'wide range of persons' and the 'wider community' (bullet point 5c of the guidance) is open to interpretation and a local authority may therefore not consult key stakeholders and service users. Respondents also asked for clarity about the extent of the consultation or how this should be undertaken.

**Government response:** Section 3 (2) of the Local Government Act 1999 broadly sets out the local representatives that a Best Value authority should consult. In the guidance, we have explicitly stated that authorities should consult voluntary and community organisations and businesses.

We have sought to avoid listing all possible elements of such representatives as inevitably this will not be comprehensive and risks being unhelpfully prescriptive. In terms of the extent of and how consultation should take place, each authority will want to take its own decisions on how best to consult *representatives of local persons* as appropriate in the exercise of their functions, and this will rightly differ between authorities. In addition, there will be a range of different ways to engage with representatives, including as part of any Local Compact. Setting out minimum requirements would reduce the flexibility of authorities to accurately tailor their actions to their circumstance and could reduce levels of ambition.

In terms of timing of consultation with an organisation facing a reduction or end to funding, we have strengthened the guidance to reflect that this should happen before a decision is made on the future of the service.

*Paragraph 3 – Disproportionate cuts*

17. Key point: 11 per cent of respondents commented that clarity was needed on the term 'disproportionate cuts'.

*Comments*

18. Respondents were concerned about the reference to the term 'disproportionate cuts' in the guidance as they felt the words generated a wide range of interpretation and it would be difficult to define in a way that met the expectations of all parties.

<p><b>Government response:</b> We recognise that this term may give rise to different interpretations. We have amended the guidance to provide clarity that the term refers to authorities not passing on larger reductions to the voluntary and community sector and small businesses as a whole, than they take on themselves; it is not about cuts in funding to individual organisations.</p>
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*Paragraph 3 (bullet point 1) – three month notice period*

19. Key point 1: The three month notice period of a cut or end to funding was the absolute minimum required or should be longer. Also, the need for clarity on when the notice should be provided - notice of *potential* or *actual* reductions.

Thirty-three per cent of respondents commented on the three month notice period and of those:

- thirty-nine per cent thought three months notice too short
- fifty per cent thought three months notice was fair; and
- eleven per cent asked for further clarification on when the notice period would begin.

*Comments*

20. A number of respondents felt a minimum three month notice period for cuts or termination of funding was not enough and most of these thought six months should be the minimum requirement in order to give organisations enough time to plan for the future, consult with service users, seek alternative sources of funding and give employees required periods of notice of redundancy. Further clarity was requested on when the notice period should begin.



**Government response:** We recognise that in some circumstances it may be appropriate for Best Value authorities to provide increased notice periods for a reduction or an end to funding. However, to allow for local discretion in individual circumstances and in order to remain consistent with the National Compact, we remain of the view that a *minimum* three month notice period should be required. We have amended the text to clarify that this notice should be of an *actual*, rather than any *potential* reduction.

21. Key point 2: Furthermore some respondents commented on the need for clarity on the types of cuts in funding the guidance applies to.

*Comments*

22. Respondents sought clarity on whether the three month notice of a reduction or end in funding applied to fixed term contracts for commissioned services and/or grant aid which are governed by different legal requirements.

**Government response:** The guidance applies to all funding to the voluntary and community sector and small businesses, where on the basis of past practice the organisation might have some basis for expecting the funding or contract to be continued. The draft guidance did state, in a footnote, that the notice period applied to grant funding and fixed term contracts. We have now made this clearer by bringing the text into the main body of the guidance.

*Paragraph 3 (bullet point 2) – Active engagement and wider impact on service users and the local community*

23. Twelve per cent of respondents commented on this bullet point. The key points raised were as follows:
24. Key point 1: Minimal impact of guidance on small voluntary and community organisations.

*Comments*

25. There was some concern among small community organisations that the guidance would not impact on cuts in funding to them as their services often only reach a small proportion of society and therefore may be judged by authorities to be of lesser significance.

**Government response:** The guidance applies to cuts to all voluntary and community organisations, regardless of size. We have therefore amended the guidance to make this explicit.

26. Key point 2: Reference to Equality Act 2010 needed.

### *Comments*

27. Respondents commented that the guidance needed to remind Best Value authorities of their public sector equality duty under the Equality Act 2010, to ensure that engagement on commissioning and decommissioning of services takes place with each protected characteristic.

**Government response:** Local authorities are aware of their statutory responsibilities under the Equality Duty 2010 and therefore, we do not consider further reference to the Duty in the Best Value guidance is required. In addition, the guidance that accompanies the Act sets out clearly that authorities should consider the needs of diverse groups when designing and delivering public services, and use commissioning to drive equality. The Best Value guidance balances out any possible future impacts on protected groups arising from authorities having less funding overall. The emphasis on social value in the guidance can also be considered in the context of promoting equality of opportunity and eliminating discrimination.

### *Paragraph 3 (bullet point 3) – Transparency*

28. Seventeen per cent of respondents commented on this bullet point.
29. Key point: The guidance refers to the Transparency Code of Practice which is yet to be finalised.

### *Comments*

30. A number of respondents objected to the guidance requiring authorities to comply with a Code that is yet to be finalised and published.

**Government response:** We recognise that the Code is yet to be finalised and published and have therefore removed reference to it. However, Government is committed to increasing transparency across Whitehall and local authorities in order to make information more readily available to the citizen and allow them to hold service providers to account. Transparency will put the voluntary and community sector and small business in a much stronger position to pitch for contracts and bring new ideas and solutions to the table. Therefore, we have incorporated some text highlighting the transparency agenda.

### *Other issues*

31. Key point: Application of the guidance to central government and its agencies.

### *Comments*

32. A number of respondents were unclear on whether the guidance would apply to the NHS and other central government agencies. As large funders of voluntary and community organisations, it was considered

important that central government and its agencies were covered by the guidance too.

**Government response:** When the Secretary of State for Communities and Local Government launched the guidance on 13 April 2011, he said the Government is making an additional parallel commitment that central departments and any non-Best Value agencies of departments will sign up to the same fair standards as set out in the guidance. We now have made this clear in the introduction to the guidance.

33. Key point: The guidance needs to make reference to the Compact and Local Compacts and not duplicate what is in these.

*Comments*

34. Respondents asked that the guidance refer to the Compact framework and make reference to the importance of Local Compacts to ensure alignment with principles set out in these agreements. Some respondents questioned the requirement for Best Value guidance as the Compact sets out similar principles agreed between government and the voluntary and community sector.

**Government response:** Government is committed to the principles in the renewed National Compact and recognises the value of Local Compacts that are working well in many places across the country. We have now highlighted the National Compact in the introduction to the guidance. We do not think any further reference to Local Compacts is required in the guidance as it already clearly states that Best Value authorities should honour commitments set out in them. However, we have amended the introduction to the guidance to mention that the guidance does not replace any Local Compacts that are in place.

We remain of the view that the principles set out in the guidance are important and applicable in the current climate of funding cuts, apply across the board, including areas where Local Compacts are not in place, and apply to Best Value authorities and their relationships with the voluntary and community sector and small businesses.

35. Key point: Need for clarity on the sanctions that would apply if authorities do not comply with the guidance.

*Comments*

36. A number of respondents enquired about how the guidance would be enforced and the sanctions that would be in place for authorities who did not comply with the guidance.

**Government response:** The guidance is statutory, based on the Duty of Best Value. This means Best Value authorities have to have regard to it, and could be challenged to show they have done so, but cannot be compelled to follow it.

Any intervention is tied to the Best Value Duty, which is a duty on local authorities to secure continuous improvement in the way in which their functions are exercised. The Secretary of State does not have a statutory power to intervene on the grounds of how funding is provided to voluntary groups. For an intervention, he has to be satisfied that there is a failure by an authority in discharging its Best Value Duty.

37. Key point: Concern over the loss of statutory duties.

*Comments*

38. Although the consultation did not cover the repeal of statutory duties, there was a strong feeling amongst respondents (33 per cent) that the Duty to Involve should not be repealed. Respondents felt that the duty has helped create more openness and transparency in local government and repeal would have a negative impact on public involvement, which helps to improve local services.

39. There was also some anxiety about the loss of the Duty to Prepare a Sustainable Community Strategy as it provides an inclusive tool through which a local authority can respond to local issues in consultation with its delivery partners in an accessible and transparent way.

**Government response:** Localism and decentralisation is about trusting councils to engage local people in its function without imposing a raft of duplicative top down duties compelling them to do so. Our plan to repeal these duties is in line with our commitment to free local authorities from this kind of bureaucracy.

Once the Duty to Involve is repealed, the separate Duty to Consult local representatives (which supports the Duty of Best Value) will remain in place. This will be backed up by the additional support for voluntary and community groups in the Best Value guidance.

When the Duty to Prepare a Sustainable Community Strategy (and the associated Duty to Consult) is repealed, authorities will still be able to carry on having a strategy – it just means they would not have a top-down duty to do so. Similarly, authorities will not be prevented from consulting partner agencies and others in developing their strategy, but they would simply not be *required* to by a statutory duty. However, consulting the community on how it will fulfil its Duty of Best Value (which applies to all its functions) would still be covered by the Duty to Consult under Best Value.

40. Key point: The guidance needs to reference other forthcoming legislation

*Comments*

41. Respondents asked that the guidance show greater linkage to aspirations in the Localism Bill.

**Government response:** We recognise that it would be helpful to highlight the alignment of the guidance with Localism Bill and have therefore amended the introduction to the guidance to reflect this.

42. Key point: The guidance runs contrary to localism and decentralisation.

*Comments*

43. Respondents felt that the production of national guidance in itself ran contrary to policy on localism and decentralisation.

**Government response:** We have withdrawn nearly 56 pages of prescriptive guidance on a range of duties and associated issues around how local authorities should agree their priorities, engage their citizens, lead their communities and commission public services. We also removing top-down duties. We have replaced this with one short page of light touch guidance. That means more freedom for councils, more protection for voluntary groups and more clarity for both.

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