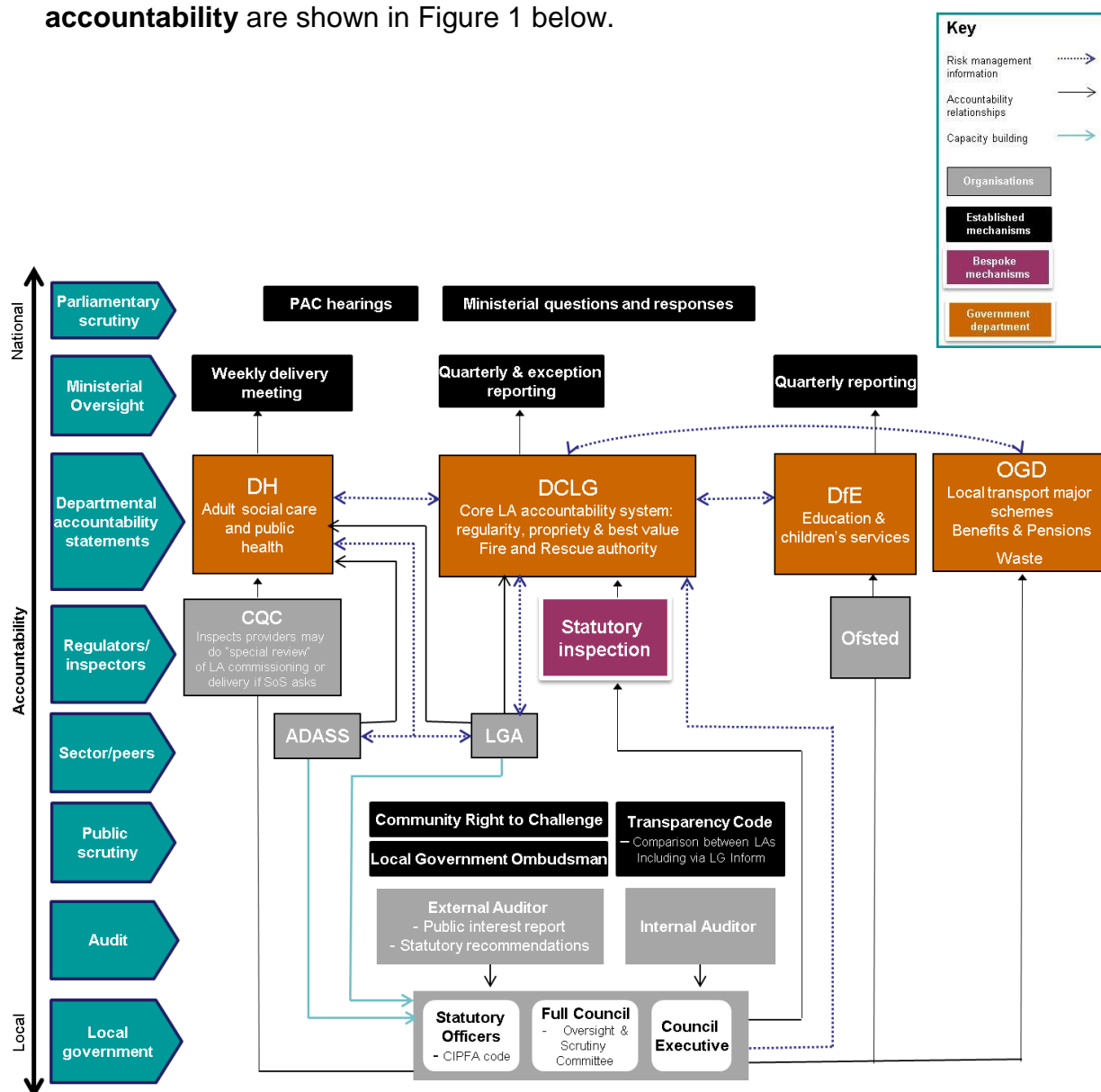


BEST VALUE INSPECTION

1. OVERVIEW

Accountability

Local authorities are independent of central government and are held to account by independent bodies, such as the external auditor, Local Government Ombudsman (LGO) and Local Government Association (LGA). In normal circumstances the Government would expect the sector (for example the LGA) to provide guidance to the authorities to help them improve. The Ministry of Housing, Communities and Local Government's annual Accountability System Statement for Local Government explains the system of checks and balances.¹ The **tiers of local government accountability** are shown in Figure 1 below.



¹ See here for the July 2016 statement:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537005/LG_Accountability_System_Statement.pdf

Data

The Ministry for Housing, Communities and Local Government (MHCLG) receives data from local authorities including finances, housing, homelessness, planning, and pensions. This information is used to inform ministers in setting government policy and in the assessment of funding (e.g. grants) to local authorities for carrying out their statutory functions.

MHCLG holds a “single data list” which is a catalogue of all the datasets that local authorities are required to provide to central government including information from BEIS, Defra, DH, DWP and MoJ. It is reviewed annually. Local authorities are not required to provide any data that’s not included on the list without extra funding being provided by Government. The current list can be accessed here:

<https://www.gov.uk/government/publications/single-data-list>.

Additional soft intelligence is received from OGDs and the Local Government Stewardship’s engagement team. In addition, MHCLG has access to LG Inform which allows comparative analysis of key service delivery indicators across local authorities.

Inspection and intervention

If there is evidence that a local authority may be failing the ‘best value duty’, the Secretary of State (SofS) has statutory powers to inspect in authority. In order to intervene, the SofS must be satisfied that the authority is failing its best value duty. Any action taken must be proportionate to the evidence available at the time; both Statutory Inspection and Statutory Intervention have previously been subject to judicial review. Statutory powers are typically used as a last resort, as they can be viewed as circumventing the local democratically elected representatives and their role of Governance, particularly where Executive powers are being exercised by the SofS or his/her elected representatives. Whilst a Statutory Intervention can be carried out without the agreement of the local authority concerned, non-Statutory Intervention can also be used where a local authority agrees.

To date there have been six statutory interventions (not counting Northamptonshire CC): London Borough of Hackney (2001 – 2007); Hull City Council (2003 – 2006); Stoke-on-Trent City Council (2008 – 2010); Doncaster Metropolitan Borough Council (2010 – present) [DCLG directions still being used by DfE]; London Borough of Tower Hamlets (2014 – 2017 – now under scrutiny until Sept 2018); and Rotherham Metropolitan Borough Council (2015 - present)

There is also two non-statutory interventions: Birmingham Independent Improvement Panel (2015 – present); and the Grenfell Recovery Taskforce (for RB Kensington and Chelsea, 2017 – present).

2. BEST VALUE DUTY AND POWERS TO INTERVENE

Councils must deliver a **balanced budget** (Part 1 of the Local Government Finance Act 1992), **provide statutory services** (including adult social care and children's services) and **secure value for money in spending decisions**.

The requirement for all local authorities to comply with the "**best value duty**" is noted in s3 (1) of Local Government Act 1999:

A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

If the Secretary of State (SoS) has evidence that a local authority is not complying, or is at very high risk of failing to comply with the best value duty, he or she can intervene under s.15 of the Local Government Act 1999.

This Act has been amended a few times including to remove references to the Audit Commission. Our legal team can provide the latest version of the Act if required.

3. STATUTORY INSPECTION

Triggers

As described in the Overview section, MHCLG gathers and analyses a range of information provided to the Ministry by local authorities. We also rely on external evidence provided by the governing bodies, such as the LGA and local auditors, in addition to whistle blowers, to raise concerns and provide local authorities with guidance to resolve issues. Other government departments have means of assessing a service delivery and their own intervention powers to relate to this, such as Ofsted for DfE or the Care Quality Commissions (CQC) for the DfH. Their respective intervention measures and powers relate specifically to a section of functions undertaken by an authority, whereas the Local Government Act 1999 relates to the exercise of any and all functions, including governance, in relation to the best value duty. We work alongside other government departments who feed in their concerns about the authorities, and use this as intelligence gathering.

Where the evidence we, and others, have gathered suggests that the an local authority is failing or is very likely to fail to comply with its best value duty, the first step they take may well be to commission a Best Value Statutory Inspection.

Statutory Inspection characteristics

A Statutory Inspection is an **independent** inspection commissioned by the SoS to gather intelligence regarding a local authority's compliance with its Best Value Duty. When commissioning the inspection the SoS will specify the scope of the inspection and may identify particular questions or areas of concern. Often, an inspection will lead to a Statutory Intervention, however, **there should be no preconception as to**

the outcome of an inspection. The inspection is a means to gather the information in a clear and methodical manner that can be presented as evidence to support the inspector's recommendations.

Assistant inspectors

Section 10 (2) of the 1999 Act enables the Secretary of State to appoint assistant inspectors for the purposes of the inspection. Section 10(3) provides that "The appointment of an assistant inspector must be made on the recommendation of the inspector, unless the Secretary of State thinks that the urgency of the inspection makes it necessary to dispense with this requirement."

The status of assistant inspector carries the same powers and duties as inspector (see section 11 of the 1999 Act), in particular, powers to require the production of documents. Where any inspection report relies on information elicited using these powers, it is important that the person requesting the evidence is either the inspector or an assistant inspector.

Failure of the Best Value Duty

PWC's report on Tower Hamlets provides a helpful discussion of what does and does not constitute failure of the Best Value Duty, pages 5-6, section 1.24-1.25:

[...] No governance regime is perfect; no system of financial control is fool proof. The very concept of "continuous improvement" implies that there will always be some room to make such improvement. Despite the best efforts of those charged with governance, errors will occur, controls may be breached or circumvented, whether inadvertently or deliberately, and some level of fraud may be perpetrated on the organisation, without necessarily calling into question the fundamental integrity of an organisation's governance or its compliance with the best value duty.

However, for this to apply, such errors, irregularities or fraud should clearly be isolated and exceptional rather than regular or endemic, as well as immaterial in value and/or in their wider implications. The absence or the frequent or wholesale failure or circumvention of one or more controls is clearly no longer an isolated matter, and might constitute a failure to make the "arrangements" referred to in the 1999 Act and therefore to comply with the best value duty. Likewise, the absence or failure of processes and controls which result in the inability of an organisation to determine whether or not it is achieving economy, efficiency and effectiveness in a particular area would seem logically not to be conducive to continuous improvement or therefore to the fulfilment of the best value duty. Furthermore, errors, irregularities or fraud which indicate the existence of more widespread governance failings will have implications beyond the immediate instance. Errors, irregularities or fraud in which those charged with governance are implicated, whether by direct involvement, consent or connivance, will also tend to raise more fundamental questions about the integrity of governance and the fulfilment of the best value duty.

The term “effectiveness” relates to the degree to which an appropriate desired outcome is achieved through the application of resources, including financial resources. An activity that is executed effectively is one which achieves the desired objective (and does so with appropriate economy and efficiency); conversely, an activity which is executed in a way that fails to achieve the desired objective is one that clearly has not been executed effectively. Funds spent and other resources applied in a manner that is ineffective in this way are clearly also not being used economically or efficiently.

Contact between the Inspector and MHCLG

The inspection report is an independent report to the Secretary of State on which she or he will base a decision whether or not to intervene in the inspected local authority. It is therefore important that the independence of the inspection work is maintained at all times. This is not to say that officials will have no contact with the inspection team. But that they must observe a clear demarcation of what can and cannot be discussed. In particular, officials should not in any way attempt to steer the direction of the inspection or the investigation methods used by the inspection team, and they should not seek early indications of the likely findings or recommendations of the inspection.

There are, however, a number of legitimate topics for discussion, including:

- progress in terms of the inspection process and likely reporting date,
- clarification of the statutory powers and duties of the inspector and the duties of the inspected authority,
- appointment of assistant inspectors and indemnity, if relevant, and options for Maxwellisation (see below), and
- process for handling submission of the report to the Secretary of State.

Legal advice can be provided to the inspector through the Ministry.

Maxwellisation

Maxwellisation is the process where people who may be criticised in an official report are sent details of the criticism in advance and invited to respond ahead of publication. An inspection team should consider whether or not to undertake some form of Maxwellisation before finalising its report, and should build in a suitable amount of time to do this.

The process refers to a high profile court ruling relating to newspaper owner Robert Maxwell, who was criticised in a 1969 DTI report as "unfit to hold the stewardship of

a public company". Maxwell sued the DTI and Justice Forbes ruled that the DTI had "virtually committed the business murder" of Maxwell.

Maxwellisation can take a number of forms depending on the precise information that is shared with the person, which could be extracts from the draft report or raw material in the form of interview transcripts, or summaries of the accusations and evidence against them. It is for the inspector to decide whether or not to undertake Maxwellisation and if so what form it should take; they may also wish to seek legal advice.

Maxwellisation was undertaken by both the Tower Hamlets and Rotherham inspection teams and in both cases deadlines for response were set. The inspection team can choose to conduct the exercise by email / letter and may offer face-to-face meetings; inspectors should anticipate that some individuals may seek legal advice or wish to bring a lawyer to any meeting.

Extension of inspection reporting date

The reporting date for the inspection will be set out in the inspector's appointment letter and will also be public knowledge e.g. through a ministerial statement. The reporting date is a direction to the inspector. Where a report is likely to be delayed, the inspector should alert the MHCLG team with sufficient notice for them to advise the SoS on an extension and handling which might involve notifications to key stakeholders, a short written ministerial statement and publication of the extension and relevant correspondence on the government's website.

4. INSPECTION REPORT

The report – statutory requirements

If anything comes to the attention of the inspectors, they must report it; there is no room for discretion. The inspectors may choose to make recommendations based on the evidence but are under no obligation to do so. PwC chose not to make a recommendation. The Audit Commission's report on Doncaster included a recommendation that the SofS intervened to achieve specified objectives but left the method of intervention to the discretion of the SofS. Louise Casey chose to make specific recommendations to the SofS which he discussed with her – a slightly amended intervention was agreed by SofS and Louise Casey sent the SofS a follow up letter confirming that she approved of his decision.

Report publication

The legislative requirement for the inspector with regard to publishing and distributing the report are:

“Reports

“(1) Where an inspector has carried out an inspection of an authority under section 10 it shall issue a report.

“(2) A report—

(a) shall mention any matter in respect of which the inspector believes as a result of the inspection that the authority is failing to comply with the requirements of this Part, and .

(b) may, if the inspector mentions a matter under paragraph (a), recommend that the Secretary of State give a direction under section 15.

“(3) Inspector— .

(a) shall send a copy of a report to the authority concerned and to the Secretary of State, and .

(b) may publish a report and any information in respect of a report.

“(3A) The Secretary of State may publish a report and any information in respect of a report.

“(4) If a report recommends that the Secretary of State give a direction under section 15, the inspector shall as soon as reasonably practicable— .

(a) arrange for the recommendation to be published.”