

the role of the chief financial officer

In Local Government

CIPFA Statement on the role of the Chief Financial Officer in Local Government

The Chief Financial Officer in a public service organisation:

- is a key member of the Leadership Team, helping it to develop and implement strategy and to resource and deliver the authority's strategic objectives sustainably and in the public interest;
- must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and alignment with the authority's financial strategy; and
- must lead the promotion and delivery by the whole authority of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently and effectively.

To deliver these responsibilities the Chief Financial Officer:

- must lead and direct a finance function that is resourced to be fit for purpose; and
- must be professionally qualified and suitably experienced.

Contents

Foreword	1
Definitions Used Throughout The Document	2
Introducing The CIPFA Statement	3
Using The CIPFA Statement	4
Principle 1	7
Principle 2	13
Principle 3	17
Principle 4	23
Principle 5	27

\ foreword

This Statement on the Role of the CFO in Local Government describes the role and responsibilities of CFOs in Local Government. It builds heavily on CIPFA's Statement on the Role of The CFO in Public Services¹ and applies the principles and roles set out in that document to Local Government.

The CFO occupies a critical position in any organisation, holding the financial reins of the business and ensuring that resources are used wisely to secure positive results. While the global financial crisis and economic downturn have made these tasks even more challenging, they have also underlined the fundamental importance of the role. Achieving value for money and securing stewardship are key components of the CFO's role in public service organisations, a duty enshrined in legislation for the CFO in local government.

In order to support CFOs in the fulfilment of their duties and to ensure that local authorities have access to effective financial advice at the highest level, CIPFA is introducing a 'comply or explain' requirement in the annual statement of accounts.

Jon Pittam

Chair

CIPFA Role of the Public Services Director of Finance Panel

Steve Freer

Chief Executive

CIPFA

1 http://www.cipfa.org.uk/panels/finance_director/download/Role_CFO.pdf

definitions used throughout the document

The public services have a variety of organisational structures and governance arrangements. Some include elected representatives, while others are wholly appointed. The following terms are used throughout the Statement in a generic sense. The Statement and the supporting guideline and requirements need to be read in the context of these. Terms in use in different parts of the public services can be substituted for the generic terms used here.

Chief Financial Officer (CFO)

The organisation's most senior executive role charged with leading and directing financial strategy and operations.

Leadership Team

Comprises the Board and Management Team.

Board

The group of people charged with setting the strategic direction for the organisation and responsible for its achievement.

Management Team

The group of executive staff comprising the senior management charged with the execution of strategy.

Chief Executive

The most senior executive role in the organisation.

Managers

The staff responsible for the achievement of the organisation's purpose through services/ businesses and delivery to its clients/customers.

Finance Function

The staff with a prime responsibility for financial matters, located either in a central department or within business/service areas. Some functions may be outsourced.

Governance¹

The arrangements in place to ensure that an organisation fulfils its overall purpose, achieves its intended outcomes for citizens and service users, and operates in an economical, effective, efficient and ethical manner.

Financial Management²

The system by which the financial aspects of a public service organisation's business are directed, controlled and influenced, to support the delivery of the organisation's goals.

Audit Committee

The governance group charged with independent assurance of the adequacy of the risk management framework, the internal control environment and the integrity of financial reporting.

Internal Audit

An assurance function that provides an independent and objective opinion to the organisation on the control environment, by evaluating its effectiveness in achieving the organisation's objectives.

Head of Profession

The leading professionally qualified accountant charged with promoting professional standards within the organisation.

Annual Governance Report

The mechanism by which an organisation publicly reports on its governance arrangements each year.

Public Service Organisation

One or more legal bodies managed as a coherent operational entity with the primary objective of providing goods or services that deliver social benefits for civic society, are not privately owned, and receive public and/or charitable funding.

¹ *The Good Governance Standard for Public Services 2004*

² *CIPFA FM Model 2009*

introducing the CIPFA Statement

This Statement on the role of the Chief Financial Officer (CFO) in Local Government aims to give detailed advice on how to apply the overarching public services Statement within local government. The CFO in local government is not only bound by professional standards but also by specific legislative responsibilities. The role and responsibilities of the 'Treasurer' were developed by case law in England and Wales. In *Attorney General v De Winton* 1906, it was established that the Treasurer is not merely a servant of the authority, but holds a fiduciary responsibility to the local taxpayers. Section 151 of the Local Government Act 1972² requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a CFO to have responsibility for those arrangements

Section 95 of the Local Government (Scotland) Act 1973 requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a CFO to have responsibility for those arrangements. In Northern Ireland, section 54 of the Local Government Act (Northern Ireland) 1972 requires local authorities to make safe and efficient arrangements for the receipt of money paid to it and the issue of money payable by it and for those arrangements to be carried out under the supervision the chief financial officer.

This Statement sets out how the requirements of legislation and professional standards should be fulfilled by CFOs in the carrying out of their role. The Statement is not intended to be exhaustive and does not negate the personal responsibility of finance professionals to ensure that they comply with all professional standards and legislative requirements. It is intended to codify the key responsibilities of the CFO in local government and assist those carrying out that role in ensuring that they meet the key personal duties of the role. The Statement refers to CIPFA's Statement of Professional Practice with which all CIPFA members are required to comply. For members of other accountancy bodies this represents best practice within the public sector. All professional accountants should also have regard to their own body's Code of Ethics as well as that produced by International Ethics Standards Board for Accountants (IESBA) on behalf of the International Federation of Accountants (IFAC).

Contained with the appendices for completeness is a description of the legislative framework.

² for the Greater London Authority and its four functional bodies (Transport for London, the London Development Agency, the Metropolitan Police Authority and London Fire and Emergency Planning Authority.) the chief finance officer is not a s151 officer but a s127 officer (GLA Act 1999). For the City of London the chief finance officer the 1989 Local Government and Housing Act that places the Chamberlain in the same relationship to the Court of Common Council as applies to local authority Chief Financial Officers to their councils

using the CIPFA Statement

Statement approach and structure

The Statement sets out the five principles that define the core activities and behaviours that belong to the role of the CFO in public service organisations and the organisational arrangements needed to support them. Successful implementation of each of the principles requires the right ingredients in terms of:

- The Organisation;
- The Role: and
- The Individual.

For each principle the Statement sets out the governance arrangements required within an organisation to ensure that CFOs are able to operate effectively and perform their core duties. The Statement also sets out the core responsibilities of the CFO role within the organisation. Many of the day-to-day responsibilities may in practice be delegated or even outsourced, but the CFO should maintain oversight and control.

Summaries of personal skills and professional standards then detail the leadership skills and technical expertise organisations can expect from their CFO. These include the key requirements of CIPFA and the other professional accountancy bodies' codes of ethics and professional standards to which the CFO as a qualified professional is bound. The personal skills described have been aligned with the most appropriate principle, but in many cases can support other principles as well.

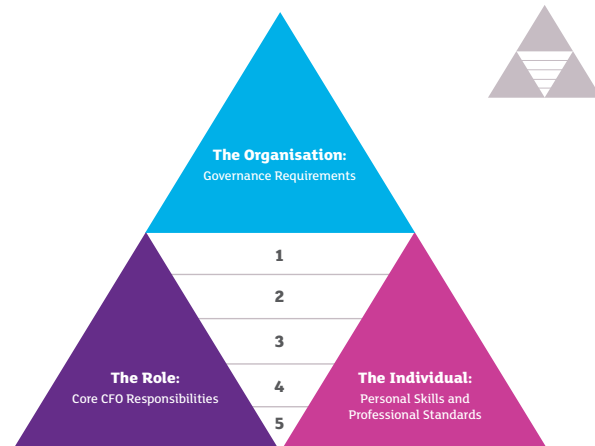
Cipfa Statement on the role of the Chief Financial Officer (CFO) in public service organisations

The CFO in a public service organisation:

- 1 is a key member of the Leadership Team, helping it to develop and implement strategy and to resource and deliver the organisation's strategic objectives sustainably and in the public interest;
- 2 must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and alignment with the organisation's financial strategy; and
- 3 must lead the promotion and delivery by the whole organisation of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently and effectively.

To deliver these responsibilities the CFO:

- 4 must lead and direct a finance function that is resourced to be fit for purpose; and
- 5 must be professionally qualified and suitably experienced.



\ principle 1



The Chief Financial Officer in a local authority is a key member of the Leadership Team, helping it to develop and implement strategy and to resource and deliver the authority's strategic objectives sustainably and in the public interest.

Key member of the Leadership Team

The Leadership Team in public services organisations takes many forms, with different mixes of executive and non-executive members and elected representatives. Collectively the Leadership Team are responsible for setting the strategic direction for the organisation, its implementation and the delivery of public services. In recognition of the centrality of financial issues to organisational success it is UK government policy that all government departments should have a professional CFO reporting directly to the permanent secretary with a seat on the departmental board, with a status equivalent to other Board members. HM Treasury recommends 'It is good practice for all other public sector organisations to do the same, and to operate the same standards'. CIPFA fully supports the Treasury's recommendation.

Local authorities operate a number of different democratic models. In local authorities, therefore, the concept of the leadership team will include executive committees, elected mayors, portfolio holders with delegated powers and other key committees of the authority. The CFO should play a key role within these leadership teams whilst balancing their responsibility to advise all members.

Local authorities are required to have a suitably qualified CFO with certain defined responsibilities and powers. The governance requirements in the Statement are that the CFO should be professionally qualified, report directly to the Chief Executive and be a member of the Leadership Team, with a status at least equivalent to other members. The Statement requires that if different organisational arrangements are adopted the reasons should be explained publicly in the authority's Annual Governance Report, together with how these deliver the same impact.

Developing and implementing organisational strategy

All local authorities face competition for limited public funds and have to balance expenditure needs against the burden of local taxation. Many will have allocated cash limits, while others have tax raising powers. All will be concerned to examine opportunities, with suitable assessment of legal powers and risk, for building income streams, whether through attracting external grants, charging for services, or commercial activity. Strategic planning needs to be based on an understanding of the external political landscape, the authority's demand and cost drivers, and the need to manage and fund longer term commitments on a sustainable basis. Finance translates ambitions and goals across the authority into a common language, so the CFO must share in the strategy development and implementation responsibilities of the Leadership Team. These include supporting elected representatives under the proper governance arrangements and the CFO must be in a position to provide unfettered advice to elected representatives to inform their decision making. The CFO must also ensure the members of the Leadership Team have the financial capabilities necessary to perform their own roles effectively.

The CFO must encourage continuous improvement and development to enable the authority to deliver at the highest levels. As well as having the fundamental concern for probity and control, the CFO must be proactive in managing change and risk, be focussed on outcomes, and help to resource the authority's plans for change and development in the public services it provides. As a key member of the Leadership Team, the CFO must also behave in ways that are consistent with the authority's agreed values and objectives.

³ HM Treasury 'Managing Public Money' Annex 4.1. 2007

⁴ The officer appointed as the CFO must, by virtue of section 113 of the Local Government Finance Act 1988 in England and Wales, be a member of a specified accountancy body¹³. There is no equivalent statutory requirement in Northern Ireland and Scotland although in both cases, this is widely acknowledged to be good practice.

⁵ The Annual Governance Statement is currently voluntary in Scotland.

⁶ Under s.114 of the 1988 Local Government Act, applying to England and Wales

Helping resource and deliver organisational objectives

There is a growing trend for CFOs to hold a range of different responsibilities beyond finance, including managing other services or leading change programmes. Whilst these can develop the individual as a corporate manager, authorities must not let the CFO's core financial responsibilities be compromised through creating too wide a portfolio. Dilution and/or overload in the role of the CFO can result in poor financial outcomes for the authority. Setting out the core CFO responsibilities in this Statement is intended to allow local authorities and their CFOs to assess their job descriptions to ensure that their core finance responsibilities can be properly performed.

Local authorities also need to engage with partners through a range of collaborative or commissioned relationships in order to realise their goals. Partnership working and the focus on community outcomes mean that the CFO needs to understand the financial risks and potential liabilities that may impact on the authority and have appropriate involvement in partnerships' business decisions. The CFO must therefore work to develop strong and constructive working relationships with key decision makers in partner organisations.

Delivering the authority's strategic objectives sustainably and in the public interest

Local authorities have a corporate responsibility to operate within available resources and to remain financially sound over the short, medium and longer term. Maximising public value involves an appreciation of user needs, expectations and preferences, and the planning process must allow for their involvement and influence. The internal process to determine priorities often then needs to grapple with service rationing and difficult trade-offs between different groups of service users, as well as between present and future benefits. The overarching long term need to match financial resources to the authority's purposes and policies, within constraints of affordability, taken with the responsibility to citizens and taxpayers for financial stewardship, mean that the CFO must contribute actively to cross organisational issues and to corporate decision making to match resources to the authority's objectives.

Public finance is complex and highly regulated, and the CFO must contribute expert technical

advice and interpretation. CFOs must act in the public interest, even if necessary against a perceived organisational interest. In some types of public service organisation, including local authorities, this professional obligation is given statutory backing, and a fiduciary duty is established in case law. In *Attorney General v De Winton* 1906, it was established that the Treasurer is not merely a servant of the authority, but holds a fiduciary responsibility to the local taxpayers. This remains applicable to the CFO.

Section 151 of the Local Government Act 1972 requires that every local authority in England and Wales should "... make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs". Section 95 of the Local Government (Scotland) Act 1973 substantially repeats these words for Scottish authorities. In Northern Ireland, section 54 of the Local Government Act (Northern Ireland) 1972 requires that "A council shall make safe and efficient arrangements for the receipt of money paid to it and the issue of money payable by it and those arrangements shall be carried out under the supervision of such officer of the council as the council designates as its CFO."

The CFO's duties in England and Wales were significantly extended by section 114 of the 1988 Act which requires a report to all the local authority's members to be made by that officer, in consultation with the monitoring officer and head of paid service¹⁵, if there is or is likely to be unlawful expenditure or an unbalanced budget. Section 114 does not apply to Scotland – instead the requirement to set a balanced budget is established in s108(2) of the Local Government (Scotland) Act 1973 and s93(3) of the Local Government Finance Act 1992. In Northern Ireland, the equivalent duty – whilst not specified in statute – would rest with the authority's CFO in keeping with the statutory responsibility under section 54 of the Local Government Act (Northern Ireland) 1972.

As holders of the 'red card'¹⁶, the CFO must exercise a professional responsibility to intervene in spending plans in order to maintain the balance of resources so that the authority remains in sound financial health. To ensure that the necessary corrective action is implemented, the CFO must have direct access to the Chief Executive, other Leadership Team members, the Audit Committee and also to external audit.



Governance requirements

Principle 1

- Set out a clear statement of the respective roles and responsibilities of the Leadership Team and its members individually.
- Ensure that the CFO reports directly to the Chief Executive and is a member of the Leadership Team with a status at least equivalent to other members.
- If different organisational arrangements are adopted, explain the reasons publicly, together with how these deliver the same impact.
- Determine a scheme of delegation and reserve powers, including a formal schedule of those matters specifically reserved for collective decisions by the Board, and ensure that it is monitored and updated.
- Ensure that authority's governance arrangements allow the CFO:
 - to bring influence to bear on all material business decisions; and
 - direct access to the Chief Executive, other Leadership Team members, the Audit Committee and external audit.
- Review the scope of the CFO's other management responsibilities to ensure financial matters are not compromised.
- Assess the financial skills required by members of the Leadership Team and commit to develop those skills to enable their roles to be carried out effectively.



Core CFO responsibilities

Principle 1

- Contributing to the effective leadership of the authority, maintaining focus on its purpose and vision through rigorous analysis and challenge.
- Contributing to the effective corporate management of the authority, including strategy implementation, cross organisational issues, integrated business and resource planning, risk management and performance management.
- Supporting the effective governance of the authority through development of
 - corporate governance arrangements, risk management and reporting framework; and
 - corporate decision making arrangements.
- Leading or promoting change programmes within the authority.
- Leading development of a medium term financial strategy and the annual budgeting process to ensure financial balance and a monitoring process to ensure its delivery.

⁷ CIPFA LAAP Bulletin on Local Authority Reserves



Personal skills and professional standards

Principle 1

- Role model, energetic, determined, positive, robust and resilient leadership, able to inspire confidence and respect, and exemplify high standards of conduct.
- Adopt a flexible leadership style, able to move through visioning to implementation and collaboration/consultation to challenge as appropriate.
- Build robust relationships both internally and externally.
- Work effectively with other Leadership Team members with political awareness and sensitivity.
- Support collective ownership of strategy, risks and delivery.
- Address and deal effectively with difficult situations.
- Demonstrate best practice in change management and leadership.
- Balance conflicting pressures and needs, including short and longer term trade-offs.
- Demonstrate strong commitment to innovation and performance improvement.
- Manage a broad portfolio of services to meet the needs of diverse communities.
- Maintain an appropriate balance between the technical financial aspects of the CFO role and broader focus on the environment and stakeholder expectations and needs.
- Comply with the IFAC Code of Ethics for Professional Accountants, as implemented by local regulations and accountancy bodies, as well as other ethical standards that are applicable to them by virtue of their professional status as a member of CIPFA or another accountancy institute. The fundamental principles set out in the Code are integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. Impartiality is a further fundamental requirement of those operating in the public services.

\ principle 2



The CFO in a local authority must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and alignment with the authority's overall financial strategy.

Responsibility for financial strategy

No organisation can achieve its goals effectively without proper structures for allocating and optimising the use of resources. The centrality of finance means the CFO must play the lead role in advising and supporting the leadership team in turning policy aspirations into reality by aligning financial planning with the vision and strategic objectives for the authority.

Within the overall corporate governance and management structure, the CFO has direct responsibility for leading development and implementation of the financial strategy necessary to deliver the authority's strategic objectives sustainably. The CFO must therefore work closely with decision makers to establish a medium to long term strategy that ensures the financial sustainability of the authority.

The CFO must also develop and manage resource allocation models to optimise service outputs and community benefits within funding constraints and any tax raising limits. In implementing these models, the CFO must ensure that the financial and risk implications of policy initiatives are analysed and appropriately addressed. Models must encompass capital investment programmes and annual operations, as well as financial targets and benchmarks. They must also take into account future commitments, resources available and the desirable levels of reserves, to ensure that the authority's finances remain sustainable.

The statutory guidance⁸ issued by the Secretary of State under the 2000 Local Government Act (England and Wales) advises that local authorities will need to ensure that the CFO and the monitoring officer have access as necessary to meetings and papers and that members must consult with him/her regularly⁹. The advice

continues that the finance director will have an important role in the management of the local authority in particular by

- contributing to corporate management in particular to the provision of professional financial advice
- maintaining financial administration and stewardship
- supporting and advising all members and officers in their respective roles
- providing financial information to the media, members of the public and the community.

There is no equivalent legislative requirement in Scotland or Northern Ireland, but the guidance is equally relevant.

Influencing decision making

Local authorities must be rigorous in their decision making, be explicit about the reasons for their decisions and record the supporting information and expected impact. This requires the CFO to be actively involved in, and able to bring influence to bear on all material business decisions whenever and wherever they are taken.

The CFO must be able to advise the Leadership Team directly, including elected representatives, in order to discharge responsibilities in relation to the authority's financial health and long term viability. The CFO must therefore be a persuasive and confident communicator with the status and credibility to challenge others, and influence material business decisions. The CFO's advice and reports to the Leadership Team must be clear, concise, relevant and timely, highlighting issues that the team needs to be aware of, and options for action.

⁸ New Council Constitutions, Local Government Act 2000 – guidance to English local authorities, chapter 8 – officers' roles under executive arrangements, DETR, October 2000

⁹ In Wales the statutory guidance does not include this reference but implies that this should be the case.

The CFO must also work to develop strong and constructive working relationships with both the executive and non executive members of the authority's leadership, creating mutual respect and effective communication. Providing information and advice to elected officials as a public servant will call on an understanding of ethics, the wider public interest, and diplomacy.

The Local Government Act 2003 and Local Government Scotland Act 2003 emphasise the importance of sound and effective financial management. In relation to capital financing there is a statutory requirement for each local authority to set and arrange their affairs to remain within prudential limits for borrowing and capital investment. Advice on fulfilling this responsibility is set out in CIPFA's Prudential Code¹⁰.

In England and Wales there is also a statutory duty on the CFO to report to the authority, at the time the budget is considered and the council tax set, on the robustness of the budget estimates and the adequacy of financial reserves. This is a public report. In addition, the Secretary of State in England or the National Assembly for Wales have reserve powers to specify in regulations a statutory minimum level of reserves that will be used if authorities fail to remedy deficiencies or run down reserves against the advice of the CFO. There is no equivalent specific legislation in Scotland or Northern Ireland.

The CFO also has a key role to play in fulfilling the requirements of the statutory duty¹¹ to keep the authority's finances under review during the year and take action if there is evidence that financial pressures will result in a budget overspend or if there is a shortfall in income.

Financial information for decision makers

At all levels in the authority those taking decisions must be presented with relevant, objective and reliable financial analysis and advice, clearly setting out the financial implications and risks.

The CFO has an important role in ensuring necessary financial information and advice is provided to the Leadership Team and decision makers at all levels across the authority. Meaningful financial analysis and robust and impartial interpretation is a key component in performance management, asset management, investment appraisal, risk management and control.

Although not a specific responsibility of CFOs alone, they – along with the monitoring officer and chief legal officer – should be alert to the 'Wednesbury' rules¹² which emphasise the importance of ensuring that when developing policy all relevant matters are properly considered. The judgement in the case stated that an authority's action in exercise of a statutory discretion would only be regarded unreasonable, in excess of the powers given by Parliament and therefore invalid if

- in making its decision it took into account matters which it ought not to take into account, or
- it did not take into account matters which it should have taken into account, or
- even if the two previous conditions were satisfied the conclusion was so unreasonable that no reasonable authority could ever come to it.

These principles apply regardless of whether decisions on policy are taken by individual members or collectively. In order to demonstrate that these principles have been observed it is important that policy decisions and the associated advice are – as a matter of routine – well and clearly documented. The 'Wednesbury' rules do not apply specifically in Scotland or Northern Ireland, but adherence to these will demonstrate good governance and proper decision making.

10 The Prudential Code for Capital Finance in Local Authorities (Fully Revised Second Edition 2009)

11 Section 28, Local Government Act 2003

12 Associated Provincial Picture Houses v Wednesbury Corporation (1948).



Governance requirements

Principle 2

- Establish a medium term business and financial planning process to deliver the authority's strategic objectives, including:
 - a medium term financial strategy to ensure sustainable finances;
 - a robust annual budget process that ensures financial balance; and
 - a monitoring process that enables this to be delivered.
- Ensure that these are subject to regular review to confirm the continuing relevance of assumptions used.
- Ensure that professional advice on matters that have financial implications is available and recorded well in advance of decision making and used appropriately.
- Ensuring that budget calculations are robust and reserves adequate, in line with CIPFA's guidance.
- Ensure that those making decisions are provided with information that is fit for purpose –relevant, timely and giving clear explanations of financial issues and their implications.
- Ensure that timely, accurate and impartial financial advice and information is provided to assist in decision making and to ensure that the authority meets its policy and service objectives and provides effective stewardship of public money and value for money in its use.
- Ensure that the authority maintains a prudential financial framework; keeps its commitments in balance with available resources; monitors income and expenditure levels to ensure that this balance is maintained and takes corrective action when necessary.
- Ensure that advice is provided on the levels of reserves and balances in line with good practice guidance
- Ensure compliance with CIPFA's Code on a Prudential Framework for Local Authority Capital Finance and CIPFA's Treasury Management Code.
- Ensure that appropriate management accounting systems, functions and controls are in place so that finances are kept under review on a regular basis. These systems, functions and controls should apply consistently to all activities including partnerships arrangements, outsourcing or where the authority is acting in an enabling role.
- Ensure the provision of clear, well presented, timely, complete and accurate information and reports to budget managers and senior officers on the budgetary and financial performance of the authority.

¹³ LAAP 77 - Local Authority Reserves and Balances, <http://www.cipfa.org.uk/pt/download/laap77.pdf>

**Responsibility for financial strategy**

- Agreeing the financial framework with sponsoring organisations and planning delivery against the defined strategic and operational criteria.
- Maintaining a long term financial strategy to underpin the authority's financial viability within the agreed performance framework.
- Implementing financial management policies to underpin sustainable long-term financial health and reviewing performance against them.
- Appraising and advising on commercial opportunities and financial targets.
- Developing and maintaining an effective resource allocation model to deliver business priorities.
- Leading on asset and balance sheet management.
- Co-ordinating the planning and budgeting processes.

Influencing decision making

- Ensuring that opportunities and risks are fully considered and decisions are aligned with the overall financial strategy.
- Providing professional advice and objective financial analysis enabling decision makers to take timely and informed business decisions.
- Ensuring that efficient arrangements are in place and sufficient resources available to provide accurate, complete and timely advice to support councillors' strategy development.
- Ensuring that clear, timely, accurate advice is provided to the executive in setting the funding plan/budget.
- Ensuring that advice is provided to the scrutiny function in considering the funding plan/budget.
- Ensuring that the authority's capital projects are chosen after appropriate value for money analysis and evaluation using relevant professional guidance.
- Checking, at an early stage, that innovative financial approaches comply with regulatory requirements.

Financial information for decision makers

- Monitoring and reporting on financial performance that is linked to related performance information and strategic objectives that identifies any necessary corrective decisions.
- Preparing timely management accounts.
- Ensuring the reporting envelope reflects partnerships and other arrangements to give an overall picture.



Personal skills and professional standards

Principle 2

- Take all reasonable steps to ensure that:
 - budgets are planned as an integral part of the strategic and operational management of the authority and are aligned with its structure of managerial responsibilities.
 - budgets are constructed on the basis of reliable data of past performance and rigorous assessments of future resources and commitments, and that policies and priorities are evaluated in an open, consistent and thorough manner.
 - responsibilities for budget management and control are unambiguously allocated, that commitments are properly authorised, and that budgets are related to clear objectives and outputs.
 - the accounting and financial information systems make available, at the relevant time to all users, the appropriate information for their responsibilities and for the objectives of the authority.
- Implement other appropriate management, business and strategic planning techniques.
- Link financial strategy and overall strategy.
- Demonstrate a willingness to take and stick to difficult decisions – even under pressure.
- Take ownership of relevant financial and business risks.
- Network effectively within the authority to ensure awareness of all material business decisions to which CFO input may be necessary.
- Role model persuasive and concise communication with a wide range of audiences internally and externally.
- Provide clear, authoritative and impartial professional advice and objective financial analysis and interpretation of complex situations.
- Apply relevant statutory, regulatory and professional standards both personal and organisational.
- Demonstrate a strong desire to innovate and add value.
- Challenge effectively, and give and receive constructive feedback.
- Operate with sensitivity in a political environment.

\ principle 3



The CFO in a local authority must lead the promotion and delivery by the whole authority of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently, and effectively.

Promotion and delivery of good financial management

Good financial management is fundamental to establishing confidence in the public services and good relationships with the taxpayer and other funders. The Leadership Team collectively needs to set the tone that financial management is core to achieving strategic aims, and to demonstrate that public money is used well. Nevertheless it is the CFO who must take the lead in establishing a strong framework for implementing and maintaining good financial management across the authority. The CFO will be instrumental in assessing the existing organisational style of financial management and the improvements needed to ensure it aligns with the authority's strategic direction.

Financial management is the business of the whole authority. When the Leadership Team, managers and the finance function all fulfil their financial management responsibilities successfully, they collectively create the financially literate and adept authority. The CFO must actively promote financial literacy throughout the authority, so that the Leadership Team and managers can discharge their financial management responsibilities, alongside their wider responsibilities in relation to risk and performance management.

Best Value and Value for money

The CFO has a key role to play in balancing control and compliance with value creation and performance. Better value for money releases resources that can be recycled into higher priorities, without increasing taxation. Helping to secure positive social outcomes within affordable funding therefore lies at the heart of the CFO's role in the local authority.

With the foundations in place, good financial management will focus on stretching limited resources to maximise value for the public service. Value for money (economy, efficiency

and effectiveness) should be the concern of all managers, but the CFO will need to take the lead in coordinating and facilitating a culture of efficiency and value for money. This will involve approaches and techniques such as

- Enabling the authority to measure value for money, and making sure that it has the information to review value for money and performance effectively;
- Advising on appropriate strategies for managing assets and stretching utilisation, and the productive use of other resources;
- Providing leadership in using and developing efficiency tools and techniques, including benchmarking, IT, shared services, process analysis and cost management, collaborating with others where this is more efficient, effective or economical; and
- Ensuring the rigorous financial appraisal and oversight of change programmes, income generation proposals and investment projects.

Safeguarding public money

The CFO must lead the implementation and maintenance of a framework of financial controls and procedures for managing financial risks, and must determine accounting processes and oversee financial management procedures that enable the authority to budget and manage within its overall resources. At the most fundamental level this means ensuring robust systems of risk management and internal control, that financial control is exercised consistently, and that the authority implements appropriate measures to protect its assets from fraud and loss.

The CFO also has a specific role with regard to stewardship. This includes ensuring that the governance structures codify financial control, internal control, risk management and assurance, as well as defining a framework of financial

¹⁴ Since July 2001 in England and Wales the Monitoring Officer cannot also be the Head of Paid Service or the Chief Financial Officer – see schedule 5, Para 24 of the Local Government Act 2000 which inserts a new subsection 1A in section 5 of the Local Government and Housing Act 1989. In Scotland section 5(1) para b of the Local Government and Housing Act 1989 makes it each Council's duty to appoint a monitoring officer (MO) – the MO may be the head of paid service but shall not be the authority's CFO.

accountabilities and reporting. In addition to the finance director's responsibilities to the authority, a wider role also exists in relation to the general public. The local authority is regarded as the trustee of local citizens' money, and the finance director has the prime obligation and duty to them to manage the authority's resources prudently on their behalf as established in the 1906 de Winton case.

In effect this means that the finance director has a personal responsibility for the stewardship and safeguarding of public money and for demonstrating that high standards of probity exist. Strong financial management, accurate financial reporting and effective financial controls are therefore central to the finance director's role in local government. This role was strengthened by the Local Government Finance Act 1988 (in England and Wales), which requires the finance director to report inappropriate financial management as well as wrongdoing.

Section 114 of the 1988 Act requires a report to all the local authority's members to be made by that officer, in consultation with the monitoring officer and head of paid service, if there is or is likely to be unlawful expenditure or an unbalanced budget. Section 114 does not apply to Scotland – instead the requirement to set a balanced budget is established in s108(2) of the Local Government (Scotland) Act 1973 and s93(3) of the Local Government Finance Act 1992. In Northern Ireland, the equivalent duty – whilst not specified in statute – would rest with the authority's CFO in keeping with the statutory responsibility under section 54 of the Local Government Act (Northern Ireland) 1972. Further guidance recommending courses of action to be followed when a report under s114 may be required is attached at appendix C to this Statement. Although section 114 does not apply to Scotland or Northern Ireland the principles that underlie it and the actions proposed in appendix C are recommended to finance directors as a means of discharging their overall responsibility for sound financial management.

Consistency of standards and transparency in financial activities are essential. In this context, CIPFA's view is that the statutory role of the CFO does not stop at the boundaries of the local authority but extends into its partnerships, devolved arrangements, joint ventures and companies in which the authority has an interest.

Assurance and scrutiny

Accountability for public expenditure is a core requirement for local authorities. They are held accountable by intermediary stakeholders, such

as scrutiny groups, service inspectorates and external auditors, and by primary stakeholders: the citizens, service users, funders and taxpayers.

Managing information flows is a key component of the CFO's role as an ambassador for the authority on financial matters and in building relationships with stakeholders. The CFO must also provide information and advice to those who officially scrutinise and review the authority; funders, regulators, and external audit, and any group which exercises scrutiny internally. The community, taxpayers and the press also expect information.

Internal audit is an important independent internal scrutiny activity. The CFO must support the authority's internal audit arrangements and ensure that the Audit Committee receives the necessary advice and information, so that both functions can operate effectively.

Public service providers face a variety of regulatory requirements and standards for external financial reporting, while measures of value are expressed both as financial and as non-financial performance targets. The role of the CFO in external reporting is to meet the reporting requirements relevant to the authority and to apply professional good practice, conscious of the needs of users. External financial reporting must be of good quality, supported by analysis and documentation and should receive an unqualified audit opinion. This will be facilitated if the CFO maintains a constructive professional relationship with external auditors and inspectors.

The Accounts and Audit Regulations 2003 (England and Wales), in Scotland, the Local Authority Accounts (Scotland) Regulations 1985 and in Northern Ireland the Local Government (Account and Audit) regulations (Northern Ireland) 2006 impose responsibilities on the finance director relating to accounting records and supporting information, control systems and the statement of accounts.

A key feature of the Regulations in England and Wales is the requirement for internal audit. Regulation 6 requires that a 'relevant body shall maintain an adequate and effective system of internal audit of its accounting records and its system of internal control'. Similar references exist for Northern Ireland in regulation 3a of the Local Government (Account and Audit) regulations (Northern Ireland) 2006. Although there is no specific reference to internal audit for Scotland the successful discharge of the finance director's responsibilities depends in part on effective internal audit.



Governance requirements

Principle 3

- Make the CFO responsible for ensuring that appropriate advice is given on all financial matters, for keeping financial records and accounts, and for maintaining an effective system of financial control.
- Ensure that systems and processes for financial administration, financial control and protection of the authority's resources and assets are designed in conformity with appropriate ethical standards and monitor their continuing effectiveness in practice.
- Ensure that the authority puts in place effective internal financial controls covering codified guidance, budgetary systems, supervision, management review and monitoring, physical safeguards, segregation of duties, accounting procedures, information systems and authorisation and approval processes. Ensuring that these controls are an integral part of the authority's underlying framework of corporate governance and that they are reflected in its local code.
- Address the authority's arrangements for financial and internal control and for managing risk in Annual Governance Reports.
- Publish annual accounts on a timely basis to communicate the authority's activities and achievements, its financial position and performance.
- Ensure an effective internal audit function is resourced and maintained.
- Develop and maintain an effective Audit Committee.
- Ensure that the authority makes best use of resources and that taxpayers and/or service users receive value for money.
- Embed financial competencies in person specifications and appraisals.
- Assess the financial skills required by managers and commit to develop those skills to enable their roles to be carried out effectively.
- Ensure that councillors' roles and responsibilities for monitoring financial performance/budget management are clear, that they have adequate access to financial skills, and are provided with appropriate financial training on an ongoing basis to help them discharge their responsibilities.

**Promotion of financial management**

- Assessing the authority's financial management style and the improvements needed to ensure it aligns with the authority's strategic direction.
- Actively promoting financial literacy throughout the authority.
- Assisting the development of a protocol which clearly sets out the roles and responsibilities of both democratically elected councillors, whether acting in executive or scrutiny roles, and of officers for financial management, including delegated authority/powers.

Value for money

- Challenging and supporting decision makers, especially on affordability and value for money, by ensuring policy and operational proposals with financial implications are signed off by the finance function.
- Advising on the financial thresholds for 'key' decisions where there is a requirement to do so.
- Developing and maintaining appropriate asset management and procurement strategies.
- Managing long term commercial contract value.

Safeguarding public money

- Applying strong internal controls in all areas of financial management, risk management and asset control.
- Establishing budgets, financial targets and performance indicators to help assess delivery.
- Implementing effective systems of internal control that include standing financial instructions, operating manuals, and compliance with codes of practice to secure probity.
- Ensuring that the authority has put in place effective arrangements for internal audit of the control environment and systems of internal control as required by professional standards and in line with CIPFA's Code of Practice.
- Ensuring that delegated financial authorities are respected.
- Promoting arrangements to identify and manage key business risks, including safeguarding assets, risk mitigation and insurance.
- Overseeing of capital projects and post completion reviews.
- Applying discipline in financial management, including managing cash and banking, treasury management, debt and cash flow, with appropriate segregation of duties.
- Ensuring the effective management of cash flows, borrowings and investments of the authority's own funds or the pension and trust funds it manages on behalf of others; ensuring the effective management of associated risks; pursuing optimum performance or return consistent with those risks.
- Implementing appropriate measures to prevent and detect fraud and corruption.
- Establishing proportionate business continuity arrangements for financial processes and information.
- Ensuring that any partnership arrangements are underpinned by clear and well documented internal controls.

Assurance and scrutiny

- Reporting performance of both the authority and its partnerships to the board and other parties as required.
- Ensuring that financial and performance information presented to members of the public, the community and the media covering resources, financial strategy, service plans, targets and performance is accurate, clear, relevant, robust and objective.
- Supporting and advising the Audit Committee and relevant scrutiny groups.
- Ensuring that clear, timely, accurate advice is provided to the executive and the scrutiny functions on what considerations can legitimately influence decisions on the allocation of resources, and what cannot.
- Preparing published budgets, annual accounts and consolidation data for government-level consolidated accounts.
- Ensuring that the financial statements are prepared on a timely basis, meet the requirements of the law, financial reporting standards and professional standards as reflected in the Code of Practice on Local Authority Accounting in the United Kingdom developed by the CIPFA/LASAAC Joint Committee.
- Certifying the annual statement of accounts.
- Ensuring that arrangements are in place so that other accounts and grant claims (including those where the authority is the accountable body for community led projects) meet the requirements of the law and of other partner organisations and meet the relevant terms and conditions of schemes
- Liaising with the external auditor.



- CFOs should take all reasonable steps to ensure that:
 - effective systems and procedures operate to monitor progress against budgets and their objectives at regular intervals, and that appropriate reporting mechanisms are in place.
 - that payments, including benefits and taxation, are made on time, accurately and in accordance with legal requirements.
 - Cash is handled with special care to avoid loss, particularly loss through theft and secure arrangements are in place to deal with the handling of electronic or other cash-less transactions.
 - the accounting and financial information systems provide an accessible, complete, comprehensive, consistent and accurate record of the authority's financial transactions.
 - all financial reports are relevant, reliable and consistent, are compatible with the authority's accounting and financial information systems available, at the relevant time to all users, the appropriate information for their responsibilities and for the objectives of the authority.
 - Within the specific legislative framework for each authority, systems exist to secure the efficient and effective management of taxes, in particular to ensure that tax liabilities and obligations are properly reported and accounted for and to prevent any tax losses.
 - Treasury management is carried out in accordance with CIPFA's treasury management code and that effective treasury management arrangements are in place.
- Generate 'buy-in' to, and support delivery of, good financial management across the authority.
- Develop and sustain partnerships, and engage effectively in collaboration.
- Deploy effective facilitation and meeting skills.
- Build and demonstrate commitment to continuous improvement and innovative, but risk-aware, solutions.
- Place stewardship and probity as the bedrock for management of the authority's finances.

\ principle 4



The CFO in a local authority must lead and direct a finance function that is resourced to be fit for purpose.

Meeting the finance needs of the business

The organisation of finance functions is changing rapidly. Traditionally they have been centralised services, but increasingly they include devolved finance teams in business areas. Arrangements may also now include outsourced functions, or services shared between organisations.

Whatever the structure, a strong customer focus both externally and internally must be a key feature of the way the finance function does business. It must support the authority's broader development agenda, by appraising investment options and change programmes and contributing creative financial solutions within an effective risk management framework.

The finance function must also have a firm grasp of the authority's financial position and performance. The CFO must ensure that there is sufficient depth of financial expertise, supported by effective systems, to discharge this responsibility and challenge those responsible for the authority's activities to account for their financial performance. The resources available must be proportionate to the complexity of the financial environment.

Section 114(7) of the Local Government Finance Act 1988 requires authorities in England and Wales to provide their CFO (CFO) with 'such staff, accommodation and other resources as are in his opinion sufficient to allow his duties under this section (ie s114) to be performed'. There is no equivalent requirement in Scotland or Northern Ireland.

Appropriately developed finance skills

The CFO must promote financial literacy throughout the authority, including championing training and development of relevant skills at all levels. However the CFO has a particular responsibility for learning and development amongst finance staff in order to ensure that both current and likely future finance skill needs are addressed. This will include identifying the competencies needed by the finance function, including specialist skills, and ensuring it can access the skills and experience to exercise stewardship of public finances, develop financial performance and contribute effectively to new organisational directions and innovation.

The CFO must ensure that the Head of Profession role for accountants and finance specialists authority-wide is properly discharged in order to ensure compliance with regulatory and professional standards. Exercising leadership on financial matters in a devolved environment will require a documented line of professional accountability to the CFO, where this is not a direct line management relationship.



Governance requirements

Principle 4

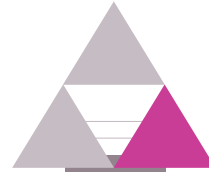
- Provide the finance function with the resources, expertise and systems necessary to perform its role effectively.
- Ensure there is a line of professional accountability to the CFO for finance staff throughout the authority..



Core CFO responsibilities

Principle 4

- Leading and directing the finance function so that it makes a full contribution to and meets the needs of the business.
- Determining the resources, expertise and systems for the finance function that are sufficient to meet business needs and negotiating these within the overall financial framework.
- Implementing robust processes for recruitment of finance staff and/or outsourcing of functions.
- Reviewing the performance of the finance function and ensuring that the services provided are in line with the expectations and needs of its stakeholders.
- Seeking continuous improvement in the finance function.
- Identifying and equipping finance staff, managers and the Leadership Team with the financial competencies and expertise needed to manage the business both currently and in the future.
- Ensuring that the Head of Profession role for all finance staff in the authority is properly discharged.
- Acting as the final arbiter on application of professional standards.



Personal skills and professional standards

Principle 4

- Create, communicate and implement a vision for the finance function.
- Role model a customer focussed culture within the finance function.
- Establish an open culture, built on effective coaching and a “no blame” approach.
- Promote effective communication within the finance department, across the broader authority and with external stakeholders.
- Apply strong project planning and process management skills.
- Set and monitor meaningful performance objectives for the finance team.
- Role model effective staff performance management.
- Coach and support staff in both technical and personal development.
- Promote high standards of ethical behaviour, probity, integrity and honesty.
- Ensure, when necessary, that outside expertise is called upon for specialist advice not available within the finance function.
- Promote discussion on current financial and professional issues and their implications.

\ principle 5



The CFO in a local authority must be professionally qualified and suitably experienced.

Demonstrating professional and interpersonal skills

The CFO must be able to demonstrate their own professional standing to exercise financial leadership throughout the authority. As a member of a professional body, the CFO's skills, knowledge and expertise will have been tested by examination and must be continuously developed in a structured and monitored context. The CFO must adhere to the professional values of accuracy, honesty, integrity, objectivity, impartiality, transparency and reliability and promote these throughout the finance function.

The CFO must communicate complex financial information in a clear and credible way. They should be able to operate effectively in different modes including directing, influencing, evaluating and informing. The CFO must also have the confidence to give impartial and objective advice even if it may be unwelcome, and be sufficiently forceful to intervene with authority if financial or ethical principles need to be asserted or defended.

The officer appointed as the CFO must, by virtue of section 113 of the Local Government Finance Act 1988 in England and Wales, be a member of a specified accountancy body. There is no equivalent statutory requirement in Northern Ireland and Scotland although in both cases, this is widely acknowledged to be good practice.

The statutory role must be performed by an 'officer' of the authority. Although 'officer' is not defined the legal view is that the terms 'staff' and 'officer' in the Local Government Act 1972 and elsewhere are intended to embrace all employees of local authorities¹⁴. It is permissible for an authority to procure non-statutory financial management services from an individual on the basis of a service contract.

Applying business and professional experience

The CFO must have an understanding and commitment to the wider business, looking beyond narrow financial objectives, to inspire respect, confidence and trust amongst colleagues, inspectors and stakeholders. In practice this means being creative and constructive in strategic roles and effective in management responsibilities, with a sound grasp of approaches such as performance management and project leadership.

The CFO must understand how and when to apply the tools and techniques of financial analysis in support of business decisions in order to evaluate proposals and to offer well founded and expert advice. Such techniques include strategic analysis, review of sector best practice, benchmarking, option appraisal, performance measurement, and risk assessment. However data is not always clear cut and the CFO must also be able to apply judgement to imperfect information.

The CFO must have a good understanding of public sector finance and its regulatory environment and comply with standards formulated through rigorous due process in support of the public interest to support the Leadership Team effectively. The CFO must also have a good understanding of the principles of financial management, and personally set a tone for the authority that finance matters and is a key part of everyone's job throughout the authority.

¹⁵ IFAC: Code of Ethics, 2005

¹⁶ Defined to mean a qualified member of one of the six bodies comprising the Consultative Committee of Accountancy Bodies (CCAB) in the UK and Ireland, that is

- Chartered Institute of Public Finance and Accountancy
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants of Scotland
- The Institute of Chartered Accountants in Ireland
- Chartered Institute of Management Accountants
- The Association of Chartered Certified Accountants.



Governance requirements

Principle 5

- Appoint a professionally qualified CFO whose core responsibilities include those set out under the other principles in this Statement and ensure that these are properly understood throughout the authority.
- Ensure that the CFO has the skills, knowledge, experience and resources to perform effectively in both the financial and non-financial areas of their role.



Personal skills and professional standards

Principle 5

- Be a member of an accountancy body recognised by the International Federation of Accountants (IFAC), qualified through examination, and subject to oversight by a professional body that upholds professional standards and exercises disciplinary powers.
- Adhere to international standards set by IFAC on:
 - ethics
 - Continuing Professional Development.Demonstrate IT literacy.
- Have relevant prior experience of financial management in the public services.
- Understand public service finance and its regulatory environment.
- Apply the principles of public financial management.
- Understand personal and professional strengths.
- Undertake appropriate development or obtain relevant experience in order to meet the requirements of the non-financial areas of the role.

Legislative Requirements

Section 151 of the Local Government Act 1972 – England And Wales

This section requires that every local authority in England and Wales should “make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs”.

The words “proper administration” are not statutorily defined nor have they received judicial consideration. Section 58 of the Local Government Act 1958 had somewhat narrower wording requiring authorities to make “safe and efficient” arrangements for the receipt and payment of money.

- “proper administration” requires a somewhat wider consideration of all aspects of local authority financial management and should include:
- compliance with the statutory requirements for accounting and internal audit
- ensuring the Authority’s (and ultimately its members’) responsibility for securing proper administration of its financial affairs (Lloyd v McMahon (1982) AC 625)
- proper exercise of a wide range of delegated powers both formal and informal (Provident Mutual Life Assurance Association v Derby City Council (1981) 1 WCR 173)
- responsibility for managing the financial affairs of the local authority in all its dealings
- recognition of the fiduciary responsibility owed to local taxpayers (Attorney General v De Winton (1906) 2 CH 106).

This view is strengthened by Section 113 of the Local Government Finance Act 1988 which requires the responsible officer under Section 151 of the 1972 Act to be a member of a specified accountancy body.

Section 95 of the Local Government (Scotland) Act 1973 - Scotland

Section 95 states that: -

“every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that the proper officer of the authority has responsibility for the administration of those affairs.”

The same considerations as to the meaning of ‘proper administration’ as set out above apply in Scotland. There is no equivalent statutory requirement to Section 113, Local Government Finance Act 1988, requiring the CFO to be a member of a specified accountancy body, in Scotland although in both cases, this is widely acknowledged to be good practice.

Section 54 of the Local Government Act (Northern Ireland) 1972 – Northern Ireland

Section 54 requires that “A council shall make safe and efficient arrangements for the receipt of money paid to it and the issue of money payable by it and those arrangements shall be carried out under the supervision of such officer of the council as the council designates as its CFO.”

The Northern Ireland Act uses the more narrow wording previously used under the 1958 Local Government Act. There is no equivalent statutory requirement to Section 113, Local Government Finance Act 1988, requiring the CFO to be a member of a specified accountancy body, in Northern Ireland although in both cases, this is widely acknowledged to be good practice.

Appendix A

Section 114 of the Local Government Finance Act 1988 – England And Wales

The responsible officer under Section 151 of the 1972 Act had his or her duties significantly extended by Section 114 of the 1988 Act which requires a report to all the Authority's members to be made by that officer, in consultation with the Council's Monitoring Officer, if there is, or is likely to be unlawful expenditure or an unbalanced budget.

Introduction

Section 114 (1) of the Local Government Finance Act 1988 places a duty on the Chief Finance Officer (CFO) as defined in that subsection to report certain matters to the authority. Serious consequences could follow making such a report and this note recommends sound procedures and consultation particularly with the authority's Chief Legal Officer (CLO)¹⁷ if that person is not the Monitoring Officer (in addition to consultation with the Head of Paid Service and the Monitoring Officer as required by law) prior to making the report.

The duty of the CFO to report is triggered if s(he) believes that a decision involves (or would involve) unlawful expenditure a course of action is unlawful and is likely to cause a loss or deficiency an entry of account is unlawful.

In those circumstances the CFO is required to make a report to the authority and send a copy to every member and the external auditor. The course of conduct which led to the report must not be pursued until the full council has considered the report. The council must consider the report within 21 days and decide whether it agrees or disagrees with the views in the report and what action it proposes to take.

Likewise the CFO must report to the authority where s(he) believes that the authority's expenditure is likely to exceed available resources. The authority is prevented from entering into any agreements incurring expenditure until the council has considered the report.

Regulations under the Local Government Act 2000 have amended section 114 for those authorities in England operating executive arrangements. In those cases such reports are submitted to full council in respect of non-executive functions and to the executive for executive functions.

Under the new sections 114A and 115B, the CFO's report about unlawful expenditure must be submitted to the executive, where it relates to actions taken by the executive. Copies must be sent also to all members of the authority and the external auditor (and the council manager if there is one).

All action in respect of such a report must be suspended until the executive has considered the report. The executive must provide a report to the authority, the CFO and the external auditor, explaining what action, if any, is to be taken and the reasons.

This guidance note is intended to assist in the provision of sound legal (and financial) advice to members of the authority but in the last analysis the duty to make a part VIII report is placed on the CFO and nothing in this note derogates from that responsibility.

The legislation raises issues that could place the CFO in conflict with his or her employers. The consequences of submitting a part VIII report are unlikely to be in the long term interests of the

¹⁷ reference is made to consulting the Chief Legal Officer (CLO). The statutory duty, however, is to consult the Head of Paid Service and Monitoring Officer (MO). The MO is often the CLO. Where s(he) is not, both should be consulted. (The reference to CLO may have originated from the practice in some authorities for the Chief Executive to also be the Monitoring Officer. Since 28 July 2001 the Monitoring Officer cannot also be the Chief Executive (Head of paid service). The Monitoring Officer cannot also be the Chief Financial Officer.)

Appendix A

authority, its officers (or even local government generally) if many have to be made. The need to issue a number of s114 reports would also indicate that there are underlying problems with the overall performance of the authority. Every action should be taken to avoid conflict by providing timely advice to elected members and where possible offering alternative lawful solutions on financial matters. However, at the end of the day section 114 imposes a statutory duty on the CFO.

Preliminary matters

The origin of information giving rise to consideration of the need for a part VIII report could be the CFO's staff, an officer, a member of the authority, a member of the public or the auditor. The attention of all elected members and all officers should be drawn to the duty of the CFO and to his or her responsibility for signalling possible subjects for investigation which may lead to a formal report. This could in part be achieved by including details of the CFO's statutory duty in the member/officers' protocol in the local authority's written constitution which must be prepared and maintained under section 37 of the 2000 Act. The topic should also be included in members' training programmes.

Making a report under sections 114 (2) and 114A(2) requires the CFO to make a decision that an act or omission is or could be unlawful; this decision should only be taken after full consultation with the Head of Paid Service, the authority's Monitoring Officer (MO) (and Chief Legal Officer (CLO) where the CLO is not the MO) whereas a report under section 114 (3) requires a financial judgement on (essentially) the budget which the CFO could take alone. Even in a section 114(3) report the CFO is required by statute to

consult the Head of Paid Service (chief executive) and the MO because other corporate and legal issues may well flow from the report and because there may be overlaps with the MO's duty to report to the authority about unlawfulness under the Local Government and Housing Act 1989 section 5.

MOs have a reciprocal duty to issue reports under section 5 of the 1989 Act and to consult the Head of Paid Service (chief executive) and CFO on their reports.

Circumstances of a developing situation (for example, shortage of budget resources or a prospective unlawful act) should be distinguished from the imminent or actual situation. Timing of a part VIII report will need careful thought and decision.

There may well be occasions when the chief executive (CE), the MO, the CLO or the CFO will be asked for a view on matters which the authority has under consideration but which if developed might lead to a part VIII report. A mere preliminary enquiry or request should not lead to a formal report under the Act. If the situation develops the need to report must be reviewed.

It is not considered that the provisions of sections 114 (2) and 114A (2) relate to cases of discovered fraud (which could be the subject of criminal prosecution) – these should normally be dealt with under the authority's financial regulations.

A decision will be needed whether to report or not on items which could be regarded as outside sections 114 (2) and 114 A (2) such as trivial expenditure or loss of income although there may be circumstances in which such a report may be justified.

Appendix A

In the case of action under section 114 (3) the need for a report arises only where an authority's total resources fall short of likely expenditure. It does not apply where, say, a committee's budget is overspent – this might be the subject of a report outside the provisions of part VIII although this could in some circumstances amount to a loss or deficiency under section 114 (2) (b) or 114 A (2) (b).

This note assumes that within the authority the CE, MO/CLO and CFO are three separate posts; they may not always be so, although there is now a statutory bar on the CE or CFO being the authority's MO. The authority's MO may also be the CLO. Where (s)he is not, both should be consulted.

Recommended Procedures

Having regard to the circumstances and the preliminary matters mentioned above the procedure for a report under section 114 (2) or 114 A (2) – an unlawful act or omission – is suggested as follows

- consult with the MO/CLO on the issue of unlawfulness
- consult the CE on the matter (s114(3A) and s114 A (3))
- if there is disagreement or doubt the CFO should ask the MO/CLO to obtain Opinion of Counsel
- if there is still disagreement after Counsel's Opinion, the CFO and MO/CLO refer the matter to the CE for assistance on procedures but CEs should not substitute their own advice, even where legally or financially qualified.

Under section 114 (3) where the matter is an unbalanced budget – real or potential – the CFO is in a better position to come to a decision unaided. However it is recommended

- an informal indication is given by the CFO at a very early stage and an attempt made to get immediate remedial action
- the likelihood of a report under section 114 (3) should be made known to the CE at an early opportunity
- the CFO should consider informal consultation with the internal and external auditor
- at this point the CFO has to decide the course of action. If it is decided to proceed, go to next stage.
- Where the CFO decides there is a case for a part VIII report
- if the action or expenditure is potential the CFO should draft a report stating the facts and reasons and discuss with the MO, the CE and relevant chief officers how to obviate the need for the report by remedial action. If successful the matter will rest
- where action as above is not successful, or where the act or expenditure has already happened, the CFO should draft a report as above in consultation with CE and MO. The report should clearly state that it is made under the relevant sub-section of section 114 or section 114 (A) of the Local Government Finance Act 1988 and the consequences. The CFO then 'makes' the report by signing it personally
- the statutory duty to make a part VIII report and send a copy to each member of the authority and the external auditor rests on the CFO. The Act does not say when a report is to be sent but implies it should be sent as soon as reasonably practicable

Appendix A

- where an authority in England or Wales is operating executive arrangements under the Local Government Act 2000 the report must be to the full council and sent to each member of the council and to the auditor, if it relates to non-executive functions or the likelihood of an unbalanced budget
- where the local authority is operating executive arrangements, and the executive (or a person on their behalf) is about to make or has made a decision involving unlawful expenditure, a loss or deficiency or an unlawful item of account, the CFO must make the report to the executive, and send copies to every member, the auditor and (in the case of a mayor and council manager) the council manager
- the duty to make and send the report rests with the CFO and that starts the 21 day 'prohibition period' and in normal circumstances the timing of sending it needs to be carefully considered in consultation with the 'Proper Officer' for calling meetings (and the CE if not that officer)
- part VIII reports are likely to be made in highly contentious circumstances and as such could be the target for legal challenge. They must therefore be subject to most careful drafting, rehearsing all relevant matters and arguments besides clearly advising as to the options or decisions sought.

Whatever the decision, the CFO must have taken all steps necessary to arrive at and justify that decision. The CFO should ensure that there is a proper record of the considerations leading to the decision.

The executive must then meet within 21 days to consider the CFO's report and until it does so it must take no action on the decision which is the subject of the report. After considering the report, the executive must prepare a report which specifies what action (if any) the executive has taken in response, what action the executive

proposes to take in response and when it proposes to take that action and the reasons for taking the action. A copy of that report must be sent to the external auditor, every member of the council and the CFO.

Liaison With Proper Officer Responsible For Calling Meetings: (Schedule 12 Local Government Act 1972)

It is for the Proper Officer to advise on procedure for considering the report but by agreement such information could be included in the CFO's report or accompany it.

The report could be sent to each member of the authority as a separate document. However, in the case of reports to the full council, it would be advisable to send the report with the council summons to the meeting which will consider it. In the case of reports to the executive, the report could be sent with the agenda for the meeting which will consider it, but in addition copies will have to be sent direct to the remaining members of the council and the council manager (if any). In both cases copies of the report must be sent to the auditor.

The statutory duty to send the report is the CFO's but it is recommended that normally the authority's usual procedure for sending reports to all members be followed. However, proof of the sending of the report to individual addresses may subsequently be needed, so special arrangements for delivery may be required.

Other Matters

Once the CFO has sent the report addressed to each member of the authority (or to each member of the council, the executive and council manager (if any) where executive arrangements are operating) and to the external auditor, his/her reporting duty under part VIII has been completed¹⁸. In the case of authorities with

¹⁸ If inadequate action is agreed in response to a s114(3) report the CFO may need to consider – in conjunction with the CE, MO and (if necessary) take legal advice – whether or not a further report is required to address the situation that then exists.

Appendix A

executive arrangements, the executive must then issue its report in response. The CFO, under his/her section 151 responsibilities may then have to advise full council on the outcome. If the authority (or the executive) acts positively on the s114 (114A) report, well and good; if not, any further formal action is to be taken by the external auditor pursuant to section 6 of the Audit Commission Act 1998 or by the issue of an 'advisory notice' under section 19A or by applying to the Court for a declaration under section 17 of the 1998 Act.

The authority's standing orders and financial regulations should be compatible with the part VIII procedures.

In the light of these provisions it is clearly essential that all reports to committees or to the executive, an executive committee or an individual executive member containing financial matters should be cleared with the CFO. The CFO should also have access to all decision records, minutes and forward plans of executive key decisions.

The 1988 Act requires the authority to provide the CFO with sufficient resources to carry out his/her duties under part VIII. These would include the cost of obtaining advice and resources outside the authority if required.

The CFO's duties under part VIII must be carried out by him or her personally and it is recommended that (s)he nominates a person to act in his/her absence or when (s)he is ill under section 114(6).

The activities of companies set up by authorities appear to be outside the present legislation for section 114/114A reports.

Where a report has been made under section 114(3), arrangements need to be made to inform all persons, including school staff, who have

delegated authority to enter commitments, that such powers are suspended during the prohibition period.

Section 114 Equivalent In Scotland And Northern Ireland

Section 114 does not apply to Scotland – instead the requirement to set a balanced budget is established in s108(2) of the Local Government (Scotland) Act 1973 and s93(3) of the Local Government Finance Act 1992. In Northern Ireland, the equivalent duty – whilst not specified in statute – would rest with the authority's CFO in keeping with the statutory responsibility under section 54 of the Local Government Act (Northern Ireland) 1972.

Appendix B

Legal Opinion from Eversheds To CIPFA on the Definition of Officer

Section 151 of the Local Government Act 1972, requires every Authority to “secure that one of their officers has responsibility for the administration of those (financial) affairs”. There is no definition of “officer”. It is thought that the term “staff” and “officer” in the Local Government Act 1972 and elsewhere, are intended to embrace all employees of local authorities. For example, the Local Government (Staff Transfer Schemes) Order 1973, defines “officer” for the purposes of the order as “the holder of any office or employment under that council”.

There has been an employment case: Johnson-v-Ryan and Others (Employment Appeal Tribunal 2000), which held that on the facts of that case, a rent officer was also an employee of the District Council concerned. The case made the distinction between three categories of office holder:

- 1** An office-holder whose rights and duties are defined by the office they hold and not by any contract, such as police officer;
- 2** Those who retain the title “office-holder” but are in reality employees with a contract of service; and
- 3** Employees who are both office holders and employees, such as company directors.

The case also made a reference to the role of local authorities’ Chief Finance Officers and suggests that a Chief Finance Officer is an office-holder and an employee, because his/her duties are an integral part of the functions of the local authority.

On this basis, the safest course of action is for the Section 151 Officer to be an employee of the council, although it is permissible for a local authority to procure non statutory financial management services from an individual on the basis of a contract for services.

The statutory Chief Finance Officer role may be capable of being performed in a proportion of the time that an individual works for an authority. In some cases, it may therefore be appropriate to apportion part of the time of the individual between the statutory functions and the non-statutory functions. In other words, for example, a Chief Finance Officer could be directly employed for, say, 20% of their role and engaged on a Service Contract for 80% of their role. Clearly, the circumstances will vary depending upon the particular circumstances of the authority.

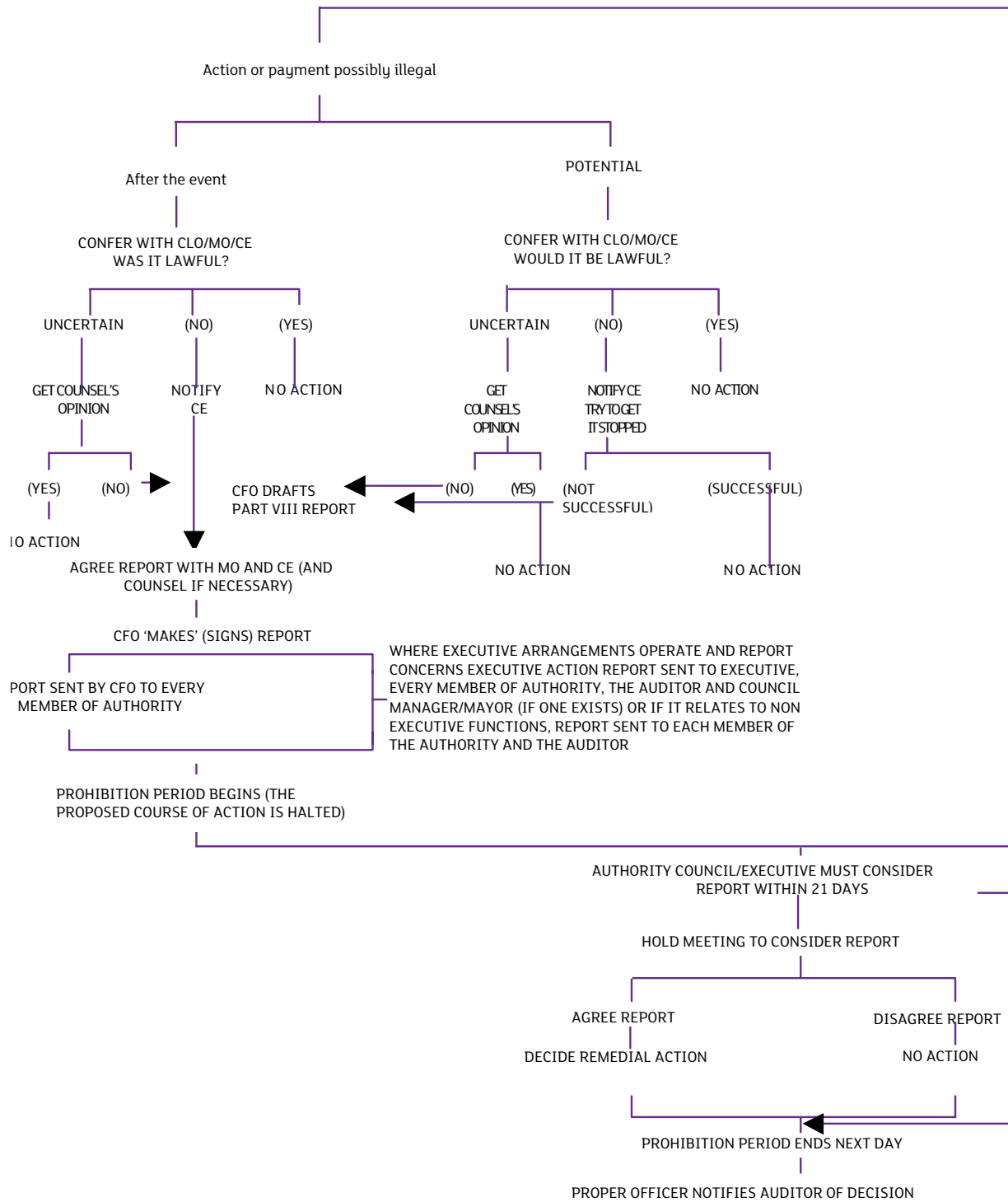
J Barnes

Eversheds

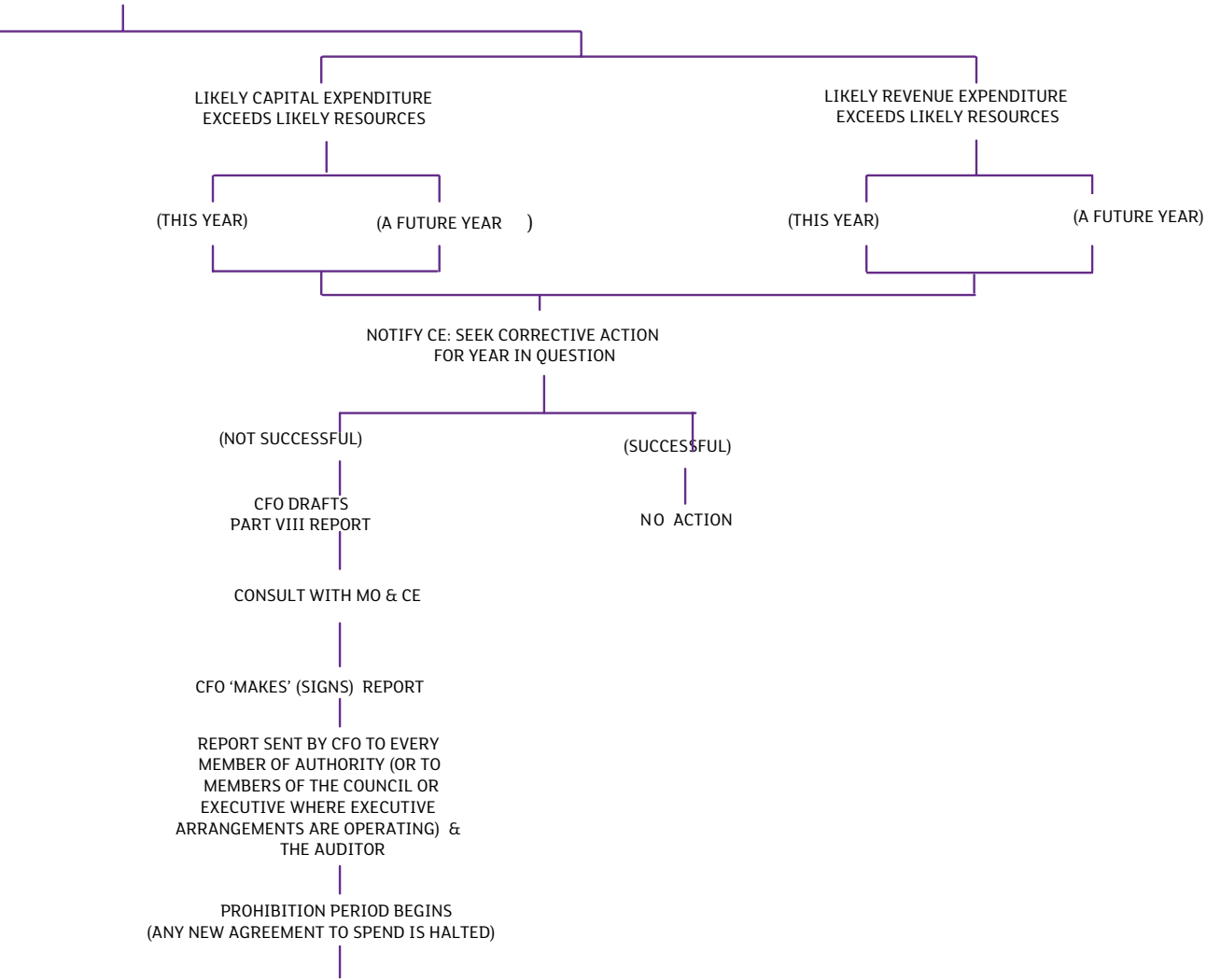
February 2010

Flow chart for Section 114 Local Government Finance Act 1988 (England and Wales) Procedures

Matter



Comes to the Attention Of The CFO



PROPER OFFICER NOTIFIES AUDITOR OF DATE TIME AND PLACE OF MEETING

WHERE EXECUTIVE ARRANGEMENTS OPERATE, EXECUTIVE MUST REPORT ON ACTIONS (IF ANY) TAKEN IN RESPONSE, TIMING AND REASONS TO THE AUTHORITY, CFO AND AUDITOR



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