

A STATEMENT ON THE ROLE OF THE FINANCE DIRECTOR IN LOCAL GOVERNMENT

January 2003



CIPFA is one of the leading professional accountancy bodies in the UK and the only one that specialises in the public services. It is responsible for the education and training of professional accountants and for their regulation through the setting and monitoring of professional standards. Uniquely among the professional accountancy bodies in the UK, CIPFA has responsibility for setting accounting standards for a significant part of the economy, namely local government. CIPFA's members work (often at the most senior level) in public service bodies, in the national audit agencies and major accountancy firms. They are respected throughout for their high technical and ethical standards, and professional integrity. CIPFA also provides a range of high quality advisory, information and training and consultancy services to public service organisations. As such, CIPFA is the leading independent commentator on managing and accounting for public money.

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FOREWORD

This Statement takes account of developments affecting local authority finance directors since CIPFA issued its previous Statement in 1999. It is designed to provide advice to finance directors in carrying out both their statutory responsibilities and their strategic and policy development roles. It is also intended to be helpful to local authorities in dealing with tensions and related risks that can arise when revising political, organisational and managerial structures.

In issuing a revised Statement now we recognise that further review will be needed as the modernisation agenda continues to gather pace and other policy developments are introduced. However, CIPFA believes that it is important to provide a practical source of guidance to finance directors to help them deal with recent changes and to discharge their increasingly onerous duties. We hope that local authority councillors and other chief officers will also recognise the value of there being a clear statement of the finance director's role and that they will wish to endorse this Statement's conclusions.

Mike Weaver
Chairman of the Working Group

APPLICATION

This Statement applies to all local authority bodies that are required to follow the Statement of Recommended Practice on Local Authority Accounting in the United Kingdom. That is local authorities, police authorities, fire authorities, joint committees and joint boards of principal authorities in Great Britain. Also in England and Wales parish, town and community councils with budgeted income of more than £500,000 as defined in the accounts and audit regulations 1996. In Northern Ireland this Statement (and the SORP) applies to all district councils.

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Mike Weaver	—	Worcestershire County Council (Chairman)
Ken Barnes	—	South Norfolk District Council
Bob Carter	—	City and County of Swansea
Rupert Dewhurst	—	IPF Ltd
David Dorward	—	Dundee City Council
Gordon Edwards	—	Aberdeen City Council
Ken Finch	—	Conwy County Borough Council
Anna Green	—	CIPFA
Roger Latham	—	Nottinghamshire County Council
Peter McKay	—	Eversheds
Robin Mosley	—	Eversheds
Sean Nolan	—	East Sussex County Council
Bob Patterson	—	Stockton on Tees Borough Council
Bet Perrins	—	South Somerset District Council
Trevor Salmon	—	Belfast City Council
John Scotford	—	Independent Consultant
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1 EXECUTIVE SUMMARY

- 1.1 Over recent years, the modernising agenda has continued to gather pace and bring a steady stream of fresh challenges for councillors and officers alike. Whilst continuous improvement of front-line services remains the ultimate goal there is also a renewed focus on local authorities' underlying structures and processes and an expectation that there will be a sound governance framework and effective approach to financial management underpinning all that an authority does.
- 1.2 The relationship between local and central government is also changing with a growing tendency to link financial freedoms and other powers with the achievement of specific outcomes and targets. In seeking to meet these targets, local authorities are increasingly looking for innovative solutions both in the way services are provided and in their funding. Partnership working with a wide variety of public, private and voluntary bodies is now common place and many authorities are setting up companies and getting involved in Public Private Partnerships and Private Finance Initiative projects.
- 1.3 The heightened expectations of service users are also having a considerable impact – the public now demands exemplary standards of behaviour and high quality, good value services. External audit and inspection regimes have also been expanded and given a new profile to monitor progress, assess achievement levels and provide feedback to organisations and their stakeholders.
- 1.4 As authorities strive to meet these challenges and branch out into new areas, the role of the finance director becomes ever more critical – not only in assessing risk and ensuring probity in the use of public money, but also in securing sound financial management and effective controls. In covering this ground the finance director can make an important contribution to the effectiveness of the organisation and help the authority to demonstrate openness and transparency in the way it operates and conducts its business.
- 1.5 At the same time, the finance director has an absolute and overriding responsibility to discharge his or her statutory duties as the authority's 'Responsible Finance Officer' (RFO). In practice this means that the finance director carries a responsibility for managing the totality of the authority's financial affairs in all of its dealings. In addition he or she has a fiduciary responsibility to local citizens.
- 1.6 To be able to fulfil these statutory responsibilities effectively and to facilitate robust corporate governance, the finance director needs to be at the heart of the authority's decision making process and play a key role in the organisation – not only to ensure that finance views carry appropriate weight in policy and decision making but also so that he or she is able to intervene with authority if proper standards are not being met at any time.

1.7 In CIPFA's view there are five key roles that are critical to the achievement of a finance director's statutory responsibilities

- maintaining strong financial management underpinned by effective financial controls
- contributing to corporate management and leadership
- supporting and advising democratically elected representatives
- supporting and advising officers in their operational roles
- leading and managing an effective and responsive financial service.

1.8 It is essential that an authority's organisational and managerial structures facilitate rather than frustrate the fulfilment of the finance director's statutory responsibilities. To ensure that this is the case CIPFA has identified four key requirements that should be observed when considering the position and influence of the finance director within an authority

- there should be a single finance director in each authority who is a qualified member of a specified accountancy body and is vested with the statutory responsibilities and with the strategic and corporate roles set out in paragraph 1.7
- the finance director should be a member of the authority's corporate management team¹ to ensure that financial and funding implications are factored into discussions from the outset and should have a parallel right of access to meetings of the authority's political executive for all discussions that have a financial dimension
- in order to ensure that there is an appropriate and clearly defined division of responsibilities for the corporate management of an authority, such that no one individual has unfettered powers of decision, the role of the finance director should not normally be combined with the role of the chief executive. Where, in particular local circumstances, authorities decide to combine these two roles, overall governance arrangements should be reviewed to ensure that adequate checks and balances exist in relation to decision making by the chief executive/finance director²
- in order to ensure that the statutory duties are discharged effectively, the finance director should be able to control and influence both the work programme of internal audit in support of those duties and the quantity and quality of staff made available to undertake the relevant internal audit projects.

¹ The corporate management team is defined as the body of individuals at officer level who collectively are responsible for the authority's leadership and strategic direction, defining control mechanisms, supervising overall management and reporting on stewardship and performance.

² See paragraphs 9.17 and 9.18.

- 1.9 CIPFA recognises that it is for each local authority to satisfy itself that its management arrangements and organisational structures are consistent with the law and that they are in line with the principles of good corporate governance. If the guidance set out in this Statement is followed, we believe that it will provide assurance that the finance director's statutory responsibilities can be properly discharged and that – as part of the overall governance framework – there are strong and effective arrangements in place for the management of the authority's financial affairs. This in turn will help the authority to ensure that its overall arrangements for supporting the delivery of services are soundly based and effective.

2 THE FINANCE DIRECTOR IN CONTEXT

TERMINOLOGY

- 2.1 In this Statement, the term ‘finance director’ refers to the most senior officer in a local authority with corporate responsibility for the finance function across the authority. It is recognised that this officer could have a variety of titles and may have other roles in addition to his or her financial responsibilities. The term ‘finance director’ is used throughout this Statement except where the context requires the use of a specific legal term such as Chief Financial Officer, Responsible Financial Officer or Treasurer.

BACKGROUND

- 2.2 Over recent years, local authorities have faced many challenges due to the rapid pace of change both in the way services are delivered and in their own organisational structures and relationships. There is also an increasing emphasis on performance management with central government policy requiring that authorities plan more openly and explicitly, continuously improve their performance levels and demonstrate that they have done so by measuring progress against wide ranging targets. At the same time external audit and inspection regimes have been expanded to monitor progress and assess achievement levels.
- 2.3 The spread of formal agreements³ concerning service delivery targets and the increasing tendency to link the powers available to an authority and its financial freedom to the achievement of specific outcomes and targets have altered the relationship between local and central government. The DTLR White Paper⁴, the Welsh Assembly Government’s Policy Statement⁵ and – more recently – the Local Government Bill 2002 (England and Wales) confirm that this trend will continue and reiterate the importance of sound financial management in all aspects of an authority’s activities. The strength of an authority’s financial management is also a key consideration in the Audit Commission’s comprehensive performance assessment regime for England.
- 2.4 As well as the general emphasis on sound financial management, the Local Government Bill includes a number of proposals that will have a particular impact on finance directors in England and Wales. Firstly there will be a statutory duty on local authorities to monitor their income and expenditure against their budget and be ready to take action if overspends or shortfalls in income emerge. Secondly, there will be a specific personal duty on the Chief Finance Officer to make a report to the authority when it is considering its budget and council tax. This report must deal with the robustness of the estimates and the adequacy of reserves allowed for in the budget proposals. The Bill requires councillors to have regard to the report in making their decisions.

³ Local public service agreements in England; policy agreements in Wales; local outcome agreements are being piloted in Scotland. There is no equivalent in Northern Ireland

⁴ *Strong Local Leadership – Quality Public Services*, DTLR, December 2001

⁵ *Freedom and Responsibility in Local Government*, Welsh Assembly Government, March 2002

- 2.5 As far as capital finance is concerned the emphasis is shifting towards a prudential regime that will have statutory backing in England and Wales and be underpinned by a Code of Practice developed by CIPFA⁶. The Local Government Bill confirms the intention to introduce a statutory requirement for each local authority in England and Wales to set prudential limits for its borrowing and makes clear that these new borrowing freedoms must be accompanied by effective forward planning and sound financial management. This approach will also place significant new responsibilities on the finance director. In Scotland a similar system is being introduced through amendments to the draft local government bill⁷ which will abolish the existing section 94 consent controls on local authority capital expenditure and replace them with a statutory requirement for each local authority to determine its own capital investment within a prudential framework. A decision on any move to a prudential approach has not yet been taken in Northern Ireland.
- 2.6 On a broader level, local authorities – along with other public services – are subject to rising expectations from service users. The public demands that councillors and officers behave with propriety and expects to receive high quality, good value products and services across both the private and public sectors. The public is also far more aware of its rights than in the past and is prepared to ensure that they are exercised and fulfilled. The trend towards seeking greater involvement of the public in the way public services are run means that expectations about performance levels will rise still further. As a result issues of corporate governance, accountability, propriety and ethical standards will remain high on the agenda along with a general expectation that public services will be open and accessible, that their dealings will be transparent and that the information they produce will be tailored to meet their stakeholders' needs.
- 2.7 To meet these heightened expectations, the fundamental principles of good corporate governance need to be reflected in all aspects of an authority's business and encapsulated in a local code of corporate governance as recommended in the CIPFA/SOLACE framework⁸. This is particularly important at a time when many authorities are introducing new structures of political management and adopting innovative approaches to service delivery and procurement. Although the ultimate responsibility for an effective approach to governance rests with the authority itself the finance director has a key role to play in assessing risk, evaluating options and ensuring that effective controls are in place.
- 2.8 Authorities are also having to find new sources of funding, including through Public Private Partnerships (PPP) and the Private Finance Initiative (PFI)⁹, and are increasingly setting up companies and participating in partnerships with a wide variety of public, private and voluntary bodies. Again the finance director's role is

⁶ *Draft Code on a Prudential Framework for Local Authority Capital finance*, CIPFA, December 2001. Depending on the progress of legislation, it is expected that a second exposure draft of the Code will be published for consultation in Spring 2003 and the final Code in Autumn 2003.

⁷ *Local Government in Scotland Bill – introduced in May 2002 and currently (December 2002) at committee stage.*

⁸ *The CIPFA/SOLACE framework – Corporate Governance in Local Government: A Keystone for Community Governance*, CIPFA, 2001

⁹ For detailed guidance see *PFI/PPP: Stewardship issues – a guide for finance directors in the public services*, CIPFA, 2001

key both in assessing options, ensuring that public money is safeguarded and establishing an effective control framework.

- 2.9 At authority level there is now a greater emphasis on devolved management with operational staff having greater freedom to take budgetary and financial planning decisions and front line service providers being more autonomous in terms of how and when they access financial support services. Although the ultimate responsibility for financial matters remains with the finance director, these structural changes mean that the finance function has had to adapt to new ways of working and delivering services – presenting the finance director with fresh management and leadership challenges.

THE IMPACT ON THE ROLE OF THE FINANCE DIRECTOR

- 2.10 It is clear that local authorities are now subject to constant change and councillors and officers alike must be able to respond quickly and confidently to new ideas, challenges and pressures.
- 2.11 For the finance director this means that he or she must play a full role in the authority's leadership and be at the heart of the decision-making process helping to generate and progress ideas and initiatives that will assist the authority in meeting the strategic aims and objectives that councillors have agreed. Finance directors must also ensure that all 'branches' of an authority receive timely, clear, accurate, impartial, professional financial advice and support. This applies equally to the full council, executive and scrutiny functions where such arrangements exist, to administration and opposition groups and to individual members.
- 2.12 Fulfilling all of the onerous responsibilities of today's finance directors demands a wide range of personal qualities, skills and competencies. Above all, finance directors need to inspire respect, trust and confidence amongst their colleagues and demonstrate that their contribution is critical to the success of the authority. In practice this means that they need to be both creative in addressing their strategic and corporate roles, and effective in fulfilling their management responsibilities. They must display leadership skills (for example, in the role of head of the finance function) and at the same time be effective team players (for example, as corporate management team members). They must also have 'presence' and be sufficiently forceful to intervene with confidence when financial principles need to be defended or asserted or when corrective action is required.
- 2.13 Finance directors must ensure that the full range of their knowledge, skills, and competencies are constantly refreshed and kept up-to-date. As qualified accountants, finance directors are required by their professional codes to do this. It is recommended that finance directors display a commitment to this requirement by participating in a formal continuing professional development scheme¹⁰ and encouraging other finance staff to do likewise.

¹⁰ For details of CIPFA's CPD scheme visit CIPFA's website www.cipfa.org.uk/cpd

- 2.14 In the case of CIPFA members there is an additional requirement to comply with Standards of Professional Practice (SoPPs)¹¹. These set out standards with which CIPFA members are required to comply in order to uphold the public interest, assure the quality and integrity of the work for which they are responsible and to discharge their professional obligations. Failure to comply with any relevant SoPP provides potential grounds for disciplinary action under CIPFA's bye-laws.
- 2.15 Finance directors should also ensure that there are high standards of performance and professionalism throughout the finance function whether provided direct, through devolved management arrangements or via an outsourced or partnership model. In practice this means that the finance director should set out the standards expected from staff dealing with financial matters and ensure that appropriate training is provided to meet the needs of staff both within the finance function itself and for other staff with financial responsibilities. The finance director should also promote and encourage both a basic level of financial awareness amongst all councillors and staff and more detailed financial training for those with specific financial responsibilities, including councillors involved in executive and scrutiny activities.

¹¹ CIPFA's overarching *Standard of Professional Practice* is effective from 12 September 2002. This covers auditing; budgetary planning and control; financial transactions management (exchequer services); financial reporting; suspected fraud and corruption; tax management and treasury management. There is also a SoPP on ethics issued in December 2000.

3 THE ROLES OF THE FINANCE DIRECTOR

STATUTORY RESPONSIBILITIES

- 3.1 The overriding duty of the finance director is to fulfil the statutory responsibilities attached to the position. These statutory duties derive from six principal sources as set out in the following paragraphs.

Statutory Definition

- 3.2 The statutory definition of the ‘Treasurer’ was 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. This responsibility has been incorporated into the role of the Responsible Financial Officer.

Responsible Financial Officer

- 3.3 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. Section 73 of the Local Government Act 1985 applies the concept of the Responsible Financial Officer (RFO) to metropolitan police, fire and civil defence, and transport authorities, and section 112 of the Local Government Finance Act 1988 applies the concept to police and combined fire authorities in England and Wales. Section 127 of the Greater London Authority Act 1999 applies the concept to the GLA and its four functional bodies. 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 chief financial officer.*”
- 3.4 CIPFA has obtained a legal opinion¹² that the term ‘administration’ in these statutes means responsibility for managing the totality of the financial affairs of a local authority, in all of its dealings.

¹² Eversheds, March 1999 – see Appendix A.

- 3.5 The officer appointed as the RFO 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.
- 3.6 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.

Unlawful Expenditure and an Unbalanced Budget

- 3.7 The RFO’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(7) requires authorities to provide their Chief Finance Officer (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’. The equivalent arrangements for the Greater London Authority and its functional bodies are set out in section 130 of the Greater London Authority Act 1999 and the report is submitted to the Mayor of London and every member of the London Assembly. 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 RFO in keeping with the statutory responsibility under section 54 of the Local Government Act (Northern Ireland) 1972.
- 3.8 Section 114 has been amended following the introduction of executive arrangements under the Local Government Act 2000 for England and Wales¹⁶. This change relates only to those authorities operating executive arrangements. The effect of this modification is that the finance director is required to submit section 114 reports to the

¹³ 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.

¹⁴ CIPFA has obtained a legal opinion on this point – see Appendix B.

¹⁵ 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.

¹⁶ The Local Authorities (Executive and alternative arrangements) (Modification of enactments and other provisions) England Order 2001. S1 No 2237. The Local Authorities (Executive arrangements) (Modifications and enactment of further provisions) (Wales) order 2002 w.88.

council in respect of non-executive functions in the same way as was previously the case. However, where the decision may involve unlawful expenditure, a loss or deficiency or an unlawful item of account as a result of the exercise of executive functions then – under section 114A – the finance director must submit his or her report to the executive. He or she must also send copies of the report to every member of the authority, the external auditor and where there is a mayor and council manager/ executive, to the council manager.

- 3.9 The executive must consider the report within 21 days and all action in respect of the report must be suspended until it has been considered by the executive (the ‘prohibition period’). After considering the report the executive must provide a report under section 115B to the council, the CFO and the external auditor, explaining what action if any is to be taken and the reasons for that action or for not taking action. This procedure ensures that the authority’s auditor has the information to take action in appropriate cases, including service of an advisory notice under section 91 of the 2000 Act, a public interest report or seeking a declaration from the courts as to the legality of the authority’s proposed course of action.
- 3.10 A guidance note 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.

Local Government Act 2000 (England and Wales only)

- 3.11 The finance director’s role in England and Wales has been enhanced under the executive arrangements introduced by the Local Government Act 2000. Under this Act, all principal authorities in England and Wales are required to introduce executive arrangements in the form of a leader and cabinet, an elected mayor and cabinet or an elected mayor and council manager. Smaller shire district councils in England (with a population under 85,000) and any authority in Wales, may adopt ‘alternative arrangements’ – a streamlined form of committee system.
- 3.12 Under these arrangements, the full council meeting has a statutory role to set the authority’s policy framework as well as approving the budget and setting the council tax. The executive (and in the case of the alternative arrangements, the committees) must act within this policy framework and budget and to do otherwise could be ultra virus. Authorities operating executive arrangements can appoint committees to deal with those functions prescribed by regulations which cannot be dealt with by the executive. These ‘non-executive functions’ are largely regulatory in nature. Councils also have to appoint at least one overview and scrutiny committee to hold the executive to account and a standards committee to promote and maintain high standards of conduct by members and co-opted members.
- 3.13 In addition to their traditional role of advising all members and officers about statutory powers, maladministration, financial impropriety and probity, under executive arrangements the finance director and the monitoring officer have a role in advising whether particular decisions are likely to be contrary to the policy framework

or budget. The statutory guidance¹⁷ issued by the Secretary of State under the 2000 Act advises that local authorities will need to ensure that the finance director and the monitoring officer have access as necessary to meetings and papers and that members must consult with him/her regularly¹⁸. 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 members and officers in their respective roles
- providing financial information to the media, members of the public and the community.

3.14 The importance of the finance director's role as adviser to councillors is supported by the model code of conduct for members¹⁹. The Code requires members to have regard to advice provided by the finance director in any formal report he or she submits under section 114 of the Local Government Finance Act 1988. There is a similar provision in the code of conduct issued by the National Assembly for Wales. Breach of the code of conduct is enforced by the Standards Board for England and the Ombudsman in Wales and can lead to suspension and/or disqualification.

3.15 In recognition of the enhanced role of the finance director (and the monitoring officer) the Secretary of State has made mandatory standing orders to provide that the statutory protection in relation to dismissal currently applied to the head of paid service will be extended to the monitoring officer and the finance director²⁰. This means that the finance director (like the head of paid service and the monitoring officer) may not be suspended for more than two months for the purpose of investigating misconduct unless it is in accordance with a recommendation in a report made by an independent person.

3.16 Finally, where local authorities in England and Wales are operating executive arrangements under the 2000 Act the s151 role is categorised as a non executive function and the finance director as a 'statutory chief officer'. This means that the appointment of the section 151 officer is the responsibility of the council (or one of its committees) and not the executive. The appointment cannot be delegated to the head of paid service or his or her nominee.

¹⁷ New Council Constitutions, Local Government Act 2000 – guidance to English local authorities, chapter 8 – officers' roles under executive arrangements, DETR, October 2000

¹⁸ In Wales the statutory guidance does not include this reference but implies that this should be the case.

¹⁹ Local Authorities' Model Code of Conduct (England) Order 2001. The conduct of members (Model Code of Conduct) (Wales) Order 2001. SI No 2289 (w.177).

²⁰ The Local Authorities (Standing Orders) (England) Regulations 2001). In Wales the 1999 regulations apply.

Accounts and Audit Regulations

- 3.17 The Accounts and Audit Regulations 1996²¹ (England and Wales) and, in Scotland, the Local Authority Accounts (Scotland) Regulations 1985 impose responsibilities on the finance director relating to accounting records and supporting information, control systems and the statement of accounts.
- 3.18 A key feature of the Regulations in England and Wales is the requirement for internal audit. Regulation 5 requires that a 'relevant body shall maintain an adequate and effective system of internal audit of their accounting records and control systems'. 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. This issue is discussed in paragraphs 9.20 to 9.28.

Local Government Bill, 2002 (England and Wales)

- 3.19 The Local Government Bill, 2002 emphasises the importance of sound and effective financial management and signals the introduction of two new statutory duties that will bear heavily on finance directors.
- 3.20 In relation to capital financing there will be 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 draft Code²². The Government also intends to ensure that local government officers (particularly s151 officers) and external auditors have the powers they need to ensure that the legal requirements are complied with in discharging their responsibilities for capital finance.
- 3.21 There will also be a new statutory duty on the finance director 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 will be a public report. The Secretary of State in England or the National Assembly for Wales will have 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 finance director.
- 3.22 CIPFA is in the process of updating its 1995 occasional paper on reserves and balances to assist finance directors in discharging their responsibilities in this area. A revised version will be published soon.
- 3.23 The finance director will also have a key role to play in fulfilling the requirements of the statutory duty set out in the Local Government Bill for authorities to keep their 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.

²¹ The ODPM has recently consulted on the Accounts and Audit Regulations 2003 for England – the closing date for comment was December 9, 2002.

²² *Draft Code on a Prudential Framework for Local Authority Capital Finance*, CIPFA, December 2001.

3.24 In England, the finance director of an authority will have an important role to play in improvement planning linked to the Audit Commission's Comprehensive Performance Assessment (CPA) regime. In some circumstances, where an authority is deemed to be underperforming, the authority and the finance director will need to be prepared for Government intervention²³ which may involve the transfer of functions or placing the authority into administration or franchising management. The finance director clearly has a central role to play in ensuring that the authority's financial standing and financial management arrangements are sound and that such interventions are unnecessary. However, if problems do arise that could lead to intervention the finance director should as a matter of good professional practice report his or her concerns initially to the executive.

WEDNESBURY PRINCIPLES

3.25 Although not a specific responsibility for finance directors alone they – along with the monitoring officer and chief legal officer – should be alert to the 'Wednesbury' rules²⁴ 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.

3.26 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 documented²⁵.

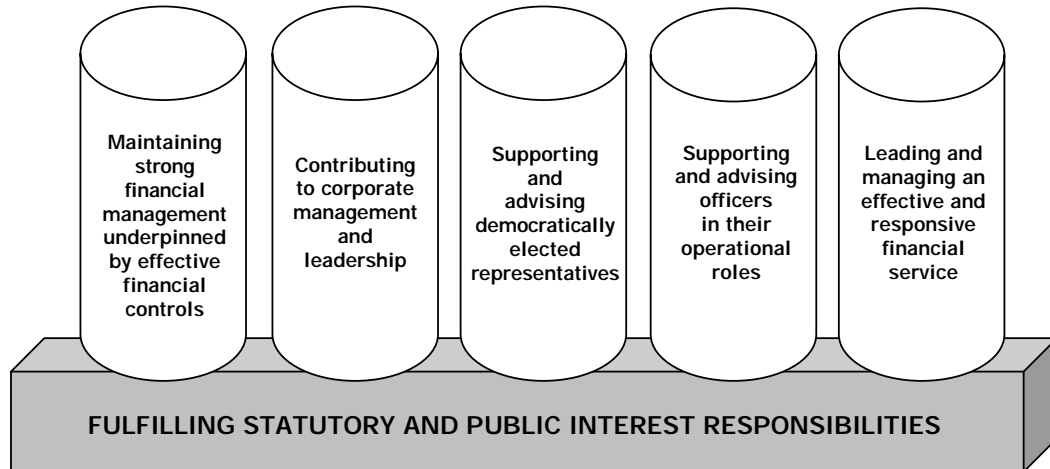
KEY ROLES

3.27 To be able to fulfil their statutory and public interest duties and to ensure that financial arrangements remain robust and effective finance directors must make a positive and effective contribution to an authority in five key areas. In effect these represent five discrete though related roles as shown in the diagram below.

²³ See the ODPM's consultation paper 'Tackling poor performance in local government', August 2002 and 'Government action following the Comprehensive Performance Assessment', ODPM, November 2002.

²⁴ Associated Provincial Picture Houses v Wednesbury Corporation (1948).

²⁵ In England and Wales model constitutions under the Local Government Act 2000 require authorities to ensure that (as with the council, its committees and sub committees) all decisions made by members of the executive (either collectively or individually) are based on sound professional advice from officers. All decisions taken by members of the executive (individually or collectively) have to be recorded and published. The decision record has to include the reasons and any relevant interests.



- 3.28 Each of these five roles is critical to the achievement of the finance director’s statutory responsibilities and this needs to be recognised in an authority’s organisational structure and arrangements. The finance director should alert the authority to any areas in which arrangements adopted by the organisation may militate against the discharge of his or her statutory responsibilities.
- 3.29 Regardless of an authority’s structure, it should be remembered that, whilst there can be considerable delegation of authority for financial matters, there can be no delegation of the ultimate responsibility – that rests at all times with the finance director.
- 3.30 The sections that follow look in detail at each of the finance director’s five key roles.

4 MAINTAINING STRONG FINANCIAL MANAGEMENT UNDERPINNED BY EFFECTIVE FINANCIAL CONTROLS

- 4.1 Financial management, administration and stewardship functions are well established in local authorities and the finance director obviously has a key role in this area.
- 4.2 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 (see paragraph 3.2). 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.
- 4.3 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 (see paragraphs 3.7 to 3.10). The 2002 Local Government Bill (England and Wales) further emphasises the importance of sound financial management by introducing a statutory duty on local authorities to monitor income and expenditure against their budget and be ready to take action if overspends or shortfalls in income emerge.
- 4.4 Recent policy initiatives that have affected the management and financing of local authorities have placed even greater emphasis on the need for the finance director to ensure that financial management is sound, that public money is safeguarded and that effective financial controls are in place. Such changes include new approaches to political management, an increasing emphasis on an enabling role, the growth of partnership working, devolved financial management, innovative approaches to procurement, internal trading, the PFI and local authority involvement in arms length companies. In local authorities, as in other types of organisations, the development of more devolved or innovative ways of doing business strengthen the need for a strong co-ordinating financial role and emphasise the importance of the finance director's statutory responsibilities.
- 4.5 Consistency of standards and transparency in financial activities are essential. In this context, CIPFA's view is that the statutory role of the finance director 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.
- 4.6 Where the authority operates in partnership or other arrangements, the finance director must ensure that roles and responsibilities are clearly defined within a sound framework of effective controls. In other words, the finance director needs to be satisfied that appropriate arrangements are in place to conduct the business of the partnership effectively²⁶ and that his or her own responsibilities are clear.

²⁶ For detailed guidance on partnerships see *Sterling Work : Financial Control and Budgeting for Local Authority Partnerships : a practical guide*, CIPFA 2001.

- 4.7 Increasingly as partnership working spreads and new models are introduced (for example aligned or pooled budgets between health bodies and local authorities) situations will arise where the finance director may be required to take on an additional subsidiary role. For example a number of services (fire, police, valuation) are traditionally managed by ‘joint boards’ or separate authorities that appoint a treasurer and clerk from a ‘lead authority’. In other situations, local authority business may be conducted through corporate entities that are subject to Companies Act requirements. The finance director may be appointed as a director of such a company.
- 4.8 From time to time these arrangements may give rise to potential conflicts of interest. It is important that the finance director is alert to this possibility and makes clear that his or her allegiance ultimately lies with the authority for which he or she is the RFO. Where the finance director is acting in an advisory role, the advice given must be objective and potential conflicts of interest declared. In some circumstances it will be appropriate for the finance director to declare an interest and take no part in the discussions concerning the particular issue. In others it may be that safeguards are needed to ensure that no conflict can arise – for example by delegating responsibility for the authority’s interests in a company to a deputy. In extreme circumstances, it may be appropriate for the finance director to resign from his or her subsidiary role.

ACTIVITIES

- 4.9 The key activities that the finance director is responsible for when maintaining strong financial management and effective financial controls are set out below. In each case we identify one or two main tasks that are involved in the performance of the activities

Key Activities	Main Tasks
Advising on corporate risk profiling and management, including safeguarding assets, risk avoidance and insurance	Assisting the authority to identify past, current and future risks and liabilities, their likelihood of occurring and their likely magnitude. Assisting the authority to develop a systematic risk management strategy and to put in place appropriate risk management procedures (including insurance).
Advising on effective systems of internal control	Assisting the authority to put in place an appropriate control environment and effective internal controls that provide reasonable assurance of effective and efficient operations, internal financial controls and compliance with laws and regulations. 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.
Ensuring there is an	Ensuring that the authority puts in place effective

<p>effective system of internal financial control</p>	<p>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.</p> <p>Ensuring that clear financial regulations²⁷ exist, are updated regularly and understood by all.</p> <p>Ensuring that external auditors, members, inspectors and officers are aware of the authority's financial arrangements and controls.</p> <p>Signing the authority's published statement on internal financial control in line with the Statement of Recommended Practice on Local Authority Accounting in the United Kingdom.</p>
<p>Ensuring that financial management arrangements are sound and effective</p>	<p>Providing advice on implementing effective financial management arrangements within changing service delivery arrangements.</p> <p>Ensuring that financial management arrangements complement service management responsibilities.</p>
<p>Ensuring a prudential financial framework is in place</p>	<p>Ensuring 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.</p> <p>Ensuring that budget calculations are robust and reserves adequate, in line with CIPFA's guidance²⁸.</p> <p>Ensuring that there are sound medium and long term financial plans for both revenue and capital and that these are subject to regular review to confirm the continuing relevance of assumptions used.</p> <p>Ensuring that there are sound asset management plans.</p>

²⁷ For more detail see, *Financial Regulations for a Modern English Local Authority*, CIPFA, 2001.

²⁸ Revised CIPFA guidance on reserves and balances will be issued soon.

<p>Ensuring that any partnership arrangements (or other innovative structures for service delivery) are underpinned by clear and well documented internal financial controls</p>	<p>Advising on financial appraisal, budgeting, financial control, reporting, governance and performance management of partnership arrangements²⁹.</p> <p>Ensuring that when the authority is the 'accountable body' (for example under a New Deal for Communities programme) there are effective controls and governance arrangements in place.</p>
<p>Securing effective arrangements for prudential borrowing, treasury management, pensions and trust funds</p>	<p>Ensuring the effective management of cash flows, borrowings and investments of the authority's own funds or the pension³⁰ 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.</p> <p>Ensuring compliance with CIPFA's Code on a Prudential Framework for Local Authority Capital Finance (once finalised).</p> <p>Ensuring compliance with CIPFA's Code of Practice for Treasury Management³¹.</p>
<p>Ensuring there is an effective internal audit function and assisting management in providing effective arrangements for financial scrutiny</p>	<p>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 Practice³².</p> <p>Ensuring that the reporting arrangements for internal audit are clear and that these include the right of independent access to officers and members and a clear understanding that internal audit is independent of the activities audited.</p> <p>Advising councillors and corporate management on effective arrangements for financial scrutiny.</p>

²⁹ See *Sterling Work : Financial Control and Budgeting for Local Authority Partnerships : A practical Guide*, CIPFA, 2001

³⁰ For detailed guidance see *Principles for Investment Decision Making in the Local Government Pension Scheme in the UK*, CIPFA, 2002.

³¹ *Code of Practice for Treasury Management in the Public Services*, CIPFA 2001.

³² *Code of Practice for Internal Audit in Local Government in the United Kingdom*, CIPFA, 2000.

<p>Advising on anti-fraud and anti-corruption strategies and measures</p>	<p>Assisting the authority to put in place effective anti-fraud and anti-corruption strategies and measures to deter, prevent, detect and investigate allegations and instances of fraud and corruption, both on the authority by external parties and within it.</p>
<p>Securing effective systems of financial administration</p>	<p>Ensuring that effective systems and procedures for financial administration are in place that meet the requirements of the law and of other partner organisations. For example revenue collection and payment systems should ensure that income collected and payments made are accurate, complete, timely and in accordance with legal requirements.</p>
<p>Ensuring that statutory and other accounts and associated claims and returns in respect of grant are prepared</p>	<p>Ensuring that accounting and financial information systems provide a comprehensive, consistent and accurate record of the authority's financial transactions.</p> <p>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 Statement of Recommended Practice on Local Authority Accounting in the United Kingdom developed by the CIPFA/LASAAC Joint Committee.</p> <p>Certifying that the annual statement of accounts presents fairly the financial position and transactions of the authority.</p> <p>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 such as the New Deal for Communities programme) meet the requirements of the law and of other partner organisations and meet the relevant terms and conditions of schemes.</p> <p>Ensuring that arrangements are in place so that claims and returns are accurate, complete, timely and supported by adequate working papers and that, where required, CFO certificates are given following the appropriate degree of review.</p>

5 CONTRIBUTING TO CORPORATE MANAGEMENT AND LEADERSHIP

- 5.1 Effective corporate management enables authorities to pursue policy and service objectives within the law and in a properly controlled manner. Although councillors have ultimate responsibility for agreeing priorities and policy objectives, it is the corporate management team at officer level that is responsible for policy implementation, for leading and managing staff and for ensuring that there is an effective approach to performance management.
- 5.2 Regardless of the organisational and political structure it is important to distinguish between councillors' responsibility for leading the authority, representing citizens and establishing policies and officers' responsibility for day to day managerial and operational decisions relating to the implementation of those policies.
- 5.3 The finance director has an essential part to play in the corporate management of the authority and the key activities and related tasks are set out below

Key Activities	Main Tasks
Contributing to the effective leadership of the authority	<p>Participating in the development of the authority's vision and objectives.</p> <p>Participating in the development of strategies to meet the authority's objectives.</p> <p>Actively seeking to increase or diversify the authority's resource base, within an appropriate risk management strategy.</p> <p>Anticipating economic, political, legislative and technical changes affecting the environment in which the authority operates and contributing to the assessment of their implications and translation into appropriate policies, objectives and strategies.</p> <p>Ensuring that there is a medium term financial strategy and providing detailed financial forecasts to assist in the development of the authority's plans and strategies.</p> <p>Ensuring that the medium and long term financial implications are taken into account as policies and strategies are developed.</p> <p>Ensuring that policy objectives and the resources required to achieve them are reconciled with each other.</p> <p>Exercising leadership by conducting himself or herself</p>

	in accordance with high standards of personal behaviour.
Contributing to the management of the authority	<p>Playing a key role in the authority's corporate management, having a strong working relationship with leading councillors, portfolio holders, other chief officers and the authority's partners based on mutual respect and trust and a clear understanding of roles and responsibilities.</p> <p>Playing a full part in the authority's policy and strategy development and ensuring that resourcing issues are taken into account.</p> <p>Participating in the development and annual review of the authority's local code of corporate governance to demonstrate openness, inclusivity, integrity and accountability in all aspects of the local authority's affairs. In particular advising on a framework of systems and processes that can give an assurance of sound financial management.</p> <p>Assisting the authority to put in place as part of its corporate governance arrangements a culture and control environment that complements service delivery arrangements.</p> <p>Assisting the authority to put in place an appropriate code of conduct and ethical framework that defines the standards of personal behaviour to which all councillors³³ and employees³⁴ subscribe.</p> <p>Participating in the development and maintenance of the authority's local constitution (where required)³⁵ and related protocols.</p> <p>Assisting in the development of an effective performance management framework and ensuring that financial and non-financial information are brought together in a meaningful way.</p>

³³ In England and Wales the authority's Standards Committee is responsible for advising the Council on the adoption/revision of the Members' Code of Conduct and for monitoring its operation. In Northern Ireland there is a voluntary code of conduct for elected members drawn up by the DOE in 1992.

³⁴ A statutory 'Code of Conduct for Employees' is expected to be issued soon for England. This will form part of employment terms and conditions. In Wales the references are: Local Government Wales The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001. Local Government Wales The Code of Conduct (Non-qualifying local government employees) (Wales) Regulations 2000. SI No 2278 (W168).

³⁵ Every local authority in England and Wales is required to have a written constitution under the Local Government Act 2000.

	<p>Ensuring that the authority's approach to financial and performance reporting is in line with statutory and professional requirements.</p>
<p>Ensuring that the authority's financial resources are well managed</p>	<p>Ensuring that there are consistent and rigorous processes for constructing and monitoring capital and revenue budgets and that they support the authority's strategic objectives and policies.</p> <p>Ensuring that budgets are aligned with managerial responsibilities.</p> <p>Ensuring 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.</p> <p>Ensuring that all policy or management initiatives are supported by authoritative advice on any taxation implications.</p>
<p>Contributing to cross-authority issues and to the development of the authority</p>	<p>Assisting the authority to adopt an integrated approach to service delivery within the authority.</p> <p>Assisting the authority to identify opportunities and to realise those opportunities in a managed way.</p> <p>Advising on the authority's approach to procurement by evaluating the financial implications of options to 'make, buy or share' services.</p> <p>Advising on the authority's approach to developing and implementing an effective approach to improving services.</p> <p>Adopting an integrated approach with partners to ensure the best use of public money and collaborative working.</p> <p>Assisting in the development and maintenance of the authority's information strategy including its IT strategy³⁶ and approach to data security.</p>

³⁶ See *Achieving an Information Strategy*, CIPFA, 1995.

	Assisting the authority to develop an effective approach to the exploitation of information and communications technology.
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6 SUPPORTING AND ADVISING DEMOCRATICALLY ELECTED REPRESENTATIVES

- 6.1 Councillors are the politically accountable policy-makers of a local authority. For local government as a whole to be effective there needs to be a strong working partnership between councillors and officers based on mutual trust and respect and a clear understanding of respective roles and responsibilities. In particular it is important to recognise that councillors are responsible for defining the authority's core aims, policies and priorities based on impartial, clear and professional advice from officers.
- 6.2 Recent changes to structures of political management in England and Wales, emphasise the distinctive nature of executive and scrutiny activities. This was introduced by the Local Government Act 2000 which requires all principal authorities with populations above 85,000 to introduce one of three models³⁷ that separate executive and overview and scrutiny functions. Authorities with populations below 85,000 can follow a fourth option — a modified committee system but with a requirement for overview and scrutiny.
- 6.3 The Local Government Act 2000 also allows individual members of the executive to take formal decisions themselves although they are expected to seek advice from relevant officers.
- 6.4 In Scotland and Northern Ireland decisions have to be taken formally by the full council, officers (under delegated powers) or politically balanced committees.
- 6.5 The new structures mean that executive and scrutiny functions are explicit and identifiable with some inevitable tensions between the two roles.
- 6.6 Whatever form the executive takes, its responsibility is to exercise political leadership on behalf of the authority and to represent the area and its community by
- translating the wishes of the community into strategies and policies
 - building coalitions and partnerships
 - preparing policy plans and proposals
 - taking decisions on resources and priorities
 - drawing up the annual budget, including capital plans and longer term forecasts, for submission to the full council
 - monitoring activities to ensure effective delivery of strategy and programmes.
- 6.7 The scrutiny function

³⁷ The three models introduced by the Local Government Act 2000 are an elected mayor with executive powers; a leader and cabinet with executive powers; a directly elected mayor with appointed council manager.

- reviews, questions and evaluates policies set and decisions taken by the executive
- monitors the effective delivery of strategy and programmes in terms of policy impacts and outcomes (ie not day to day detailed monitoring).

6.8 Chief officers are responsible for supporting the council, executive and scrutiny functions and are accountable to them all. They advise on, and enact, the policies of the authority. The finance director therefore has a key part to play in supporting all functions of the authority. He or she must be impartial and objective in providing support and advice to all councillors as individuals, to all political groups, and to both executive and scrutiny functions and must maintain the confidentiality of that advice where appropriate. It is essential that all councillors understand that this is the approach being followed, and that they recognise the importance of the finance director having a clear overarching responsibility for advising all ‘branches’ of an authority (see paragraph 9.9).

6.9 To be able to fulfil this role effectively the finance director must have access to all councillors – individually and collectively – and vice versa. It is also important that the finance director establishes good professional working relationships with councillors founded on mutual trust and respect. In some structures the finance director will need to work particularly closely with individual councillors – for example where there is a portfolio holder for finance in a cabinet or chair of a scrutiny committee with particular responsibilities for finance. In such circumstances it is essential that the finance director maintains an objective and independent approach so that his or her standing in the eyes of other councillors is not compromised.

6.10 The key activities for this role and related main tasks are set out below

Key Activities	Main Tasks
Advising on protocols setting out the respective roles and responsibilities of councillors and officers for financial management	Assisting in the development of a protocol ³⁸ 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 ³⁹ .

³⁸ This protocol will form part of an authority’s local constitution where one exists. Every local authority in England and Wales is required to have a written constitution under the Local Government Act 2000.

³⁹ The Local Government Act 2000 (Constitutions) England Direction 2000 and The Local Government Act 2000 (Local Authority Constitutions) (Wales) Direction 2001 require local authorities to include in their written constitutions a scheme of delegations for functions that are the responsibility of the executive and those functions exercisable by individual executive members.

	<p>Advising on the financial thresholds for ‘key’ decisions⁴⁰ where there is a requirement to do so.</p>
<p>Providing advice to councillors on developing an overall financial strategy that serves policy and service objectives</p>	<p>Ensuring that effective arrangements are in place and sufficient resources available to provide accurate, complete and timely advice to support councillors’ strategy development proposals and resource requests for front line services.</p> <p>Assisting councillors in assessing and reconciling the resources needed for policy developments.</p> <p>Ensuring that the organisation’s total available capital and revenue resources and partnership opportunities are quantified and that clear forecasts to facilitate medium term planning are developed.</p> <p>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.</p> <p>Ensuring that an overall financial strategy for the executive is formulated that meets its policy and service objectives and ensures the best use of the organisation’s available capital and revenue resources and partnership opportunities. Promoting innovation within an appropriate risk strategy.</p> <p>Reporting clearly on what factors have been taken into account and what options and alternatives have been considered in reaching the executive’s chosen strategy.</p> <p>Ensuring that advice is provided to the scrutiny function in reviewing the executive’s strategy and in formulating its own proposals.</p>
<p>Helping councillors to identify priorities, prepare the annual funding plan/budget and identify how resources will be used</p>	<p>Ensuring that the financial strategy is translated into firm funding plans/budgets that are lawful.</p> <p>Ensuring that clear, timely, accurate advice is provided to the executive in setting the funding plan/budget.</p> <p>Ensuring that advice is provided to the scrutiny</p>

⁴⁰ Regulation 8 of the Local Authority (executive arrangements) (access to information) (England) Regulations 2000 sets out the definition of key decisions that must be included in the authority’s ‘forward’ plan. In Wales the regulations are The Local Authorities (executive arrangements) (decisions, documents and meeting) (Wales) Regulations 2001 W178. In Wales there are no ‘key decisions’ – all executive decisions are treated in the same way. There is also no requirement to produce a forward plan but it is strongly encouraged in the guidance.

	<p>function in considering the funding plan/budget.</p> <p>Ensuring that advice is provided on the levels of reserves and balances in line with good practice guidance⁴¹.</p>
<p>Helping councillors to monitor financial performance against the annual funding plan/budget</p>	<p>Ensuring 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 financial training on an ongoing basis to help them discharge their responsibilities.</p> <p>Ensuring that timely, accurate and impartial advice is provided to the executive and the scrutiny functions on financial/budgetary performance.</p>
<p>Ensuring that all 'branches' of the authority (including the full council, executive and scrutiny functions where such arrangements exist, administration and opposition groups and individual councillors) receive advice and information</p>	<p>Ensuring that clear, accurate, impartial professional, advice, support and information is provided to the executive (including individual members of the executive) and the scrutiny functions to ensure that the authority meets its policy and service objectives, promotes innovation, continuous improvement and provides effective stewardship of public money and value for money in its use.</p>

⁴¹ Revised CIPFA guidance on reserves and balances will be issued soon.

7 SUPPORTING AND ADVISING OFFICERS IN THEIR OPERATIONAL ROLES

- 7.1 As well as ensuring that support is provided to councillors as they agree priorities and develop policy the finance director has a key role to play in supporting and advising officers as they put together strategies for implementing the authority's agreed aims. Sound financial strategies and the provision of advice and information to support officers in this way are essential if authorities are to pursue the aims agreed by councillors within the law and in a properly controlled manner.
- 7.2 This section is concerned with the finance director's role in assisting officers in their work to support strategy development and in service delivery for individual services. In most circumstances, service directors will also have a responsibility for financial management and an effective partnership between the finance function and other functions is therefore essential. As with all forms of partnership, clarity of roles and responsibilities is key to effective working. To ensure that the relationship between finance and other functions works well it is important that there is a good understanding throughout the authority of the role finance plays and its importance.
- 7.3 The finance director's key activities and related main tasks are set out below

Key Activities	Main Tasks
Ensuring that there is an effective approach to financial management	<p>Ensuring that the role of finance and importance of sound financial management is understood at all levels within the authority.</p> <p>Ensuring that the role of finance is covered in the authority's induction programme and that appropriate training is provided to all those with financial responsibilities.</p>
Ensuring that financial strategies serve policy and service objectives	<p>Ensuring that effective arrangements are in place to provide accurate, complete and timely advice to officers to support strategy development proposals for front line services.</p> <p>Advising officers of the financial consequences (including costs and resources) of partnership opportunities and risks to support strategy development proposals for front line services.</p> <p>Ensuring that support is provided in the identification, selection and financial analysis of alternative courses of action.</p> <p>Ensuring that financial considerations are taken into</p>

	account as service policies/strategies are developed.
Ensuring that the authority's resources are well managed	<p>Ensuring that clear financial regulations and operating procedures exist, are updated regularly and understood by all.</p> <p>Ensuring that financial information is provided to facilitate the efficient and effective use of resources.</p>
Ensuring that budgets are properly managed	<p>Ensuring that officers' roles and responsibilities for budget development, management and monitoring are clear, that budget managers have adequate access to financial skills, and are provided with financial training on an ongoing basis to help them discharge their responsibilities.</p> <p>Ensuring 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.</p> <p>Ensuring that appropriate management accounting systems, functions and controls are in place so that finances are kept under review on a regular basis.</p> <p>Ensuring that these systems, functions and controls apply consistently to all activities including partnerships arrangements, outsourcing or where the authority is acting in an enabling role.</p>
Ensuring that financial advice and information is provided	Ensuring that effective arrangements are in place to provide appropriate, complete and timely advice and information to officers to support decision making, probity, stewardship, value for money and legality in service delivery.
Advising on performance management and measurement	<p>Advising on objective and target setting.</p> <p>Advising on appropriate performance measurement systems and on applying benchmarking data.</p>

8 LEADING AND MANAGING AN EFFECTIVE AND RESPONSIVE FINANCIAL SERVICE

- 8.1 As well as advising and supporting councillors and officers as they develop and implement policy objectives, the finance director is also responsible for the direct provision of some services involving the collection and payment of monies. The key services that often fall into this category are the billing and collection of local taxation and charges for services and the payment of, for example, salaries and wages, creditors, housing benefits and pensions to retired officers. These activities bring the finance function into direct contact with members of the public and, in the case of benefits administration, with some of the most vulnerable people in the community.
- 8.2 As far as the mechanics of providing these 'direct' services is concerned, there can be a number of models including in-house, out-sourced or partnership – in each case, the finance director has a key role to play in line or contract management.
- 8.3 The finance function also comes into contact with members of the public, external auditors, inspectors and the media when providing financial and performance information. In managing the relationship with external stakeholders, the finance director must ensure that the finance function is responsive and that it tailors its services to suit their different needs. It is particularly important that there is a good, professional working relationship between the finance director and external auditors and inspectors.
- 8.4 The finance director must also lead and manage the authority's finance function and ensure that it is adequately resourced and fulfils the needs of internal customers. In particular, the finance director is responsible for ensuring that there are high standards of performance throughout the finance function whether it is provided directly, in a devolved environment or on an outsourced or partnership basis. A key aspect of this responsibility is ensuring that finance staff – whether or not they are managed directly by the finance director – are trained for their tasks and that their roles, duties and accountabilities are clear.
- 8.5 The finance director must also fulfil the role of 'head of profession' and provide a focus for all finance professionals in the authority. To encourage commitment from finance staff it may be helpful to establish a written protocol that sets out relationships and responsibilities so that all officers are clear about linkages.
- 8.6 Key activities that the finance director needs to undertake in this area and related main tasks are set out below

Key Activities	Main Tasks
<p>Securing high standards of performance and service to the public</p>	<p>Ensuring that the mode and standards of financial service delivery are responsive to customer needs.</p> <p>Ensuring that appropriate guidance and training is available for front-line finance staff in dealing with members of the public.</p> <p>Ensuring that there is an effective approach to performance management in relation to the financial service.</p> <p>Exercising leadership by conducting himself or herself in accordance with high standards of personal behaviour and by taking steps to develop a personal understanding of the needs of customers.</p> <p>Ensuring that payments are made on time, accurately and in accordance with prevailing legal requirements and recipients' entitlement.</p> <p>Ensuring that income is collected as quickly, efficiently and sensitively as possible.</p>
<p>Demonstrating accountability to members of the public and the community by providing robust financial and performance information</p>	<p>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.</p> <p>Ensuring that financial information and advice provided to individuals and other bodies is accurate, clear, relevant, robust and objective.</p>
<p>Establishing a good, professional working relationship with external auditors, inspectors and other statutory agencies</p>	<p>Ensuring that financial and performance information provided to external auditors and inspectors is accurate, clear, relevant, robust and objective.</p> <p>Ensuring that external auditors and inspectors have a good understanding of the authority's financial arrangements and controls.</p>

<p>Ensuring that the services provided by the finance function are in line with the expectations and needs of its internal stakeholders</p>	<p>Ensuring that there are suitable processes for consulting with stakeholders.</p> <p>Ensuring that there is a clear understanding of what the finance function will provide, the timescales, format and content.</p> <p>Ensuring that the mode and standards of service provided are responsive and tailored to meet the needs of stakeholders.</p>
<p>Ensuring there are high standards of performance throughout the finance function</p>	<p>Ensuring that there are suitable processes for reviewing standards of service delivery and customer satisfaction levels.</p>
<p>Leading and managing the finance function</p>	<p>Exercising leadership by conducting himself or herself in accordance with high standards of personal and professional behaviour.</p> <p>Ensuring that the finance function is adequately resourced to discharge all of its responsibilities.</p> <p>Demonstrating effective management skills so that all finance staff are 'part of the team'.</p>
<p>Acting as head of profession for all finance staff in the authority</p>	<p>Demonstrating high professional standards and maintaining up to date competencies and skills.</p> <p>Encouraging all finance staff to maintain and update their competencies and skills.</p> <p>Ensuring that appropriate financial training is available at all levels within the finance function.</p> <p>Encouraging all relevant finance staff to register for and participate in CPD schemes.</p>

9 THE POSITION AND INFLUENCE OF THE FINANCE DIRECTOR

- 9.1 The position and influence of the finance director in an authority affects the way in which the roles are carried out and, therefore, how effective the finance director can be.
- 9.2 CIPFA recognises that it is for each local authority to satisfy itself that its management arrangements and organisational structures are consistent with the law and that they are in line with the principles of good corporate governance. If the guidance set out in this Statement is followed we believe that it will provide assurance that the finance director's statutory responsibilities are properly discharged and that – as part of the overall governance framework – there are strong and effective arrangements in place for the management of the authority's financial affairs. This in turn will help the authority to ensure that its overall arrangements for supporting the delivery of services are soundly based and effective.
- 9.3 The effectiveness of the finance director and the degree of control that he or she can exercise depends on how the organisation structures both itself and the delivery of its finance function. However, regardless of the structure adopted the need to fulfil the statutory duties remains an absolute obligation. It is therefore essential that financial arrangements are reviewed regularly to ensure that the finance director can perform his or her role effectively including meeting his or her statutory responsibilities.
- 9.4 In CIPFA's view there are four key principles that need to be observed when considering the position and influence of the finance director within an authority
- there should be a single finance director in each authority who is a qualified member of a specified accountancy body⁴² and is vested with the statutory responsibilities for maintaining financial administration and stewardship, including the Responsible Financial Officer (RFO) duties, and with the strategic and corporate roles (contributing to corporate management and leadership; supporting and advising democratically elected representatives; supporting and advising officers in their operational roles and leading and managing an effective and responsive financial service)
 - the finance director should be a member of the authority's corporate management team to ensure that financial and funding implications are factored into discussions from the outset and should have a parallel right of access to meetings of the authority's political executive for all discussions that have a financial dimension
 - in order to ensure that there is an appropriate and clearly defined division of responsibilities for the corporate management of an authority, such that no one individual has unfettered powers of decision, the role of the finance director should not normally be combined with the role of the chief executive. Where, in particular local circumstances, authorities decide to combine these two roles, overall governance arrangements should be reviewed to ensure that adequate

⁴² See paragraph 3.5

checks and balances exist in relation to decision making by the chief executive/finance director

- in order to ensure that the statutory duties are discharged effectively, the finance director should be able to control and influence both the work programme of internal audit in relation to those duties and the quantity and quality of staff made available to undertake the relevant internal audit projects.

THE RESPONSIBLE FINANCIAL OFFICER DUTIES

- 9.5 The RFO duties have to be exercised by a qualified accountant in England and Wales and desirably in Scotland. The reasons for that include the wider public duty responsibilities, the code of ethics to which qualified accountants are expected to adhere and the professional responsibility to secure the observance of relevant accounting standards.
- 9.6 To exercise these statutory functions properly, the officer designated as the RFO must have appropriate access to councillors and chief officers. The RFO cannot carry out the statutory responsibilities of the post effectively without full knowledge of and participation in the key policy decisions affecting the local authority.
- 9.7 To be in a position to satisfy the statutory responsibilities, both to the authority and the general public, the RFO must be, and be seen to be, at the centre of the authority's decision and policy making processes – including access to the political executive.
- 9.8 CIPFA is aware that some authorities have separated the RFO duties from the director who is responsible for financial management and/or placed the RFO at a lower level within the officer structure. However, we believe that the statutory responsibilities⁴³ and the strategic⁴⁴ roles of the finance director should be vested in the same officer positioned at the heart of the authority and not separated between two posts⁴⁵. This is because the proper functioning of the local authority's financial management responsibilities – including the provision of financial advice – is so central to the legal responsibilities and the efficient and effective management of the local authority that the responsibility for such services and advice needs to be exercised in a unified way by one individual at the most senior level in the authority.
- 9.9 In CIPFA's view, this means that the finance director should be responsible for ensuring that all 'branches' of the authority receive timely, clear, accurate, impartial, professional advice and support. This applies equally to the full council, executive and scrutiny functions where such arrangements are in operation, to administration and opposition groups and to individual members. In the event of an authority

⁴³ See section 3 of this Statement.

⁴⁴ See sections 4-8 of this Statement.

⁴⁵ CIPFA acknowledges the specific situation in police authorities where there is both a 'Police Authority Treasurer' and a 'Force Finance Director'. The relevant guidance is the Home Office 'Financial Management Code of Practice'. This makes clear that the Police Authority Treasurer has overall responsibility for the administration of the police authority's financial affairs. However the Chief Constable has full responsibility for the activities of the authority's police force. As a result police authorities are expected to delegate financial management to the Chief Constable (unless there are good reasons to the contrary). This delegation does not include certain statutory obligations that remain the sole responsibility of the Police Authority Treasurer. Each police force has a Force Finance Director who is responsible to the Chief Constable for financial activities.

dividing this responsibility between two or more officers there would be a danger, in CIPFA's view, that conflicting advice could be given, resulting in confusion and uncertainty and ultimately running the risk that statutory duties would not be fulfilled.

9.10 This view is backed up by the legal opinion that the term 'administration' in these statutes means responsibility for managing the totality of the financial affairs of a local authority, in all of its dealings (see Appendix A). The fact that the RFO also has a fiduciary duty to local citizens adds further weight to this argument.

9.11 Of course, CIPFA recognises that it is up to each individual authority to decide its own organisational structure and that these will vary across the country. However the approach recommended in this Statement is designed to provide an assurance that the finance director can fulfil his or her statutory duties and that as part of an effective framework of corporate governance, there are strong and effective arrangements in place for the management of the authority's financial affairs.

9.12 Where an authority chooses to have a RFO who is not the finance director it is essential that there are a number of safeguards in place for the person who holds the RFO duties

- the relative roles and responsibilities of the director with responsibility for finance and the RFO should be set out clearly, as should delegated and reserved powers
- the RFO should be able to contribute to papers for corporate management meetings in advance and have access to decisions made
- the RFO should have the right to attend the part of meetings of corporate management where financial issues are being considered
- the RFO should have unrestricted access to the chief executive, to corporate directors and to councillors whenever he/she considers it appropriate to do so
- the RFO should be able to report direct to council, to the executive and to the scrutiny function whenever he/she considers it appropriate to do so
- the RFO should have unfettered access to internal audit including the ability to influence and control those parts of internal audit's work programme that relate to the discharge of his or her statutory duties (see para 9.24)
- the RFO should have unfettered access to external audit and the inspectorates to ensure that they have a good understanding and complete, up to date information about the financial arrangements in operation in the authority.

A MEMBER OF THE CORPORATE MANAGEMENT TEAM AND ACCESS TO THE POLITICAL EXECUTIVE

9.13 Because of the central role of finance to an authority and the finance director's wider responsibilities to the public, he or she should be a member of the corporate management team, however that team is structured. This will ensure that the corporate management team is able to factor in the financial and funding implications of matters under discussion from the outset.

- 9.14 This view echoes the conclusions of the report on *The Financial Aspects of Corporate Governance* (the Cadbury Report)⁴⁶ which pointed to the need for the proper recognition of the role of finance at the highest management level – ie “*boards should recognise the importance of the finance function by making it the designated responsibility of a main board director; who should be signatory to the accounts on behalf of the board...*” (para 4.22).
- 9.15 To be able to satisfy his or her statutory responsibilities and wider public interest role the finance director must be able to advise on the financial implications of policy and strategy development from the outset. To be able to do this it is essential that the finance director has a right to attend any meeting of the political executive where discussions have a financial dimension.
- 9.16 As defined in paragraph 2.1, the term ‘finance director’ in this Statement refers to the most senior officer in a local authority with responsibility for finance, but it is recognised that this officer could have a variety of titles and may have other roles in addition to his or her financial responsibilities. Care needs to be exercised to ensure that the finance director’s responsibilities in relation to finance (including his or her statutory duties) are given sufficient time and attention and are not marginalized by other responsibilities.

COMBINED CHIEF EXECUTIVE AND FINANCE DIRECTOR POSTS

- 9.17 Some authorities have combined the roles of finance director and head of paid service (the chief executive). However, in CIPFA’s view this approach is difficult to justify for three reasons
- the roles of each post are distinct – this is reflected in statute which makes clear that the head of the paid service has line responsibility for all aspects of executive management and is accountable to the authority for the ultimate performance and implementation of the authority’s policy. The finance director is responsible for financial advice, support and control and also is responsible to local citizens as well as to the authority for ensuring that public money is safeguarded
 - by combining the roles, important checks and balances in the overall governance and decision making structure of the authority are lost. In particular, there is no clearly defined division of responsibilities for the corporate management of an authority – as a result, the balance of power and authority that ensures no one individual has unfettered powers of decision is affected
 - at a practical level combining the roles of chief executive and finance director means that the advantages of an often productive working relationship at the heart of the authority’s corporate management is lost.
- 9.18 Although CIPFA believes a separation of the finance director and chief executive roles makes sense in both governance and practical terms it is ultimately for an

⁴⁶ The report was published in December 1992 with the aim of improving corporate governance in public companies.

authority to decide. However it is essential that if the roles are combined, robust governance procedures are in place, including

- a clear exposition of the post's roles, responsibilities and reporting lines
- clarity over the extent, range and application of delegated powers
- arrangements that allow for the rigorous scrutiny and challenge of the postholder's decisions and actions when considered necessary (including clarity over the role and reporting arrangements of internal audit)
- a regular review of the role and responsibilities of the post to ensure that the arrangement remains effective
- recognition and reinforcement of the monitoring officer's role in the event of challenge.

ELECTED MEMBERS AS FINANCE DIRECTORS?

- 9.19 An elected member cannot be the authority's finance director as legislation requires that authorities appoint one of their **officers** to fulfil the statutory role. In England and Wales, section 80 of the Local Government Act 1972 disqualifies a member from holding paid office or employment in the same authority.⁴⁷

RESPONSIBILITY FOR INTERNAL AUDIT

- 9.20 Internal audit is an important independent review activity that fulfils a critical role in an authority's approach to corporate governance. As far as management arrangements for internal audit are concerned authorities have discretion. In England and Wales, the Accounts and Audit Regulations 1996⁴⁸ place the responsibility for maintaining an adequate and effective system of internal audit with the authority as a whole, rather than (as previously) with the RFO, whilst recognising that in practice most authorities would delegate the responsibility to an officer. The spirit of the revision was intended to encourage councillors to take fuller ownership of control and audit issues, especially in the context of the wider corporate governance debate, not to weaken the RFO Role.
- 9.21 In recognition of the fact that the chief internal auditor is unlikely to be on the corporate management team, the responsibility for ensuring effective internal audit should be that of a senior director who is at the heart of the corporate management of the authority. This widely held professional view⁴⁹ means in practice that internal audit should report on a line or contract management basis to either the head of paid service or the finance director.
- 9.22 In deciding the line management arrangements which should be adopted authorities need to bear in mind that the finance director's RFO duties mean that he or she has a

⁴⁷ In Scotland the Local Governance Bill includes a proposal to amend existing legislation so that Council employees have to resign on election as a councillor rather than on nomination as a candidate.

⁴⁸ The ODPM has recently consulted on the Accounts and Audit Regulations 2003 for England – the closing date for comment was December 9, 2002.

⁴⁹ For example as set out in *Internal Audit A Guide to Good Practice for Internal Auditors and Their Customers*, issued jointly by ACCA, CIMA, CIPFA, ICAEW, ICAI, ICAS and the Institute of Internal Auditors in 1999.

personal responsibility for the proper administration of the authority's financial affairs. These duties distinguish the finance director's role in local government from that of those in other organisations. The duties include responsibility for ensuring that an effective system of internal controls is both set in place and operates effectively in practice, in a corporate governance context. Internal audit is an essential part of this control environment. To assist in the effective discharge of his or her statutory duties (including section 114 of the Local Government Finance Act 1988 in England and Wales and the amendment brought in by the Local Government Act 2000), the RFO relies on internal audit, particularly in an environment that is becoming increasingly devolved.

- 9.23 These statutory responsibilities of the finance director exist alongside the Accounts and Audit Regulations 1996 for England and Wales. Although the Local Authority Accounts (Scotland) Regulations 1985 make no specific mention of internal audit in Scottish local authorities, section 95 means that the finance director has responsibility for ensuring effective internal audit arrangements.
- 9.24 In practice therefore the finance director needs to be able to influence and control those parts of internal audit's work programme that relate to the discharge of his or her statutory duties. This also means that the finance director needs to be assured that audit staff are competent, well trained and effective in their work. In CIPFA's view, the most sensible way of ensuring that these requirements are met is to make the RFO directly responsible for internal audit.
- 9.25 Where an authority decides to adopt a different approach and the finance director does not have delegated responsibility for internal audit there need to be explicit and robust arrangements to ensure that the RFO's statutory duties are not undermined and that the requirements set out in para 9.26 are satisfied.
- 9.26 Whatever the arrangements are, the following principles should be followed to facilitate effective internal auditing⁵⁰
- the chief internal auditor should be professionally qualified⁵¹ and a suitably experienced individual to reflect the responsibilities of the role including the need to liaise regularly with and advise senior management
 - the internal audit function should be adequately resourced and trained
 - internal auditors should display an independent and objective attitude of mind
 - internal audit should report without 'fear or favour' on a regular (and ad hoc as necessary) basis to both the executive and scrutiny functions of the democratic process, however they are organised
 - internal auditors should be independent from the activities they audit

⁵⁰ These principles do not constitute the entirety of CIPFA's views on effective internal auditing. A full description is contained in the *Code of Practice for Internal Audit in Local Government in the United Kingdom*, CIPFA, 2000.

⁵¹ It is recognised that in some authorities it will not be possible to attract a professionally qualified person – however, this should remain the aim.

- the performance of internal audit should be reported to, and reviewed by, the executive function of the democratic process on a regular basis
- internal audit's scope should cover the whole system of controls established by the authority, not just the controls over financial accounting and reporting
- internal audit should have freedom of access to all councillors and officers (particularly the head of the paid service, the RFO and the monitoring officer).

9.27 In some authorities, an audit committee⁵² may provide a focus for internal audit reporting and for the performance review of internal audit, in others the executive may fulfil this function itself. Such an approach can help avoid any real or perceived risks of conflicts of interest and a lack of independence that may arise from officer reporting lines.

9.28 It is CIPFA's view that the finance director's responsibility for internal audit, operated through a rigorous and open regime enables the internal audit function to play its proper part in the effective governance of a local authority.

⁵² CIPFA's views on Audit Committees are set out in 'Corporate Governance: A Framework for Public Service Bodies', CIPFA, 1995. This is a generic guide that states '*Boards of public service bodies should establish an Audit Committee comprising non-executive members with responsibility for the independent review of the systems of internal control and of the external audit process.*

LEGAL OPINION FROM EVERSLEDs TO CIPFA ON THE ROLE OF THE FINANCE DIRECTOR IN LOCAL GOVERNMENT

- 1 I am happy to confirm the advice I gave at the meeting of the Working Group on the Role of the Finance Director in Local Government on 22 January 1999 on the statutory responsibilities of the Finance Director.
- 2 In this note “Finance Director” refers to the most senior manager in a local authority with responsibility for finance. He/she may have a variety of titles and may have other roles in addition to financial responsibilities.
- 3 SECTION 151 OF THE LOCAL GOVERNMENT ACT 1972
 - 3.1 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”.
 - 3.2 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.
 - 3.3 In my view “proper administration” requires a somewhat wider consideration of all aspects of local authority financial management and should include (inter alia):
 - 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*).
 - 3.4 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.
- 4 SECTION 114 OF THE LOCAL GOVERNMENT FINANCE ACT 1988

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.

5 ACCOUNTS AND AUDIT REGULATIONS 1996

These Regulations give responsibilities to the Finance Director relating to accounting records and control systems and the Statement of Accounts.

6 Having considered the statutory provisions and such case law as is available I have reached the view that:

- the Finance Director must be the Section 151 officer
- in this context "administration" means managing and taking responsibility
- he or she must have an accountancy qualification
- he or she should be on the Management Team
- the responsibility should not be split between two people.

7 This note deals with the position in England and Wales. There are broadly similar provisions in Scotland.

CP McKay
March 1999

LEGAL OPINION FROM EVERSLEDs 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 a recent 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.

R Mosley

Eversheds
June 2002

GUIDANCE NOTE ON RECOMMENDED PROCEDURES RELATING TO A REPORT MADE BY A CHIEF FINANCIAL OFFICER UNDER SECTION 114, LOCAL GOVERNMENT FINANCE ACT 1988 (ENGLAND AND WALES)

Note: Throughout this note, 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.) This note was prepared originally by a CIPFA working party for publication in *Public Finance and Accountancy* in November 1988. It has been updated for inclusion in this Statement by Eversheds.

1 INTRODUCTION

- 1.1 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) 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.
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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).

- 1.7 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.
- 1.8 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.
- 1.9 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 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

- 1.10 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.
- 1.11 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.
- 1.12 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.

- 1.13 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.
- 1.14 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.
- 1.15 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.
- 1.16 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.
- 1.17 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).
- 1.18 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.

2 RECOMMENDED PROCEDURES

- 2.1 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.
- 2.2 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 (see paragraph 2.3).

2.3 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
- 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.
- 2.4 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.
- 2.5 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.
- 3 LIAISON WITH PROPER OFFICER RESPONSIBLE FOR CALLING MEETINGS:
(SCHEDULE 12 LOCAL GOVERNMENT ACT 1972)
- 3.1 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.
- 3.2 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.
- 3.3 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.

4 OTHER MATTERS

- 4.1 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 completed⁵³. In the case of authorities with 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.
- 4.2 The authority's standing orders and financial regulations should be compatible with the part VIII procedures.
- 4.3 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.
- 4.4 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.
- 4.5 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).
- 4.6 The activities of companies set up by authorities appear to be outside the present legislation for section 114/114A reports.
- 4.7 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.

⁵³ 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.

FLOW CHART FOR SECTION 114 LOCAL GOVERNMENT FINANCE ACT 1988 (ENGLAND AND WALES) PROCEDURES

