

From: Ben Watts, General Counsel
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Subject: Lessons to be Learned from Other Authorities
Status: Unrestricted

1. Introduction

- a) Local authorities operate within a legislative framework involving a range of statutory requirements aimed at ensuring they are well-run, financially sustainable, and deliver effective services. Some of these relate to an internal system of checks and balances – such as scrutiny, internal audit, and the requirement of the Chief Finance Officer and Monitoring Officer to write Section 114¹ and Section 5² reports (respectively) in certain circumstances.
- b) Looking externally, the regulatory and oversight framework in which local authorities operate is complex with bodies such as OFSTED and the CQC able to carry out inspections, issue reports, and take (different kinds of) action in certain circumstances. Similarly, the Council's external auditors also have a role in reviewing the activities and actions of the Council.
- c) The Department for Levelling Up, Housing and Communities has a strategic role in assessing where local authorities are at risk of failing in their "best value" duty³. Although there are many stages to go before it happens, the Secretary of State does have powers to appoint someone to inspect an authority and intervene where there is evidence that the authority is indeed failing. Intervention does not necessarily follow an inspection.
- d) Members of this Committee were able to attend a training event on this topic on 5 June 2023. This provided a broad overview. In order to provide some focus from amongst the examples that could have been drawn on, the focus of this report is on the lessons to be learned from the times when the government's powers of inspection and intervention have been exercised in recent years. The lessons from other authorities will still be relevant to the discussion. The connection to Section 114 reports is also considered.
- e) Since that relatively recent training event, Woking and Thurrock Council have been in the news in relation to interventions, publicity and reports.
- f) As part of the Annual Governance Statement process and in previous conversations with the Governance and Audit Committee, the Monitoring Officer felt it important that resource be put into preparing a report and training for the Committee to consider the learning opportunities that flow from the various interventions into Councils elsewhere as part of KCC's continual improvement commitments.

¹ Of the Local Government Finance Act 1988. These are sometimes referred to as Section 114 Notices in practice.

² Of the Local Government and Housing Act 1989.

³ Under Section 3 of the Local Government Act 1999.

2. Learning the Lessons

- a) Between 2010 and 2020 this power of formal intervention by government was exercised over 4 authorities – Doncaster Metropolitan Borough Council, London Borough of Tower Hamlets, Rotherham Metropolitan Borough Council, and Northamptonshire County Council. During 2021 and 2022 it was exercised over 5 authorities – Sandwell Borough Council, Liverpool City Council, Slough Borough Council, Nottingham City Council, and Thurrock Council.
- b) There has also been non-statutory intervention by the Secretary of State into the London Borough of Croydon. Nottingham City Council was subject to a non-statutory intervention prior to the statutory one. While the number of statutory and non-statutory interventions has risen, the numbers are small compared to the number of authorities in England.
- c) Prior to the government taking these steps, there needs to be evidence that the local authority in question may be failing its best value duty. This evidence can come from the council itself (for example, regular reports on financial and governance matters), or from external sources (for example, OFSTED and the CQC).
- d) External auditors are under a duty⁴ to issue a Public Interest Report where it believes there is a significant matter that needs to be brought to the attention of the authority and wider public. These are also relatively rare, but the incidence of them has been increasing in the last couple of years.
- e) All of this produces a growing volume of information about local authorities in challenging circumstances – the background, the impact, and the actions taken to improve. Every local authority that has featured in these reports operates in a different context and has undergone a different journey.
- f) However, there are many areas of commonality between the different authorities. There are challenges common to the whole local authority sector, and councils operate within the same legal and regulatory framework. The importance of local authorities reflecting on their practice, and the lessons that can be learned from elsewhere, comes through in many of the reports produced on councils that have experienced challenges. This is a useful exercise, regardless of how many of the same factors seem to apply, as set out as an action in the Annual Governance Statement for 2021/22⁵.

3. Overview Reports

- a) In June 2020, the then Ministry of Housing, Communities and Local Government produced a guidance document - “Addressing cultural and governance failings in local authorities: lessons from recent interventions.”⁶

⁴ Under Section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.

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<https://democracy.kent.gov.uk/documents/s116150/Annual%20Governance%20Statement%20for%202021-22.pdf>

⁶ <https://www.gov.uk/government/publications/addressing-cultural-and-governance-failings-in-local-authorities-lessons-from-recent-interventions/addressing-cultural-and-governance-failings-in-local-authorities-lessons-from-recent-interventions>

Acknowledging the limitations of such a list, the following are set out as “potential indicators of a local authority which has problems”:

- lack of effective political and/or corporate leadership, including an overreliance on interim statutory officers.
 - a lack of corporate capacity, resulting in a lack of strategic vision and direction, and inadequate internal processes.
 - poor and inappropriate councillor conduct.
 - conflict and distrust among and between councillors and senior officers.
 - the absence of effective scrutiny, transparency, and public consultation, including inadequate protections for whistle-blowers.
 - a lack of awareness and acceptance of the need for improvement; and insufficient capacity to achieve the change required.⁷
- b) Although this guidance was issued prior to the recent increase in numbers of best value inspection reports and these indicators were used as part of the framing of these inspections, the detail in more recent inspection reports demonstrates that they still have relevance.
- c) Grant Thornton issued a report on the lessons to be learned from Public Interest Reports in March 2021, with a follow-up coming out in September 2022⁸. The key themes set out in the latter are:
- Cultural and governance issues.
 - Failure to understand and manage the risks associated with external companies.
 - Failure to address and resolve relationship difficulties between senior officers and members.
 - Financial capability and capacity.
 - Audit committee effectiveness.
- d) The next few sections move from the overview reports to specific case studies. There is a wealth of information available on each, but the approach taken was to summarise the background reasons that have been identified as leading the government to consider some form of intervention. The key points of any intervention are then also set out.

4. Case study 1: London Borough of Croydon

- a) In February 2021, the findings of a non-statutory review into Croydon Council were published⁹. The background to the financial pressures and problems encountered by the Council are set out as:
- Financial pressure of demand on Children and Adult Social Care budgets poorly managed.
 - Poor track record in managing to budget and achieve savings.
 - Some commercial income generation initiatives poorly managed / did not deliver to expectations.
 - Historically very low level of reserves.

⁷ Ibid, section 2.

⁸ <https://www.grantthornton.co.uk/insights/lessons-from-recent-public-interest-reports/>

⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957791/Croydon_Rapid_Review_Report.pdf

- Medium term financial planning over reliant on growth in Business Rates income that did not materialise.
- Council unfamiliar with taking and implementing difficult financial decisions.
- Political leadership accentuated the positive rather than giving an accurate reflection of the Council's financial position; Officers asked to reword reports to Cabinet.
- Checks and balances within the Council appear not to have worked: the Scrutiny and Audit Committees were not challenging enough; the Section 114 report could have been issued earlier; the external auditors could have escalated concerns more forcefully, though a Public Interest Report was issued which brought matters to a head.

b) As a result of this review, an Improvement and Assurance Panel was appointed to support and challenge the Council and report to the Secretary of State¹⁰. The fourth and most recent Panel report was published in March 2022¹¹. A third Section 114 report was issued in November 2022¹² (the previous two were issued in November and December 2020).

5. Case Study 2: Liverpool City Council

a) Statutory intervention into Liverpool City Council was announced in June 2021. This decision followed on from a Best Value Inspection report¹³ published in April 2021. This report set out the following as the background to the issues at the authority¹⁴:

- A failure of proper and due process in planning and regeneration, including a lack of proper record keeping.
- A lack of scrutiny and oversight across highways.
- A failure of proper process in relation to property management, including compliance with the Council's standing orders.
- Poor governance arrangements for Council-operated companies.
- An overall environment of intimidation.
- Failure of standards regime for Members.

b) The inspection was undertaken at the same time as a police investigation covering some of the same areas of interest.

c) Statutory intervention was announced in June 2021 with Commissioners appointed to exercise functions in four areas: all functions associated with highways; all functions associated with regeneration; all functions associated

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957586/Croydon_Council_Improvement_and_Assurance_Panel_letter.pdf

¹¹ <https://www.gov.uk/government/publications/london-borough-of-croydon-improvement-and-assurance-panel-fourth-report>

¹² <https://www.croydon.gov.uk/sites/default/files/2022-11/Section%20114%20report%20-%202022%20November%202022.pdf>

¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/976197/Liverpool_Best_Value_inspection_report.pdf

¹⁴ As summarised at: <https://www.gov.uk/government/speeches/secretary-of-state-statement-liverpool-city-council>

with property management; and functions related to the appointment and dismissal of statutory officers¹⁵.

- d) The second and most recent Commissioners' report¹⁶ was released in August 2022. In November 2022, the statutory intervention was expanded to cover finance, governance, and recruitment¹⁷.

6. Case Study 3: Slough Borough Council

- a) Slough was one of a small number of councils to request exceptional financial support during the COVID-19 pandemic. The government's agreement in principle was subject to an external assurance review. Separate reviews were undertaken into finance¹⁸ and governance¹⁹. The results of these reviews were published in October 2021 alongside the government's decision to commence statutory intervention. The main findings that lead to this decision were:

I. Finance:

- The scale of current and potential liabilities relative to revenue budget.
- Potential for growth in liabilities, particularly round council-owned companies.
- Unprecedented level of savings needed over term of medium-term financial plan.
- Difficulty in finding substantial savings from statutory services (which account for 2/3 of budget).
- Lack of good track record in delivering savings.
- Financial viability and savings require the disposal of £400m of assets, which may take considerable time to realise best value.

II. Governance:

- Longstanding systemic failures in children's services.
- Lack of political and officer continuity.
- Lack of clarity on financial decision-making.
- Lack of service reform during austerity.
- Weakness in arrangements for preparing financial accounts.
- Inadequate council process in some areas; lack of robust governance system.
- A Section 114 report was issued in June 2021.

- b) In December 2021 Directions were issued by the Secretary of State to appoint Commissioners to Slough (with an Assistant Commissioner appointed in January 2022). The Lead Commissioner, Finance Commissioner, and

¹⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992636/210610_Explanatory_Memorandum.pdf

¹⁶ <https://www.gov.uk/government/publications/liverpool-city-council-commissioners-second-report>

¹⁷ <https://www.gov.uk/government/publications/liverpool-city-council-letter-to-commissioners-8-november-2022>

¹⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028056/Slough_Cipfa_Final_-_web_version.pdf

¹⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028077/SloughGovernance_Review_-_web_version.pdf

Assistant Commissioner were appointed to oversee that the actions needed to deliver the necessary transformation were taken.

- c) The specific areas in which the Commissioners were to exercise powers were as follows: all functions associated with the governance and scrutiny of strategic decision making; all functions associated with strategic financial management; all functions associated with the oversight of the collection of revenues and distribution of benefits; and, all non-executive functions relating to the appointment/dismissal of statutory officers and the scrutiny officer²⁰.
- d) The Slough Commissioners first report was published in July 2022²¹. Additional powers for the Commissioners were requested in the report and were granted in relation to the Council structure and recruitment of tiers two and three staff²².

7. Section 114 Reports/Notices

- a) There is not an automatic connection between the powers available to an authority's statutory officers and the actions taken by government under the best value legislation. As the case studies demonstrate, statutory intervention is not always preceded by a Section 114 report, and nor does the issuing of a Section 114 report mean that intervention will follow. However, in some cases, it is part of the evidence base for a review being carried out and Commissioners being appointed. Yet there is a close enough connection that considering Section 114 reports that have been issued elsewhere can reveal useful lessons.
- b) In September 2022, CIPFA issued the report "Learning lessons: what Section 114 can teach us."²³ In this report, CIPFA sets out the following common symptoms displayed by authorities that have issued Section 114 reports:
 - Over-ambitious savings targets that are not well evidenced.
 - Lack of a medium-term financial plan.
 - A leadership team that does not work together; change at a senior level.
 - Inadequate governance (lack of oversight, audit/governance committees not exercising their function; roles not understood).
 - Weak financial management.
 - Lack of reserves.
- c) The report makes the comments that looking across the local authority sector, including those that have not issued Section 114 reports/notices, "an increasing number of authorities ... are exhibiting some of the same symptoms"²⁴.

8. Recommendation

²⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045605/Revised_Explanatory_Memorandum.pdf

²¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094655/Commissioners_first_report.pdf

²²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101641/Letter_to_Slough_Commissioners_01.09.22.pdf

²³ <https://www.cipfa.org/cipfa-thinks/insight/learning-lessons-what-section-114-can-teach-us>

²⁴ Ibid., p.3.

The Governance and Audit Committee is asked to Note the report.

9. Background Documents

None.

10. Report Author and Relevant Director

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