

Public Agenda Pack



Notice of Meeting of

AUDIT COMMITTEE

Thursday, 14 December 2023 at 1.00 pm

**John Meikle Room, The Deane House, Belvedere
Road, Taunton TA1 1HE**

To: The members of the Audit Committee

Chair: Councillor Mike Hewitson

Vice-chair: Councillor Andy Sully

Councillor Steve Ashton

Councillor Simon Carswell

Councillor Norman Cavill

Councillor Simon Coles

Councillor Habib Farbahi

Jansen van Vuuren

Councillor Lee Baker

Councillor Mike Caswell

Councillor Mandy Chilcott

Councillor Shane Collins

Councillor Tim Kerley

For further information about the meeting, including how to join the meeting virtually, please contact democraticserviceteam@somerset.gov.uk.

All members of the public are welcome to attend our meetings and ask questions or make a statement **by giving advance notice** in writing or by e-mail to the Monitoring Officer at email: democraticserviceteam@somerset.gov.uk by **5pm on Friday, 8 December 2023**.

This meeting will be open to the public and press, subject to the passing of any resolution under the Local Government Act 1972, Schedule 12A: Access to Information.

The meeting will be webcast and an audio recording made.

Issued by (the Proper Officer) on Wednesday, 6 December 2023

AGENDA

Audit Committee - 1.00 pm Thursday, 14 December 2023

- 4 Preventing Failure in Local Government – lessons learned from Grant Thornton’s recent national report (Pages 5 - 38)**

To receive a presentation

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Report: preventing failure in local government





Paul Dossett
Head of Local Government

Foreword

We are delighted to have worked in partnership with Lawyers in Local Government, the Association of Local Authority Treasurers Societies, SOLACE and CIPFA to produce this paper on preventing failure in local government. It is important to recognise that current failures are often the result of past mistakes. We should commend, rather than criticise, members and statutory officers who have inherited the consequences of historic failures for their efforts to mitigate the impact on their council and community by restoring sound financial management and good governance. We all know that local government does a great job for most residents and other stakeholders most of the time. However a decade of austerity, wider downward trends in political governance, the demands for instant results in a 24 hour society have led to failure in the full range of local authority bodies. These failures are not inevitable and the system of checks and balances which exist (in theory at least) should have caught most of the high profile recent failures. At the heart of this system is the golden triangle of Head of Paid Service, Monitoring Officer and Section 151 Officer. Proper exercise of their statutory functions by these officers should keep all councils safe. Our report explores how that might happen. We plan to publish a second report in early 2024 with further consideration of actions councils can take to prevent failure, including case studies.



1 Introduction

Most local authorities are well led and managed and balance their books, even in these challenging times, but the catastrophic failure of a local authority is no longer the rare event that it once was. While Grant Thornton's experience of Value for Money audits shows that the circumstances of each council that has experienced significant financial, governance and service delivery problems are unique, there are many common causes, symptoms and consequences of failure that can be observed across all types of council across England. In this paper, we explore the lessons we have learned about the causes of failure in local government, and why the many safeguards, designed to prevent councils making bad decisions that waste public money and undermine trust in local government, have not operated effectively. We also examine who has both the power and the ability to act and what steps they can take to reduce the risk of failures in the future.

There are a large number and variety of sources of evidence about the factors which have led to failure, including auditors' Public Interest Reports, Non-Statutory Reviews, Best Value Inspection Reports commissioned by DLUHC and Ofsted Inspection Reports. Causes include, poor decisions, often accompanied by a lack of transparency, risky investments made without the necessary commercial skills and knowledge, lack of an effective top team, over-reliance on interims in key roles and the failure of members to ask the right questions. Each instance of failure has been examined and the individual causes analysed in the context of each failing council. However, to get a better understanding of the complexity of the causes of failure, we also need to explore the wider environment of the local government sector and the many organisations which operate in that sphere.

Earlier in the year we shared our preliminary analysis of the common causes of failure with a group of Section 151 Officers and Monitoring Officers and representatives of bodies including, the Society of Local Authority Chief Executives (SOLACE), Lawyers in Local Government (LLG), the Association of Local Authority Treasurer Societies (ALATS) and the Chartered Institute of Public Finance and Accountancy (CIPFA). Their reflections on the vital and complementary roles that Section 151 Officers and Monitoring Officers play, as part of the 'golden triangle' of statutory officers with chief executives, in supporting good governance and preventing failure, have helped to strengthen our understanding of the opportunities which are available now to all the key players in the sector to prevent or mitigate the impact of failure. We offer some prescriptions for remedies to support better health, not yet another post-mortem.



2 How can we prevent failure?

A clear understanding of the common causes of failures provides useful intelligence for other local authorities, local government bodies and for central government, and is a vital first step in preventing future failures.

Every local authority must get the basics of good governance right, including robust structures, effective systems and positive and appropriate behaviours. The Nolan Principles of Selflessness, Honesty and Integrity, Objectivity, Accountability, Openness, Respect for Others, a Duty to Uphold the Law, Stewardship and Leadership, provide essential guidance on appropriate behaviours. Leadership of local authorities is shared between leading politicians and senior officers. They need to apply the Nolan Principles to establish mutual expectations and underpin strong relationships and good communications between senior officers and executive members. Members should balance their political ambitions with their legal and moral duties to their council and communities. Members and senior officers always need to be able to ask difficult questions and challenge each other. When those relationships become dysfunctional, constructive challenge and collective problem-solving become impossible and governance and financial failures may follow.

The three senior statutory roles, the Chief Executive Officer (CEO), Finance Director (Section 151 officer) and Monitoring Officer (MO), have between them complementary legal powers and duties which help to support good governance. The background to these three roles is set out in the Appendix. A strong senior management team, which is transparent and accountable, mutually supportive and challenging and is respected by the council's executive members, provides important safeguards against poor decision making. It is important that all the statutory officers and other members of the senior leadership team have a good understanding of the legal powers and constraints on local government as well as the fundamentals of local government finance, to fulfill their shared responsibilities. Discussion, challenge and ownership of the Council's financial strategy and performance are crucial and sometimes undervalued aspects of the shared endeavour of strategic leadership. Collective engagement in this task, balanced with appropriate respect for the professional and statutory roles of each member of the team is vital.

Local government finance is very complex and some decisions such as the necessary level of financial reserves and the ratio between income and borrowing require both expert advice from officers and external advisors, but also active engagement with members. It is not good enough for members to shrug and say 'we followed the advice of our officers'. Although members are not elected for their expertise but to represent their communities, it's reasonable to expect them to understand the risks associated with key investment decisions and the options that have been considered, and where this is not clear, to seek appropriate clarifications from senior officers. They should beware of optimism bias and avoid focusing too much on the potential benefits of projects and investments and not enough on the accompanying risks.

The extreme nature of some recent failures may create a risk of complacency in other councils, and a sense 'it couldn't happen here'. However, many failures have developed incrementally over several years, rather than being the immediate result of a few recent, ill-advised decisions creating the need for remedial actions, such as issuing a s114 or s5 notice to address the consequences of the mistakes of previous incumbents. Experience of failures indicates it could happen anywhere. Many local authorities are only two or three poor decisions away from a serious risk of failure. Some local authorities do share learning from failures elsewhere with their officers and members, to raise awareness of the risks they also face and all would be wise to do the same.



3 Understanding the causes of failure

3.1 Internal and external factors

Internal and external factors have played a part in each recent significant failure. Internal factors include poorly designed structures and weak systems of management and control, compounded in some cases by bad behaviour on the part of either officers, executive members, or both. That may take the form of bullying. Bullying can be defined as offensive and intimidating, behaviour which is an abuse of power, but bad behaviour may also be more subtle but no less damaging. For example, refusing to listen to alternative views and marginalising dissenters, command and control' cultures undermine personal and professional effectiveness but weak, 'laissez faire' cultures can do as much harm, by allowing poorly informed decision making.

External factors are those beyond the control of local government, such as reductions in central government's financial support and inflation which have a very significant impact on its ability to manage risks.

Internal factors

- Structures** **Use of council owned companies** and joint ventures may increase the risk of a lack of transparency and conflicts of interest.
- If s.151 officers and Monitoring Officers** are not on the senior management team their ability to advise and warn effectively is significantly reduced.
- Over-reliance on interim statutory officers** undermines effective leadership and management and results in gaps in corporate memory. It is hard for interim post-holders to fully understand the complex history of risky decision making. Interims and those acting up in statutory roles may find it difficult to develop close and trusting working relationships with their statutory officer colleagues and this can make it harder for them to challenge decisions. They may also be perceived as lacking the necessary gravitas or status to be as effective in their roles as a permanent post holder.
- Combined Authorities** bring benefits and risks. The risks are added complexity, diversion of leadership attention from local authorities and the challenges faced by those directly elected mayors who lack knowledge of how local government works and who are not inexperienced politicians.

External factors

- Central government's responsibilities** for working with local government on finance, governance and service delivery are spread across various departments including DLUHC, HMT, DfE, DfT, DCMS and DHSC. There is a risk of the government not having a clear line of sight of risks relating to individual councils and the sector as a whole. The introduction of the Office for Local Government may help.
- The constant churn** of ministers and civil servants prevents the establishment of effective long-term working relationships with local government and leads to a lack of knowledge and understanding of the complexity of local government services and finances, which impairs central government's ability to provide timely support and adapt policy to changing needs.

Internal factors

External factors

Systems

Weak risk management, financial management and performance management result in poor decision making and incremental failure.

A failure of members to fulfill their constitutional legal and ethical responsibilities in Full Council, the Executive or committees, if the council has adopted the committee system model, Overview and Scrutiny Committees and Audit Committees, results in an inability to recognise the risk of failure and take remedial action.

A failure of Internal Audit to focus on areas of greatest risk results in an inability to recognise the early signs of failure and act in time.

Weak Treasury Management can compound other financial management problems and lead to an inability to deliver a balanced budget.

A lack of commercial expertise on the part of both members and officers and reluctance to seek external, independent advice and undertake appropriate due diligence, which may lead to decisions being made because of misplaced optimism, rather than hard facts.

Funding reductions have created serious financial pressures, particularly for councils with statutory responsibilities for social care. Rising staffing costs, inflation and the impact of the pandemic have compounded the financial impact of central government funding reductions. This has driven some councils towards risky investments to try and raise new sources of income to help bridge the funding gap.

Competition between councils for additional funding for specific projects, for example, the Towns' Fund, uses resources and diverts leadership energy and resources, which are often wasted.

The Public Works Loan Board should consider the controls in place for lending to councils, so that borrowing levels and the ability for councils to repay borrowing are scrutinised and monitored.

Resource constraints on internal and external auditors and other regulators may hinder their ability to address issues in a timely manner, to complete financial statement opinions and value for money audits rigorously and to recognise and report promptly on early warning signs of failure, leading to a lack of vital information and/or false assurance.

LGA Corporate Peer Challenges may sometimes miss warning signs and make over-generous assessments of capacity and performance, based on the council's plans or good intentions, leading to a risk of false assurance based on the council's plans for good intentions rather than their true position, leading to a risk of false assurance.

Behaviours

Weak leadership disempowers both members and officers. A toxic culture makes it harder for them to speak up about the consequences of risky decisions. Conversely, strong but unaccountable leadership which is intolerant of challenge can also lead to inappropriate risk-taking.

Poor relationships between members and senior officers undermine communications and collective leadership.

Optimism bias and wilful ignorance, on the part of some members and officers has enabled poor decision making and risk management. Some have failed to ask critical questions and have accepted financial information in an incomprehensible format.

Statutory Officers' professional and legal responsibilities have not been adequately fulfilled. They may have failed to provide accessible information for members or challenge poor and even ultra vires decision making.

Decisions made behind closed doors have prevented proper scrutiny.

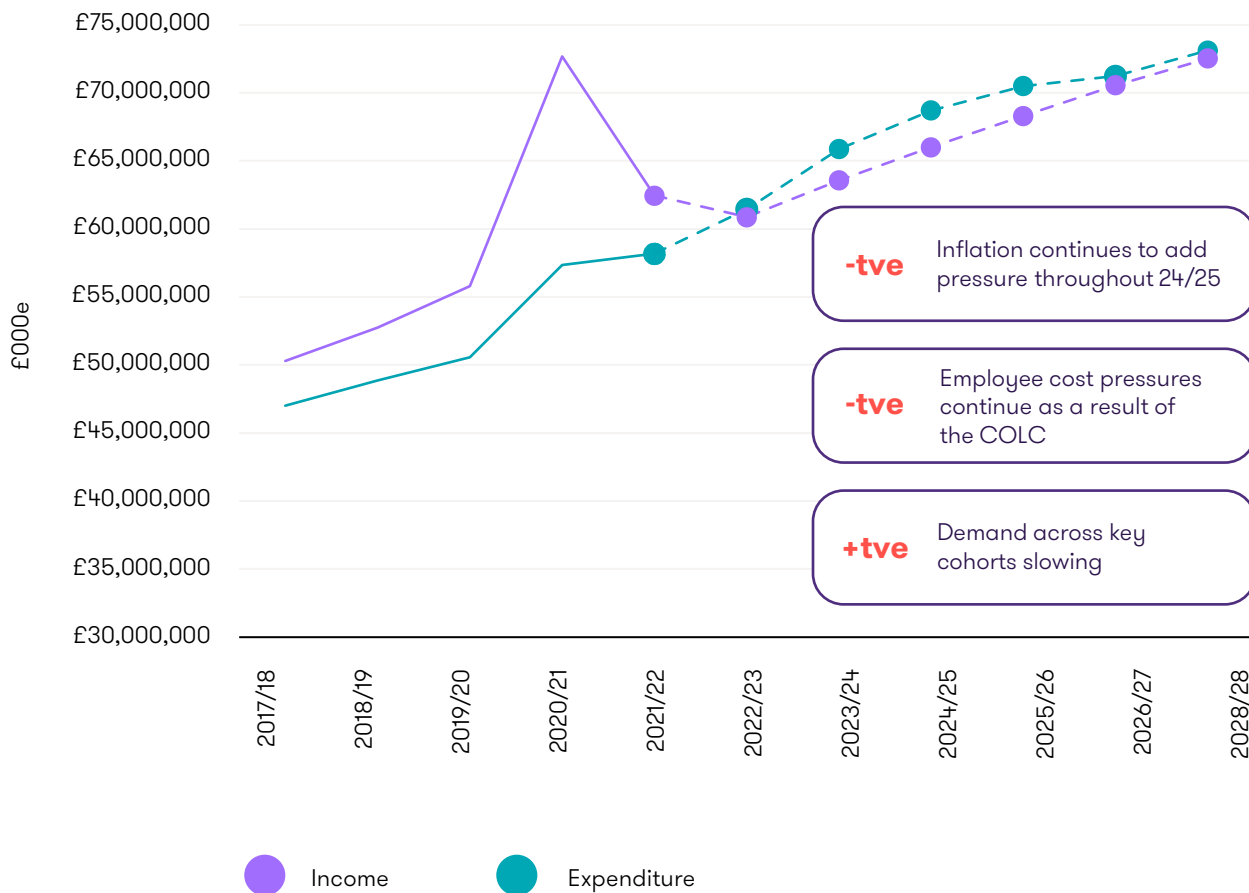
A lack of commercial skills has led some councils into risky ventures which they then could not manage effectively.

Lack of a consistent voice, across the different sector bodies and professional bodies, has made it harder for local government to be heard and understood.

3.2 Financial pressures

Financial pressures have been experienced by all councils but the impact and their responses to those pressures have varied. Councils in more disadvantaged areas are likely to have residents with higher levels of need and fewer sources of income from, for example, commercial rents, parking fees and the Community Infrastructure Levy, than more prosperous areas. That compounds the effects of reductions in central government funding, as does an outdated funding formula. However, it's clear that not all councils have responded to these financial pressures in the same way. Some have focused on transforming their organisations, removing layers of management and redesigning their services, including supporting more self-service. These changes have not been easy for officers or members. The loss of experienced, valued staff, the need to adopt new ways of working and reductions in discretionary services which contribute so much to the well-being of communities have been very painful for everyone, including residents. To make difficult decisions, councils need members and senior officers with a shared vision, clarity of purpose, strong governance, supportive leadership and the ability to engage with their local communities to reduce the impact of change on the most vulnerable. The following graph forecasts a sector wide funding gap in 2024/25 of £2.7bn, reducing to £0.6bn by 27/28.

Financial foresight projection: income v expenditure



Historical discrepancies in income and expenditure stem from the asynchronous recording and reporting of grant income and related expenditures in the local authority Revenue Outturn (RO) forms, influenced by timing differences, varied reporting standards, specific grant conditions, data revisions, and inconsistent administrative practices.

4 Opportunities to prevent failure

Local government, central government, regulatory bodies, professional bodies and advocacy organisations have, between them, significant powers, duties and opportunities and opportunities to prevent local government failure. Each of those powers, duties and opportunities to intervene provides a unique link in the chain of safeguards which protect the interests of citizens and the stewardship of public money, but the work of each organisation is often not coordinated with, or even visible to, others in the chain. Each political, regulatory, professional and advocacy body operates in its own sphere with only limited shared learning from individual and collective failures. A chain is only as strong as its weakest link and there is evidence in each case of serious financial and governance failure that one or more links in the chain has been weak or altogether broken.

The Local Audit and Accountability Act 2014 created a complex web of responsibilities for the local audit system previously exercised by the Audit Commission. As part of a revised focus on creating a single point of leadership The Financial Reporting Council has been appointed shadow systems leader for local audit and this may help to improve knowledge sharing.

DLUHC are currently consulting on detailed plans to end the backlog of audits (over 900 in September 2023) by introducing proscribed deadlines for closing late audits, which if not completed by that date would be disclaimed.

Roles and functions

Powers and duties

Opportunities to prevent failure

Individual councils

Full Council

Full Council is responsible for agreeing the Council's constitution and setting the overarching policy framework within which the Council operates and ensuring appropriate safeguards for good governance and decision making are in place. It makes or validates every major policy and financial decision. Full Council can intervene to prevent the Executive making decisions which do not comply with the constitution or the Council's policy framework.

Public bodies spending taxpayers' money are accountable for their stewardship of the resources entrusted to them. They should account properly for their use of resources and manage themselves well.

They should demonstrate courtesy and respect towards each other and officers.

Ensure all members are well informed and undertake all the necessary regular training and development.

Ensure Auditor's Annual Reports are presented to Full Council.

Avoid making important key decisions as 'urgent'. Allow enough time for in-depth discussion and for members to understand complex information and consider all the possible consequences of their decisions, including the risk of unintended consequences.

Ensure that commercial confidentiality does not prevent members being fully informed about financial decisions.

Executive

Executive (Cabinet) members are appointed by the Leader or directly elected Mayor. They are responsible individually, through their portfolios, and collectively for the effective political leadership of the council.

The Leader or directly elected Mayor should appoint executive members who have the capacity, competence and commitment to fulfill senior political roles. Each executive member should be aware of their responsibilities towards the whole council and the communities they serve and be prepared to question officers and challenge each other.

Overview and Scrutiny Committee

OSCs should act as an objective, critical friend to the Council and take a non-party political approach to scrutinising decisions taken or yet to be taken. Their focus should be on improvement in whatever issue or decisions they scrutinise and on what matters to their communities. They can ‘call in’ and review decisions made by the Executive and Full Council, either before or after they are taken. Their reports may be made to the Executive or to Full Council.

The role and functions of OSCs should be properly respected by the Executive and Full Council. They should have a Forward Plan to ensure they focus on key strategic issues and sufficient resources and officer support to carry out their functions. They should have sufficient capacity and resources to ‘call in’ and review decisions in a timely and effective way and a non-partisan focus. OSC members should receive specific training. OSCs should have independent members, as well as councillors, both to demonstrate transparency and to enable the Council to benefit from the expertise and experience of its residents. OSC’s recommendations should be acted upon by the Executive, unless there are very compelling reasons not to do so and those reasons should be published with the OSC reports.

Audit Committee

The purpose of the Audit Committee is to provide independent assurance to the Council that risks are being managed and internal controls are preventing waste of resources and fraud. The Audit Committee receives the Annual Governance Statement, from the Monitoring Officer, setting out the all the policies and procedures which the Council has in place to ensure a consistently high standard of governance across the whole organisation. Internal and External audit report to the Audit Committee.

The Audit Committee should focus on risk management alone and not have multiple functions. The Audit Committee should have an independent chair and at least one other independent member. Audit Committee members should receive specialist training and sufficient officer support to enable them to fulfill their functions. Audit Committees should ensure the Annual Audit Plan for Internal Audit focuses on major strategic and other critical issues, rather than low risk, low impact areas of operations. Audit Committees should challenge Internal Audit when important audits are deferred without good reason. Audit Committees should be curious and ask the right questions.

Chief Executive Officer

The Chief Executive sets the tone for the council as whole by providing visible, accessible and supportive leadership and ensuring effective governance. They have the legal power to define the structure and functions of the council. It is their job to bring together all the expertise of statutory officers to create a ‘golden triangle’ of competence and professionalism to support good decision making. They manage the often contested leadership space between members and officers. It is their job to speak truth to power They also support and enable other professionally and technically qualified officers to contribute to the effective management of the Council and delivery of services.

Chief Executive's need to pay attention to their own development needs, particularly in challenging times and during major change, such as a change of administration, and seek mentoring or coaching support.

They need to have a well-developed understanding of legal and financial management issues.

They need to encourage openness and challenge within the council, including by strengthening their whistleblowing policy and providing effective support to whistleblowers.

Finance Director (s151)

CIPFA sets out the duties of Finance Directors, to be professionally qualified and suitably experienced, to be an active member of the leadership team, influencing major decisions and ensuring they are risk assessed and aligned with the council's strategies. They also need to ensure good financial management to safeguard public money and provide an effective finance function to support the council as whole.

S151 officers should be part of the 'golden triangle' with Chief Executive's and Monitoring Officer's and they should be active leaders for the organisation, not just providing a specialist finance function.

Undertaking continuing professional development will help s151 officers both to develop their skills and to develop supportive professional networks.

S151 officers should be ready to seek independent, external advice, when necessary, particularly if the Council is considering making significant investments or engaging in commercial activity.

It is important to seek informal peer support and mentoring or coaching, particularly when relationships with other officers and members are strained.

Monitoring Officer

The powers of the Monitoring Officer are set out under s5 of Local Government and Housing Act 1989.

They should ensure the council acts within its constitution, fulfils its statutory obligations, and applies its codes of conduct.

They should also investigate and report anything which is potentially illegal or constitutes misconduct or maladministration.

The Monitoring Officer is a vital member of the senior leadership team, providing legal advice to Chief Executive and FD and contributing to collective leadership of the council.

Monitoring Officers should be part of the 'golden triangle' and active organisational leaders, not just specialist advisors.

Monitoring Officers should ideally be qualified as a solicitor or barrister and non-qualified Monitoring Officers should be supported by their councils to qualify.

Continuing professional development is vital to maintain expertise and enable the development of supportive professional networks.

Monitoring Officer's should seek independent, external advice when necessary.

It is important to seek informal peer support and mentoring or coaching.

Internal Audit

Internal audit is an independent, objective assurance and consulting activity, designed to add value and improve the organisation's operations. It helps an organisation to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance protocols

The annual internal audit plan should focus on key risks. Planned audits should be completed in a timely way. Reporting to the Audit Committee should be clear and prompt and recommended remedial actions should be followed up as quickly as possible. Councils should ensure that their internal audit function is adequately resourced and internal auditors suitably qualified.

External bodies

National Audit Office (NAO)

The NAO specifies the Code of Audit Practice for Local Auditors under which financial and value for money audits are undertaken and the Code is updated every five years.

The NAO undertakes audits of government departments on policy areas relating to local government.

The NAO should conclude their review of the effectiveness of the Code in the light of recent failures and strengthen the Code as necessary.

External Audit

Under the Code of Audit Practice for Local Auditors, in addition to the annual cycle of financial and value for money audits, auditors can also investigate matters about which they have concerns and report back promptly to the council with recommendations for improvement. Auditors can issue

Public Interest Reports, Statutory Recommendations and Advisory Notices to the Council under Section 24 (Schedule 7) of the Local Audit and Accountability Act 2014.

Key recommendations are made under the NAO Code of Audit Practice which requires that where auditors identify significant weaknesses as part of their arrangements to secure value for money, they should make recommendations setting out the actions that should be taken by the Council.

Improvement recommendations are designed to improve the arrangements in place at the Council.

External Auditors should complete audits in a timely way. They should take a robust approach to identifying poor practice and risks and make appropriately challenging recommendations for improvement.

Where external auditors identify issues of concern in the current audit year they should investigate and report promptly, rather than waiting for the end of the audit year. Audit firms should ensure that their staff are sufficiently qualified and experienced to identify the early warning signs of possible financial and/or governance failure.

The Local Government Association

The LGA is a membership body, to which the vast majority of councils belong. The LGA acts as a key advocate for local government with central government and across the political parties. LGA also exists to improve and support local government, taking a sector-led approach.

The LGA should continue to work with political parties to create an expectation that all members will be supported through training and development to hold themselves to the highest standards in public life.

The LGA should continue to balance their advocacy role with that of a critical friend, perhaps considering the creation of a new division for sector led improvement separate from the rest of the organisation, which distinguishes between its roles as a supporter of improvement and advocacy.

The LGA should build on recent changes to the corporate peer challenge process (for example, councils now publish the feedback report and an action plan). A potential further change would be requiring progress on the action plan to be reported to full council.

Chartered Institute of Public Finance Accounting

CIPFA is a membership and standards-setting body which, together with LASAAC, develops the Code of Practice on Local Authority Accounting for the UK.

CIPFA also provides training and professional development. It has a Practice Oversight Panel, and, through its disciplinary schemes, it can discipline a s151 officer who has not maintained the high standards set by CIPFA.

CIPFA should consider whether its practice oversight activity should include retrospective consideration of failures by individual s151 Officers where these come to light after the individual has vacated his/her role, and possible sanctions.

Not all s151 officers are CIPFA members, so there is a gap in regulation which could be filled if all s151 officers were asked to formally confirm their commitment to CIPFA standards.

Roles and functions**Powers and duties****Opportunities to prevent failure**

SOLACE

SOLACE is a professional membership body, not a regulatory one. Membership is not necessary for the appointment of a chief executive. It provides valuable training, networking and development opportunities for officers, including aspiring and current chief executives, which build knowledge and capacity.

SOLACE should offer accredited training for Chief Executive's, which councils could then specify as an 'essential' criterion when appointing chief executives.

SOLACE should consider introducing mechanisms to remove accreditation where there have been significant failures on the part of individuals.

CIPFA, Solace, and Lawyers in Local Government

Each professional membership body has a separate purpose to service the specific needs of its own members.

The three organisations, together with Treasurer Societies and ALATS, should develop a shared set of standards and expectations to underpin the collective leadership of Chief Executives, s151 officers and Monitoring Officers. Training for aspiring Chief Executives, s151 officers and Monitoring Officers, is essential to ensure a pipeline of well-informed and collaborative statutory officers for the future.

These bodies should ensure arrangements are in place for effective training and CPD for individuals in the three statutory officer roles, and work together effectively and understand the statutory purpose of each role.

DLUHC

DLUHC and HMT together with DfE, DHSC, DfT and DCMS control or influence most local government functions, through funding, policy, and legislation. We have the most centrally controlled system of local government in western Europe.

Central government should implement the recommendations of the Redmond Review on external audit.

DLUHC and HMT, together with CIPFA complete the consultation on the calculation of the Minimum Revenue Provision, to ensure a consistent approach which reduces the risks of members agreeing to unaffordable borrowing.

If central government developed a longer-term system for mainstream local government funding which provided a stable financial framework and enabled longer term planning, it would reduce the risk of councils embarking on risky ventures to bridge the ever-growing funding gap.

The modernisation of resource allocation and the reduction of competition between councils for multiple funding pots would help reduce the risk of financial and service failures.

DLUHC should also consider reinstating the now eroded legal protections for statutory officers when they use their powers and fulfill their duties to protect the interests of the council.

HMT - PWLB

The PWLB, via the Debt Management Office, an arm's Length body of HMT, lends money to councils for capital projects. The PWLB relies on the certification by s151 officers that the loan meets their criteria. They have continued to lend to councils who have already accumulated high levels of debt. Some loans have been used to generate revenue, which is against their lending rules

The PWLB should continue its current work to strengthen its approach to due diligence to reduce the risk of councils borrowing more than they can afford to repay, against capital assets with inflated values.

The PWLB should continue to not agree to any further loans when they have concerns that a council is using the loan for yield or for revolving loans to companies to cover a revenue deficit. PWLB should consider a loan ceiling for individual councils beyond which the PWLB should not make further loans without consideration of an independently produced business case and risk assessment.

5 What now needs to change to prevent failure in the future?

Local government operates in an extremely complex system and is, paradoxically, both over-centralised and under-supported. Local authorities are sovereign bodies, but their powers are far outweighed by the constraints under which they operate and the weight of their responsibilities. Local government's legal framework is enshrined in statutes and regulations dating from 1972 and is not longer fit for purpose in the current environment. The legal protections which previously protected statutory officers and enabled them to fulfill their legal duties without fear of negative personal consequences have been eroded.

Reductions in funding have led a to significant loss of organisational capacity to respond to ever-growing threats and challenges. It is to the credit of most local authorities that they have managed to avoid serious financial and governance failures despite the financial pressures they face. It is important that the failure of individual councils does not undermine the strong case for greater devolution of powers and resources to a local level and to local communities. However, the proliferation of failures raises the possibility of a more strongly regulated local government sector, the recent introduction of the Office of Local Government (Oflog) which plans to create an early warning system for councils and is a sign of this direction of travel.

A common feature of failures is that those responsible for failing to adhere to rules, failing to be open and transparent, taking decisions without the appropriate expertise or advice, and taking ill-advised risks, have frequently moved-on before the consequences become apparent leaving a difficult legacy for their successors who then inherit intractable financial and governance problems. This applies to politicians as well as officers. Whilst politicians may find that electoral success is elusive after a very public failure, officers are professionals who may well move on to operate in another public service role. In the worst cases of failure, where appropriate standards of professional conduct have not been met, it is arguable that there should be enhanced mechanisms in place to hold those who have moved on to account for their behaviour to help prevent any repeat of failure.

Everyone whose expertise, powers and duties form part of the chain of safeguards should consider what they need to do to strengthen their ability to prevent failure. It is important that this is done collectively, as well as individually. That requires strong collective leadership to recast the relationships between central and local government and all the organisations which form part of the local government family. That is a daunting task, but the consequences of failing to tackle it will be further failure and a consequent focus on regulatory provisions.

The challenge for all those in the local government system is to make the best possible use of their powers and duties to prevent failure by

- Understanding and learning from past failures
- Understanding and mitigating the risks of failure
- Working collaboratively across professions, hierarchies and organisational boundaries to support good governance and robust financial management.

Appendix: Statutory Officers

Local authorities have a duty to appoint a number of senior officers to statutory roles. This report mentions the “triumvirite” of Head of Paid Service, Section 151 Officer and Monitoring Officer. Further detail on these is set out below.

Local authorities have other statutory officer roles, including Director of Children’s Services (DCS) and a Director of Adult Social Services (DASS) which are not the focus of this report.

Section 151 Officer

Section 151 (s151) of the 1972 Local Government Act requires every local authority to make arrangements for the proper administration of their financial affairs and requires one officer to be nominated to take responsibility for the administration of those affairs.

The S151 Officer must be a CCAB¹ qualified accountant. Their main statutory roles are:

- Ensuring the council sets a balanced budget each year. Legislation describes when a budget is considered not to balance:
 - Where increased uncertainty leads to budget overspends of a level which reduces reserves to unacceptably low levels
 - Where an authority demonstrates the characteristics of an insolvent organisation, such as an inability to pay creditors
 - S151s must interpret this based on the circumstance of their own organisation and should continually monitor income and expenditure in-year.
- Report any unlawful financial activity involving the authority (past, present or proposed)

The S151 Officer also has a number of statutory powers in order to allow this role to be carried out, including issuing a S114 Notice (see further detail below).

Councils will decide which officer has the S151 responsibility and they are not always a member of the senior leadership team. The role titles can include Director of Finance, Borough Treasurer, Director of Corporate Services, Director of Resources, Head of Finance, Chief Operating Officer, Chief Finance Officer, and Executive Director of Resources.

Councils also need to identify a Deputy S151 Officer.

Section 114 Notice

Section 114 of the Local Government Finance Act 1988 requires the S151 Officer, in consultation with the council’s Monitoring Officer, to report to all the authority’s members if they believe the council is unable to set or maintain a balanced budget. It is often described as a local authority declaring itself bankrupt.

Such a notice is only given in the gravest of circumstances.

It is most likely to be required in a situation in which reserves have become depleted and it is forecast that the council will not have the resources to meet its expenditure in a particular financial year.

A full council meeting must then take place within 21 days to consider the notice.

A S114 Notice results in significant spending restrictions, including that no new agreements involving spending can be entered into.

¹ Consultative Committee of Accountancy Bodies (CCAB) is an umbrella group of chartered professional bodies of British qualified chartered accountants: ICAEW, CIPFA, ACCA, ICAS and CAI.

Head of Paid Service

Section 4 of the Local Government & Housing Act 1989 provides that it is the duty of every local authority to designate one of their officers as its Head of Paid Service.

It is the duty of the Head of Paid Service where he or she considers it appropriate to do so, to prepare a report to the authority setting out their proposals as to:

- the manner in which the discharge by the authority of their different functions is co-ordinated;
- the number and grades of staff required by the authority for the discharge of their functions;
- the organisation of the authority's staff;
- the appointment and proper management of the authority's staff.

Regulations made under the Local Government Act 2000 reinforce these duties by making the appointment of staff below chief officer level the exclusive function of the Head of Paid Service or someone nominated by him or her.

The Head of Paid Service is normally the Chief Executive Officer.

Monitoring Officer

The legal basis for the post relates to section 5 of the Local Government & Housing Act 1989, as amended by schedule 5, paragraph 24 of the Local Government Act 2000.

The monitoring officer has three main roles:

- to report on matters he or she believes are, or are likely to be, illegal or amount to maladministration;
- to be responsible for matters relating to the conduct of councillors and officers; and
- to be responsible for the operation of the council's constitution.

The role can be held by the Head of Legal Services but Monitoring Officers do not have to be qualified lawyers.

Section 5 Notice

It is the role of the Monitoring Officer to report on matters they believe to be illegal or amount to maladministration, to be responsible for matters relating to the conduct of councillors and officers and, to be responsible for the operation of the council's constitution.

A Section 5 Notice is the means by which a Monitoring Officer reports such concerns, under their responsibilities as set out in the Local Government and Housing Act 1989.

Before issuing a Section 5 Notice the Monitoring Officer should consult with the s151 Officer and Head of Paid Service.

Contact us



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Somerset Council Audit Committee

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Preventing failure in local government report

14 December 2023

Guy Clifton





Introduction

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- New report published on 7 December 2023:
- <https://www.grantthornton.co.uk/insights/how-can-further-local-authority-failures-be-prevented/>

Organisational failure

- Local authority failures remain rare, but they are not as rare as they used to be.
- This report examines the themes that relate to examples of government intervention, auditors use of their statutory powers, and the issuing of S114 or S5 Notices.
- It is important to note that the act of issuing a S114 or S5 Notice may not in itself represent failure. The statutory officers responsible for issuing such notices are typically acting with integrity, often with personal bravery, and in some cases are responding to organisational decisions that took place before they were in role.
- Nonetheless, the issuing of such Notices are signifiers of past or present organisational failure, and this report considers the internal and external factors that can contribute to such circumstances arising, and actions that can help to prevent organisational failure.



Causal factors - structures

Internal factors	External factors
Use of council owned companies	Multiple government departments
S151 Officer or MO not on senior management team	Churn of ministers and civil servants
Over-reliance on interim statutory officers	
Combined authorities	

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Causal factors - systems

Internal factors	External factors
Weak risk management	Funding reductions
Members not fulfilling responsibilities	Competition between councils for additional funding
Internal audit weaknesses	Ease of access to PWLB borrowing
Weak treasury management	Resource constraints on regulators
Lack of commercial expertise	

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Causal factors - behaviours

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Internal factors	External factors
Weak leadership	Lack of a consistent voice across sector and professional bodies
Poor relationships	
Optimism bias and wilful ignorance	
Statutory officers not fulfilling their responsibilities	
Lack of transparency on decisions	
Lack of commercial skills	



Preventing failure - individual councils

Functions and roles	Good practice
Full Council	Effective resource management, ensure members are well informed/trained, auditor's annual reports presented to full Council, allow enough time for in-depth discussion on key decisions.
Executive	Ensure those appointed have appropriate capacity, competence and commitment, and are fully aware of responsibilities.
Overview & Scrutiny	O&SC function respected by Executive and full Council. Forward plan to focus on key strategic issues. Sufficient resources/support to meet functions including for call-ins. Non-partisan approach, independent members. Recommendations should be acted upon.
Audit Committee	Independent chair, members receive specialist training, receive appropriate officer support, internal audit plan focus on key strategic /risk-based areas, be curious, challenge IA/EA.

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Preventing failure - individual councils (cont'd)

Functions and roles	Good practice
CEO	Pay attention to development needs, seek mentoring/coaching, have well-developed understanding of legal and financial issues, encourage openness and challenge within the council.
S151 Officer	Undertake CPD, seek independent/external advice where necessary, seek peer support and mentoring when relationships internally are strained.
Monitoring Officer	Ideally be legally qualified, undertake CPD, seek independent external advice where necessary, seek peer support and mentoring.
Internal Audit	Annual plan focus on key risks, complete audits in timely way, clear reporting to AC, follow up recommendations, be adequately resourced.

Golden triangle – active leaders across the organisation



Preventing failure - external bodies

Functions and roles	Good practice/opportunities
NAO	Conclude review on effectiveness of Code in the light of recent failures and strengthen the Code as necessary
External Audit	Complete audits in timely way, identify poor practice and risks and make appropriate improvement recommendations. Report promptly on issues of concern. Ensure appropriately experienced teams.
CGA	Continue training and development of members including standards in public life. Continue sector led improvement. Build on recent changes to corporate peer challenge process.
CIPFA	Consider oversight activity, consider sanctions regime, management of S151s not CIPFA members.
SOLACE	Offer training to CEOs, specify essential criteria for CEOs, consider mechanism to remove accreditation where appropriate.



Preventing failure - external bodies (cont'd)

Functions and roles	Good practice / opportunities
LLG, CIPFA, SOLACE & ALATS	Develop shared set of standards and expectations for statutory officers, training for aspiring statutory officers, support networks.
DLUHC	Implement Redmond Review recommendations in full, complete consultation on MRP (with CIPFA and HMT), review sector funding regime.
HMT	Continue work to strengthen due diligence on PWLB borrowing and consider a loan ceiling for individual councils.

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Summary

- Most councils are well run, and have avoided significant failures, but the sector is facing increasing challenges.
- Legal framework and funding system need to be reviewed.
- Common feature of failures is weak leadership and impact on organisational culture.
- Everyone with expertise, powers or duties should consider safeguards in place and what they need to do individually and collectively – strong collective leadership.
- Understand and learn from past failures, understand and mitigate risk of failure.
- Work collaboratively across professions, hierarchies and organisational boundaries to support good governance and financial management.

Questions....

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Preventing Local Government Failure Report No.2

- A follow up publication is planned for January 2024
 - This will provide further detail on the steps councils can take to prevent failure
- To include case studies

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Previous reports

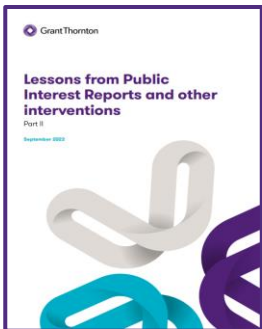


We published our first lessons learned report on Public Interest Reports (PIRs) in March 2021.

A follow up, covering lessons learned from subsequent PIRs was published in September 2022

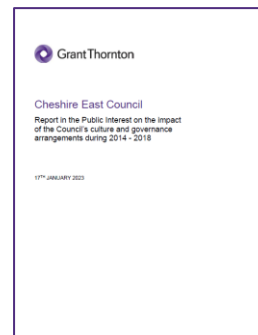
Both reports can be accessed here:

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



Procurement and contract management lessons learned (Dec 2022):

<https://www.grantthornton.co.uk/insights/local-government-procurement-and-contract-management-lessons-learned/>



Cheshire East Council PIR (Jan 2023):

<https://www.cheshireeast.gov.uk/pdf/council-and-democracy/council-finance-and-governance/public-interest-jan2023/cheshire-east-council-final-17-january-2023.pdf>

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