

Central government intervention in local government

Note of roundtable meeting

Introduction and attendees

On 12th June 2018, the Centre for Public Scrutiny convened a roundtable meeting to talk over key issues relating to the governance, accountability and transparency of central Government intervention in local government.

This note is a summary of that discussion, interspersed with contextual information to make the note more useful to a casual reader.

The note does not necessarily represent the views of CfPS or of any individual listed as having taken part – it is simply a summary of some of the points made over the course of the discussion and that we found interesting. It does not provide an analysis or critique of those points. CfPS will, in due course, be pursuing more detailed research on this issue. As we do, we intend to have conversations with a wider range of people – some of whom will inevitably have opinions different to those expressed below.

Contact: Ed Hammond (020 3866 5109 / ed.hammond@cfps.org.uk)

Present

Lord Bob Kerlake (Chair, CfPS), Jacqui McKinlay (Chief Executive, CfPS), Piali das Gupta (Head of Policy, SOLACE), Diana Stirbu (Senior Lecturer in Public Administration, London Metropolitan University), Harley Manning (Student, London Metropolitan University), John Tizard (independent strategic adviser), Yvonne Davis (former Head of Housing, Audit Commission), Dan Corry (Chief Executive, New Philanthropy Capital), Ben Proctor (Communications and Community Development, Satori Lab), Pete Murphy (Professor, Nottingham Business School), Aileen Murphy (Director, Local Government Value for Money, National Audit Office), Ashley McDougall (Director, Local Service Delivery Studies, National Audit Office), James McLaughlin (Head of Democratic Services, Rotherham MBC), Zena Cooke (Head of Finance, Tower Hamlets LBC), Ed Hammond (Director of Research, CfPS)

Background and scope of discussion

Intervention is an increasingly important issue for the sector to grapple with. Prior to 2015, Government had used its formal powers to intervene in the running of local councils – removing political decision-making and sending in appointed “commissioners”, only a couple of times. Since 2015, there have been several occasions where formal (and slightly less formal) intervention measures have been put in place:

- In 2015 in Rotherham (commissioners appointed to run all council services in the aftermath of the child sexual abuse scandal)
- In 2015 in Birmingham (an Independent Improvement Panel appointed to oversee improvement in light of a critical external report)
- In 2015 in Tower Hamlets (commissioners appointed to run some council services following irregularities in grant-making and general council governance)
- In 2017 in Kensington and Chelsea (a Taskforce appointed to oversee and advise on the changes being made to how the council works in the aftermath of the Grenfell fire)
- In 2018 in Northamptonshire (commissioners appointed to run some council services following the council’s significant financial problems)

This does not include the numerous occasions where councils have been placed under “special measures”, and other enhanced oversight mechanisms, where individual services have been found to have failed. This has been a particular feature in children’s services; for the purposes of our roundtable discussion this is not an issue that we are posing for discussion.

The process

Central Government intervention is difficult to understand. There is often, but not always, a political imperative to intervene; other circumstances can provoke intervention in ways that is often unpredictable.

There are two principal forms of intervention – on the basis of “best value”, and through less formal mechanisms.

1. Best value intervention

The Local Government Act 1999 (s15) gives the Secretary of State for Housing, Communities and Local Government wide discretion to make “directions” to local authorities where he/she feels that the authority in question is not delivering its duties under the best value regime. This BV-led system was essentially a replacement for the intervention powers available to the district auditor (prior to the Audit Commission Act 1998).

Although most elements of the BV regime have been dismantled, this important power remains. However, Government does not have the benefit of the best value performance framework helping it to make accurate determinations on whether BV is being delivered. As such, Government has taken to commissioning independent reports on the subjects on an ad hoc basis to allow it to determine the “case for intervention” in particularly high profile instances. However, the scope, duties and methodologies of these inspections has varied significantly.

This power, and other powers of intervention, have been used idiosyncratically in the last few years. The Minister is obliged to provide updates to Parliament on these powers and how they are used, but there is no effective scrutiny of their application at national level. In 2016, the Communities and Local Government Select Committee produced a report into s15 interventions; it looked at the case of Rotherham and Tower Hamlets and concluded that more transparency and accountability was required at local level. It concluded that although intervention appeared to have helped in those cases it was concerning that no other form of intervention other than commissioners could have been put in earlier – effectively that the council had to hit “rock bottom” before any steps were taken to arrest the problems.

2. Non-statutory intervention powers

Other, more informal, powers of oversight and intervention also exist – most notably in Birmingham where the establishment of the Birmingham Independent Improvement Panel (BIIP) was preceded by the Kerslake Review into council governance. The operation of the BIIP has been subject to significant confusion and an overall lack of scrutiny – accountable to the Secretary of State, they have (in late 2017) announced their withdrawal only to rescind that decision. The sense is that the operation of the BIIP is like a “Sword of Damocles”, itself a destabilising influence for an authority grappling with its improvement challenges.

In Kensington and Chelsea, despite prominent calls for Government intervention, Government chose to establish a “Task Force” (in particular, to manage the operational response to the Grenfell fire). The terms of reference of the Task Force emerged from that operational response but have also enlarged to encompass a wider range of activity.

It might be argued that these less formal mechanisms of intervention risk “mission creep” – an external body set up for a defined purpose but whose lack of local accountability makes it difficult for politicians and officers to understand what their ongoing role will look like.

Other ways to improve council performance

There are two other main ways that council performance might be improved, stopping short of external intervention.

- “Sector improvement”. This is the term used for mechanisms operated by the Local Government Association – in particular, the corporate peer challenge process, although there are various other both formal and informal means to try to identify, understand and arrest poor performance.
- Local governance. Internal management systems and processes – and overview and scrutiny – are important mechanisms that councils will use to improve performance. Good councils will be able to use these mechanisms as an early warning sign, to take immediate action if the risk of failure begins to emerge.

The discussion itself

At the roundtable, discussion was framed with reference to three issues:

- The “slippery slope” leading to intervention
- The process of intervention itself
- Recovery, and emergence from intervention: turnaround and improvement

The slippery slope

The early warning signs of failure are not well understood. Degradations in councils’ corporate cores, a lack of a sense of what local people want and need, a failure to innovate and an unwillingness to identify and stick to key priorities can all play a part. These are sometimes issues that corporate peer challenges pick up on; however, for action to be taken requires a council’s leadership to step up, recognise the risks and be firm in doing whatever is necessary to turn the situation around. Because often the cause of these warning signs is a lack of effective leadership, how realistic is this – and is it unrealistic, therefore, to assume that councils should be able to pull themselves out of problems?

Roundtable comments on pre-2010 arrangements and what they can teach us

- Intervention and inspection pre-2010 had more of an automatic flavour, making it more predictable both for individual councils and for the sector as a whole;
- The relationship between the Audit Commission (AC) (leading on intervention) and the Improvement and Development Agency for local government (IDeA) (leading on review) meant that roles and functions were well understood;
- The AC model at the time was about a series of inspections being used as “intervention” – the IDeA model was about improvement; the two organisations worked in concert. These, and other agencies, understand their role within the system. This infrastructure has been lost, and mission creep for more informal interventions (see below) may in part result from this.
- Peer review was not, as originally conceived, meant to be a “gentle” process. The very earliest examples (for example, as demonstrated in Liverpool and Lambeth) present it as something short, sharp and directed.

Roundtable comments on early warning signs of failure: general

- The key questions are – whose job is it to pick up on the issues, and what are those issues?
- External audit is the worst way of picking up on early warning signs (public, formal objections to the council’s accounts could be a useful driver but is unusual and focused only on financial matters);
- We don’t know enough about how cultures change when they begin to slide;
- People will continue to operate in the way they always have – even if it is a way of working which is less and less relevant to the way the world is now - until something changes in the environment;
- That change in the environment may be a single catastrophic instance (such as Grenfell) or a combination of issues which combine to produce failure (like in Northamptonshire) but in all instances the visible change, and its consequences, are often a symptom of the underlying failure, not a cause;

- It is possible to pick up these things – but we collectively lack the guts to do so, to take individual onus and responsibility.
- A hollowing out of strategic resource at the centre of organisations makes proper value analysis (and oversight) very difficult.

Roundtable comments on early warning signs of failure: the case for better use of insight

- There is an issue of proportionality here – whether it is better to have systems in place to identify and arrest failure, or better to be prepared to allow failure to happen and to improve afterwards;
- The difficulty is that failure has direct real world consequences – and costs for people’s lives that can be very high;
- There will be a defensiveness sitting around early intervention in councils on the “slippery slope” – part of that failure will display itself through an unwillingness to engage with outsiders or the sector at large, making intervention by definition more challenging;
- Data governance remains a significant issue. Poor use of data in the service of accountability remains a pressing concern – within councils, and for those seeking to hold them to account;
- There is a case for a method to gather evidence to give the sector at large a better sense of the areas where the greatest risks exist – but the risk exists of recreating the Audit Commission by the back door, and scapegoating councils for the consequences of decisions made at national level (on local government finance, for example);
- That said, the Audit Commission did, overall, provide a valued and valuable role around both review and improvement which is lacking in the system as it currently stands;
- There is a need for better collaboration across different bodies to understand what information is collected and how it is used – and to ensure that there is accountability and transparency built into this.

Intervention itself

We have noted that intervention will often follow a trajectory – the “slide towards intervention” being put in stark relief by a significant, high profile event which reveals the authority’s underlying weaknesses. Sometimes this event is inherent, inextricably linked to those weaknesses (Northampton’s financial situation). Sometimes the event is seen as a bolt from the blue; something affecting a council which is seen in other respects as being “well run” (notably, in the case of Kensington and Chelsea). The way that a high profile event triggers national interest, and later Government action, can be unpredictable, and driven by political imperatives (at national and local level).

Roundtable comments on decision-making at national level

- Secretaries of State are generally loath to intervene – in at least one instance pressure was exerted by other Government departments to intervene;
- The number of interventions to date is actually low, particularly compared to the NHS, and particularly considering the challenges that the sector faces, with only one (to date) on grounds of financial viability;
- It should be recognised that there are two different stages to the process – one of review, and one of improvement. Different people will need to be involved in both – different skillsets are involved.

Roundtable comments on the ad hoc nature of intervention

- The dynamics around “informal” intervention are confused – in those instances, such intervention has technically been “invited in”, although the extent to which the councils concerned have been happy with this arrangement is moot;
- Informal intervention is especially ad hoc, and risks “mission creep” where the terms of reference of the body providing oversight is open to interpretation;
- A series of silo-based interventions (which reflects what has emerged, post Audit Commission) is the least effective way to proceed. For example, In housing, the regulator has an important role in flagging issues of concern – the co-regulatory nature of housing governance (in particular, the way it allows for early intervention) has no analogue in local government.

Roundtable comments on practical support under intervention

- There is now a significant use of consultants to support councils under intervention (reflecting the elimination of the national support structures highlighted above);
- A lot of time and effort is expended by councils under intervention supporting and resourcing the intervention itself;
- In a general sense, significant issues exist around capacity within councils, and the sector, to support interventions, and the capability (in terms of skills and understanding) within councils and the sector to support it as well;
- Intervention systems (depending on their scope and role) often observe, rather than providing direct support; often intervention happens because councils lack both the skills, resource and capacity to address issues locally;
- Intervention is not neutral – it is not subject to enough oversight or accountability itself;
- More thought needs to go into developing an understanding, for individual interventions, of the cost vs the impact of that intervention – essentially, its value for money;
- The political dynamics of intervention should be recognised better. Failure and intervention is not just an officer problem. If intervention could be seen as happening on behalf of the place, rather than on behalf of central Government, it could lead to a more significant role for members.

Recovery

In due course the process of intervention will come to a conclusion, and commissioners / Government will make plans for the return of responsibilities to the council. During intervention, while political systems will not have been in abeyance, councillors will at times have felt like spectators. There is an issue about sustaining improvement and ensuring that councillors have the capacity and expertise to take on and fulfil their roles, once commissioners (and/or others) have left. There is also a need to think about the accountability of commissioner decisions to “return” services to local political control.

Roundtable comments on what recovery looks and feels like

- Intervention can spur something of a revolution. In one area, many senior officers left immediately prior to intervention, or straight afterwards;
- A significant churn in senior officers can lead to a lack of corporate memory at senior level – this can have positive and negative effects (temporary “acting up” of other staff

can lead to capacity problems, but offers the opportunity for a conscious break with the old culture;

- The denial that can initially sit around intervention can make it difficult for staff lower down the organisation;
- Commissioner-led intervention can drive improvement – and will often use a very blunt approach in doing so;
- Commissioners can be used to challenge political issues in a way that would otherwise be very difficult;
- Values and behaviours are key in changing culture (as evidenced by all the recent interventions, in particular Rotherham).

Roundtable comments on “overstay”

- Where the terms of reference of intervention are imprecise (and especially in the case of informal intervention) mission creep can emerge;
- Overstaying intervention can do more harm than good – it affects public morale and relationships with partners.

Conclusions

- There is a large unoccupied space around local government failure – in particular, around predicting failure. In the past, processes for this existed;
- There is a difference between review (the ongoing process of oversight of performance, and more detailed analysis where failure does seem to be a risk) and improvement (the intervention, whatever form it takes, when failure has occurred, or to mitigate the risk of further failure);
- Prevention mechanisms are possible, but at the moment we live with a significant information deficit;
- There is a pressing need to consider the skills, experience and other capabilities required when intervening (and for councils under intervention), which requires a unique blend of training, development, coaching and support of different kinds for different individuals and groups;
- There are limitations in the perspectives of those organisations who are involved in intervention – either in supporting it or directly – there is a need to join the dots, which includes sharing information and insights about behaviours and cultures;
- There is a need to look again at the operation of peer review – especially the publication of reports and improvement plans. There need to be more strategic conversations about what peer reviews are showing across the country.

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