

Decline and fall: understanding how and why local government fails, what leads to central Government intervention, and what comes after

government prevention **support**
scrutiny intervention **function**

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performance improvement system

A TYPOLOGY OF FAILURE

“Failure” is a loaded word. For some, it is a natural part of life – an idea failing to pan out, an experiment not working, something happening that causes us to pause, reflect and try again. In this context failure is not something to be feared, but something to be embraced for the opportunity that it gives you to learn and, eventually, succeed.

In local government, failure is different. It can have direct, immediate and real world consequences for the services on which local people rely. Failure will directly impact on their lives. Failure is something we all want to avoid.

We are used to seeing case studies and publications about councils which have striven to succeed, to excel, to demonstrate unusual innovation and commitment to local people. This focus on positivity is a good thing, but there is a risk that we can forget to look with similar forensic detail at failure – what it actually is, how we can identify it, how we can stop it happening or, when it does happen, how we can minimise its consequences.

CfPS is working with Localis to carry out work to explore failure in the context of local government intervention. This paper is the midpoint of that work – we hope to take things further in the coming year, speaking to people in areas subject to central Government intervention, and others, as we come up with ideas for how local, and sector-led, governance, can play a more active and forthright role in identifying and arresting failure.

We want to:

- Set out a typology of failure which gives a sense of how councils decline and fall, and the points along that slope where earlier intervention could arrest that failure;
- Think about the current systems for intervention and support within the sector, and whether they match the needs identified in this typology;
- Think about the experiences of those subject to intervention, support and oversight, and how those experiences might influence our thinking;
- Given the above, take part in a conversation with others in and beyond the sector to come up with practical suggestions about what we might need to change.

We want nothing less than to transform the way that we in the local government sector think about failure, why it happens, and what we can do to prevent it. There has never been a more urgent time to address this pressing need. We hope that our work can propel a conversation that has already begun and to lead, in 2019, to a vision for managing and arresting failure that is focused on local action taken by local people at a local level with a clear democratic mandate – not professionals working in Westminster like ourselves.

Understanding these issues is fundamental if we are going to weather the next few months and years. The stresses and pressure placed on councils, individually and collectively, will only increase. At the moment, our understanding in the sector of failure is simplistic – Government’s understanding of it even more so. If we do not quickly address this issue we will be ill-equipped to understand how and why the next failures will happen. Local government change and improvement will look increasingly nationalised, and divorced from local need.

At this stage in the research, we have developed a “typology” of failure that we want to use further research to test. This typology is based on the following assumptions:

- Failure is a slippery slope, a process not an event. There is no obvious start and end point;

- Failure is driven by culture and mindset. The presence of “unknown knowns” seems to be an important feature – features of the council’s failure (or risk profile) that are widely, tacitly understood by senior officers but never articulated because they challenge a prevailing orthodoxy;
- Failure can be thrown into relief by a particular set of circumstances but it may not be caused by those circumstances, and those circumstances may not themselves be an automatic consequence of the failure.

This last point in particular highlights the weakness with the existing model of intervention which is based on Government responding to high profile, catastrophic events.

In our typology there are four different types of failure. They intersect but can exist independently of each other. The typology highlights the fact that a council can be “failing” in one or more of these areas without experiencing “corporate failure” – possibly for many years – but that these forms of failure do place the council and its residents at greater risk:

- A failure of culture. A failure of managerial and political leadership, a breakdown in both external and internal communications, evidence of introversion and defensiveness in how the organisation operates and makes decisions. This might be expressed as a kind of corporate dysfunction. It is quite possible for a council that is failing culturally to continue to deliver services competently and legally.
- A failure of service. An inability to understand the intersection between statutory and non-statutory services and how risk factors around specific services (social care, children’s services, libraries, waste collection and so on) can have an impact on corporate health. Particular risk factors can include changes in personnel and leadership, increases in demand due to national or demographic factors, market failure and issues with governance (including contract oversight). This is about a failure to understand the needs of local people in how services are designed and delivered. A council can experience failure in a specific service without failing as a corporate entity.
- A failure of function. A failure to conform to legal and functional requirements in managing business, making decisions and delivering services on an internal basis. This goes hand in hand with cultural failure but is distinct – this is to take account of the fact that a council can be failing culturally while still continuing to adhere to strong internal systems and processes;
- A failure of duty. This is also about adherence to the law in respect of the council’s formal service delivery requirements, and is an adjunct to both the failure of function and failure of service. It also connects to an authority’s work with partners – through the intersection with the wider public service landscape and neighbouring councils.

We want to test, explore and further refine this methodology – we recognise that as it stands it probably doesn’t tell the whole story.

The better that we can understand failure, how it happens and what it looks like, the better that we will be able to discuss how the different forms of support and intervention that currently exist are fit for purpose. If they only engage with one aspect of failure, or if they engage at the wrong time, then that will provoke us to think about how things can be different.

THE CONTEXT: DIFFERENT FORMS OF SUPPORT AND INTERVENTION AND HOW THEY ARE DEPLOYED

Our work is focusing on corporate failure in local government and the steps taken to address it.

There are a wide range of different mechanisms, working in loose concert, which aim to address failure.

Government mechanisms

Formal intervention is not the only lever available to Government. It is in fact part of a wider set of strategies and tool monitoring both risk and accountability. But intervention is particularly important, and we expect it to form the focus of our research, so we will start with it.

Central to intervention is the “best value” intervention regime, brought in by the Local Government Act 1999.

The best value regime was the foundational principle for local government modernisation and improvement for much of the 2000s. Based on “new public management” principles of measurement, management accountability and reporting of performance up to Government, it gave Ministers (through the Audit Commission) a ready sense of where performance was falling behind. Under these circumstances, the ordering of a “best value inspection” was a natural longstop, embedded within this wider framework.

The situation is now very different. Best Value still exists, on paper, but in practice it does not. Government issued guidance on BV in 2015 which asserted the continued importance of the duty but it is difficult to see its presence felt at a more local level. BV was very much a creature of the “New public management” ethos which took root in UK public policy in the 90s, and NPM as a more general concept, has taken a bit of a beating in recent years. We have seen councils moving away from a culture of performance management through KPIs and scorecards (such a prevailing feature of the BV era) to something which looks and feels looser and more agile (both with and without the capital A). There is a growing understanding that the old ways are ill-equipped to dealing with the complex partnership (and increasingly commercial) landscape that is now central to the way that local government works. Now, managerial relationships and accountabilities are more diffuse than they used to be. But we have not developed the widespread governance systems to “replace” NPM.

This puts us in a quandary when it comes to having the information to hand to understand where the risks of failure lie. The data, perhaps, simply isn't there – or if it is, it is prepared and presented so unsystematically as to be essentially useless for these purposes.

This paper (and our ongoing work) are not a defence of BV or a call to return to the days of the Audit Commission. In many ways, our work is more a defence of the basic framework of the sector-led improvement framework in place for much of the last decade. Our worry is that “best value inspection” still exists in a world which in all other respects moved decisively away from it in 2010 – that the process for dealing with catastrophe and what leads to it is increasingly unfit for purpose.

It is, for example, difficult to understand why a BV inspection is triggered now. Prevailing political circumstances are likely to form a large part, which makes it unpredictable. The decision is, fundamentally, in the gift of the Secretary of State.

The inspection process can be extremely swift (Northamptonshire) or can come as part of a wider, emerging set of concerns about local performance (Rotherham) whose truly catastrophic scope only becomes apparent later.

Very roughly, once the Secretary of State considers that a best value inspection is warranted, he or

she might commission an independent person to carry that inspection out. In Northamptonshire, the Secretary of State explained to the House of Commons that this decision was precipitated by a range of factors – audit reports, LGA activities and concerns expressed by district councils amongst them. The Secretary of State will usually appoint someone highly experienced – a person whose legitimacy and expertise will not be in question – to carry out the review.

The method and format of various BV reviews is not especially consistent, but this reflects the differing nature of failure in different councils. The terms of the inspection are set by the Secretary of State. BV reports are forensic and detailed. They have to be, as they are used to make a judgement on whether intervention is justified. But that decision, too, is entirely in the gift of the Secretary of State. External observers may presume to understand the logic under which that decision is made, but the abolition of the wider BV framework means that that decision is, essentially, inscrutable.

This may seem obtuse but it is in fact fundamental to the mechanics of failure. The Secretary of State's powers under the Local Government Act 1999 are profound and wide-ranging. He or she has the power to effectively suspend local democratic functions, for a timescale and in a manner of their own choosing – subject to law, of course. It is right not only that we should be able to unpick and understand that process, but to unpick and understand what has preceded it, and what follows from it.

What does follow from it is a resource-intensive process of intervention and oversight. While we think that this point may be overreaching slightly, we are drawn to the argument that what commissioners do is dismantle the council and rebuild it from the ground up – that councils under this form of intervention are so “far gone” that only such radical action can lead to improvement. As we have learned from supporting councils under intervention, this is a tough, bruising experience. But, as the experience of councils like Tower Hamlets and Rotherham demonstrates, it can and does lead to improvement. Intervention ends, the formal element of the “turnaround” ends.

It is worth bearing in mind that formal intervention of this kind remains highly unusual. The power has been deployed only a handful of times since it was introduced, which suggests – until now – that existing improvement mechanisms have worked. The question remains whether this will continue as the pressures on councils increase.

We are particularly interested in the process of withdrawal, and of the handing back of services to the authority – the capacity-building that commissioners carry out to make this happen, and the conscious existence of an “exit strategy” for those involved in the intervention. We think that there are broader lessons here which can help us to understand what could prevent intervention being necessary in the first place.

Not-quite-intervention intervention

Some forms of intervention exist separate to the formal BV framework. There are two current examples of this in practice in relation to corporate governance. One is Birmingham (where the council invited a Birmingham Independent Improvement Panel to oversee its work, the BIIP being answerable to the Secretary of State). The other is Kensington and Chelsea, where the unique circumstances around the scale of the operational response to the Grenfell fire tragedy led to the establishment of the Grenfell Response Task Force. The Task Force has since 2017 overseen the council's Grenfell-related activity, but has in doing so had regard to the authority's wider corporate health, and its wider transformation plans (given that this is highly relevant to its ability to respond).

It is probably contentious to describe either of these bespoke arrangements as “intervention”, but both involve a direct local presence in the authority of the Government, which takes an interest in overseeing (although perhaps not directing) the form and pace of improvement. It is unclear at the moment how either arrangement will end. The BIIP was planning to withdraw quite recently but took the view that it should continue to stay in place as Birmingham's improvement work needed further oversight in order to be assured.

Although carried out in good faith and the best of intentions, these forms of more ad hoc intervention and oversight have the potential to introduce uncertainty and confusion into an already complex local improvement picture. As councils continue to struggle, and given that the resources to support fully-fledged intervention appear to be significant, it is not impossible that these forms of oversight will become more common.

Sector-led improvement

CfPS has an active stake in the sector-led improvement landscape. We receive, through grant, a (very small) proportion of the improvement services grant made to the Local Government Association by Government. We are not, however, involved in the design and delivery of improvement services at a strategic level.

Independent evaluation has demonstrated that sector-led improvement has been successful since its inception in the aftermath of the abolition of the Audit Commission. The LGA works proactively to identify councils which might be in need of assistance – both through its councillor-led networks (in particular, the political groups) and through its network of advisers operating at local level. Councils can draw on a range of support, including corporate peer reviews, which involve a council inviting the LGA to carry out a review of its corporate health, that review being led by senior officers and councillors from other councils.

The nature of sector-led improvement rests on its voluntary nature. It works through collaboration and invitation. This collaborative, and often informal, approach works well for the councils who participate, and arguably for the sector as a whole. It is perhaps not as transparent as the pre-2010 system (councils have the freedom not to publish peer challenge reports, for example). Inevitably, this means that there is an inbuilt weakness – the better councils are those who will welcome, and engage with, the opportunities that SLI brings. The weaker councils – the ones at risk of failure, the ones who are defensive and introspective – will not, and the below-the-radar nature of SLI means that not engaging in it is not likely to lead to significant local challenge from the public or others.

But bringing in an element of compulsion to these arrangements risks that the collaborative, partnership focus of SLI, as it stands, is weakened.

Sitting alongside the LGA are a range of other membership and representative organisations – like SOLACE, CIPFA, LLG and NLGN – who will develop a sense of where strengths and weaknesses lie in the sector. As things stand MHCLG has a team dedicated to sector stewardship but it's unclear whether information is shared by them, either.

At the moment, there is limited evidence to suggest collective working to share intelligence about risk and failure. In many cases intelligence emerges informally through information provided in confidence, and it would be difficult to use this to form a reliable evidence base; a rumour-based intervention model would hardly be appropriate.

There will be other political, and other, reasons why sharing information across this range of organisations might not happen, as things stand. Individuals' perspectives on risk, and the chance of failure, are often subjective. We might have hunches, suspicions and a sense that something in a given council isn't quite right, and even some evidence to back that up. But sharing that information, however well-intentioned, could be unfair on the council concerned, and/or could serve to make a bad situation worse. These issues involve tough judgment calls at every stage.

Beyond the core of SLI sits other national, non-Government mechanisms for evaluating performance. LG Inform provides intelligence to allow for an element of comparison between councils; CIPFA offers a nearest-neighbour service for benchmarking, and other less formal methods for networking and information sharing all play their part in the improvement landscape.

Of course, ultimately local people and the press – and councillors – provide a measure of

accountability for failure. At a local level, councils' scrutiny functions should play a part in this – we have found in our fifteen years supporting overview and scrutiny in the sector that too frequently it lies on the fringes where corporate failure is present. Scrutiny has been singled out for criticism where such failure has happened; this is probably unreasonable because of the complexity of failure and because one of the components of that failure will usually be a defensiveness and corporate introversion that make effective scrutiny functionally impossible. Part of our rationale in pursuing this work lies in trying to understand how local scrutiny might be strengthened in order to be more effective when this cultural failure happens.

The press have the potential to play an important role. With the advent of the BBC-funded local democracy reporting services there is an obvious opportunity to see a bolstered local journalism community a clearer role in investigating and holding to account on behalf of local people.

Local people themselves can hold to account – often on complex matters. The Lambeth People's Audit process is a recent, high profile example of this in action. It is likely that the insight and perspectives of local people will provide an important source of evidence; moreover, it is likely that local people can and should play an active part in the oversight and improvement of failing councils.

Other intervention mechanisms operated by central inspection

The focus of this research is on corporate failure, but this can be brought about through service-specific failure (as our typology makes clear). Ofsted and CQC inspections form part of this landscape, and failure here has an impact on failure at corporate level. However, the CQC and Ofsted processes inevitably fall short for our purposes as their service-specific areas of focus could well result in a lopsided approach to oversight – one that fixates overly on specific services without looking at corporate health.

While not inspection as such, the NAO carries out thematic reviews of value for money in areas of local government practice.

Suggested new approaches

It's good that a debate has recently been kickstarted, by CIPFA and others, about how oversight, support and intervention might be managed in the future. There are a few ideas around which may form part of the picture.

Nobody, yet, is calling for the reintroduction of a relatively heavy, formal inspection regime like that which was abolished in 2010. What seems to be afoot is a move to introduce an element of compulsion to existing mechanisms.

CIPFA have suggested a financial resilience index – a set of criteria that can be used to give a “traffic light rating”, for councils, of their financial health. While not engaging with the broader improvement and failure landscape, financial health is of course critical to those corporate issues.

The LGA, SOLACE and others have expressed serious reservations about this approach. Firstly, concerns exist about the ability of a simple index to capture the complexity of council finances. Secondly, there are worries that, despite intentions to the contrary, the index will be seen as an arbiter of wider council performance. Thirdly, there are worries that the focus on finances would skew councils' attitude and approach to governance.

CIPFA proposes to produce more detail on its index in due course.

Another proposal is “simply” to make corporate peer reviews/challenges compulsory, and transparent. As things stand a council can choose whether to make public the peer team's findings – most do. And as we have already noted, councils can simply choose not to invite the LGA to conduct a review. SOLACE and others have suggested (when SLI was established, and more recently) that compulsion would require all councils to go through the process and to publish the results.

This seems straightforward but raises its own challenges. As we have noted above, introducing an element of compulsion changes the nature of SLI, and potentially raises challenges for the operations of the LGA as it reconciles its improvement role with that of representation of its members. “Compulsory” peer review might end up needing to look rather different to the voluntary systems which have, for the majority of councils, worked so well since 2010. A more rigid set of criteria for evaluating council health and performance might need to be put in place to accommodate this and, with it, similar risks to those that apply to CIPFA’s proposal.

QUESTIONS THAT NEED ANSWERING

Our post-2010 improvement systems for councils are complex, and not especially transparent. It would be unfair to describe them as unfit for purpose (evidence points to the contrary) but there are risks that the system as it currently stands will not be able to manage the complex, almost existential crisis that the sector now faces. Change is needed, but at the moment the choice appears to be between two national systems – the light touch of SLI as it stands versus the increased rigour, but arguably more simplistic, compulsion-based systems.

We appreciate that this is perhaps an oversimplification of the options that exist but it is notable that a lot of the debate seems to focus on national assurance, with national leaders and bodies (within and outside the sector) being given the task of applying a two-hundred mile long screwdriver from Westminster. This is of course a reflection of how centralised local government is. But it does suggest that we should turn our eyes more to local governance, and think about how we can strengthen and bolster those existing systems, thus allowing a national framework of assurance, oversight and intervention to be less intrusive.

Sceptics would say that this, broadly speaking, is the system that we already have. But given the degradation in councils’ corporate cores since 2010, the loss of expertise in governance and financial capability, we are not so sure. We are worried that a potential future of increasingly hollowed-out councils will see more pressure placed on national institutions to assure those councils’ health. If that is the case, that will be unsustainable.

We need a different approach, and our ongoing work hopes to chart a path. But in order to craft a compelling vision for a local and national system that can understand, address and arrest failure, we first have to understand what it actually is – the slippery slope, the typology of that failure and the mechanisms by which it is permitted to happen.

All of the foregoing begs the following questions. We are not publishing this paper as a “consultation document” but we recognise that what we have written here does demand further work to give ourselves the confidence that we are producing something of value.

- The approach that we are taking is based on the assumption that a more rigorous system for the prevention of local government failure will involve an evolution of our existing systems rather than a wholesale return to the drawing board. We think that the basics of SLI with formal intervention as a longstop feels instinctively right – elements of the system need strengthening but it is difficult to think of how a new system would be designed from scratch. Is this right? Or do we need to raze everything to the ground and start from scratch?
- Does our typology stand up to scrutiny when judged against people’s practical experience of scrutiny at local level?
- How can we translate the typology into something meaningful? At the moment it tries to

articulate failure, explain and understand it; this is obviously useful and interesting but what process is needed to use this as the foundation for meaningful change?

- What does “meaningful” look like? We are not convinced that a kind of toolkit for “identifying failure” or a checklist type approach will work here. We think that some kind of approach which engages with culture and mindset in councils has to be at the heart of any practical support but if so, what would it look like?
- Who needs to play a part in making this happen? We have outlined above the role already played by many of the sector bodies, and Government. Who needs to step back, and who needs to step up? What is the role, for example, of statutory officers at a local level, of local networking, of partnerships? What is the role of members and political parties, locally, regionally and nationally?
- Is this approach – defining failure, understanding it, and so on, on a national level – even worthwhile? Is the issue with failure is that it is so bespoke to each council, each organisation, that national research, understanding and action will only ever result in outcomes so vague and nebulous that they cannot be easily or usefully applied – at least not in a way that is especially consistent?

OUR NEXT STEPS

- We will continue to seek partners to assist us with this work. CfPS and Localis together are committed to this project but we recognise that it will benefit from wider professional and political expertise and experience. We want to draw this in, alongside funding to ensure that we can carry out work of value;
- We will use this paper to kickstart a wider conversation within and beyond the sector about improvement, inspection and oversight.
- We will continue with our research, carrying out one-to-one interviews, holding focus groups and convening roundtables to tease out these issues.

In mid 2019 we will – resourcing permitted - produce another iteration of this work that we hope will form the basis of something practical that the sector can use to understand and arrest failure. In the meantime, the important thing is that we play an active part in the conversation that needs to happen about what that looks like. It needs profile, it needs commitment, and it needs bravery.



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