



# CIPFA SE Spring Conference

Why good governance is important - lessons learned from some recent Public Interest Reports and Statutory Recommendations.

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# Introduction

- Share some lessons from our recent work on governance
- Roles and responsibilities for financial governance
- Recent examples
- Key themes
- Other governance issues we have come across in the course of our audits
- Local authority centric
- But, useful lessons for the wider public sector

# Roles and responsibilities for financial governance

# The role of the Section 151 officer

- Refers to Section 151 (S151) of the 1972 Local Government Act
- Requires arrangements for the proper administration of financial affairs
- One officer to be nominated to take responsibility – the CFO or S151 Officer
- CFO is part of a triumvirate, including the Head of Paid Service and Monitoring officer.
- Several other statutory roles – Director of Adult Services & Director Childrens Services.
- S151 equates to role of Director of Finance in the NHS or Treasurer in a PCC's Office.
- Councils also need to identify a Deputy S151 Officer
- **Important role for CIPFA and other professionals in the team to support the S151**

# Responsibilities of the S151 Officer

- Required to ensure a balanced budget is set each year.
- Legislation describes when a budget is considered not to balance:
  - budget overspends reducing reserves to unacceptably low levels
  - Demonstrates characteristics of insolvency (e.g. inability to pay creditors)
- S151s must interpret this based on the circumstance of their own organisation
- Continually monitor income and expenditure in-year.
- Must report any unlawful financial activity to SOS (past, present or proposed)
- S151 Officer has a number of statutory powers - including issuing a **S114 Notice**.
- Non-essential spending frozen while the budget is brought back into balance.
- CIPFA have issued guidance, including during COVID.

# S114 Notice

- S151 Officer has a number of statutory powers (exercised in consultation with MO)
- Includes issuing of a S114 Notice if requirements of the Act cannot be met.
- Only given in the gravest of circumstances.
- Non-essential spending frozen while the budget is brought back into balance.
- CIPFA have issued guidance, including during COVID.
- A growing number of Councils have raised the possibility
- COVID a particular challenge – but mitigated by adaptation of the rules
- Several recent examples – Northamptonshire, Croydon, Slough.
- Highly likely Government intervention – appointment of Commissioners.

# The role of the external auditors

Auditors also have statutory functions that can be enacted if they have concerns, including the issue of:

- **Advisory Notice** if proposed plans will lead to a balanced budget being set, the council is then required by law to recast its budget
- **Statutory Recommendations** which require a public response from the council. These can be issued at any time.
- **Public Interest Report** – rarely used in the past, but...

# Your role as finance professionals

- For many, the issues may seem “above my pay grade”
- Also, some legitimate fears and concerns about speaking up
- If you feel this, it may say something about the management culture
- You are CIPFA professionals and public office holders
- You do have professional ethical responsibilities
- You should be aware of CIPFA's Ethical code and helpline

**Governance issues, tend to snowball from modest beginnings**

# What can you do?

- Cases where the CFO would have benefitted from more support
- Role of deputies can be particularly important
- There are opportunities to challenge and raise concerns early on
- To do so, may avoid escalating to whistleblowing or complaints
- Many cases of poor practice being stopped by people speaking up
- You can influence and challenge the management culture

*In many of the examples we are about to discuss, a higher degree of professional curiosity and scepticism from middle and upper management could have helped avoid the adverse outcomes.*

# Recent examples

# Timeline of reports - Part I



- Best value inspection report – Northamptonshire County Council March 2018
- Public Interest Report Nottingham City Council August 2020
- Public Interest Report L.B. Croydon October 2020
- S114 Notice L.B. Croydon November 2020
- Public Interest Report Northampton Borough Council January 2021
- Best Value Inspection Liverpool City Council March 2021

# Key quotes from Part I

“There has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken.”

**London Borough of Croydon**

“Overall, the governance arrangements were overshadowed by the Council’s determination that the Company should be a success, and this led to institutional blindness within the Council as whole to the escalating risks involved, which were ultimately very significant risks to public money.”

**Nottingham City Council**

# Timeline of reports – Part II



- Statutory Recommendations -Copeland BC **February 2021 and March 2022**
- Public Interest Report – York Council **April 2021**
- Statutory Recommendations – Slough Borough Council **May 2021 and July 2021**
- Statutory Recommendations – Thanet District Council **October 2021**
- S114 Notice – Nottingham City Council **December 2021**
- Statutory Recommendations – Sandwell Borough Council **December 2021**
- Public Interest Report – L.B. Croydon **January 2022**
- Public Interest Report – Pembrokeshire County Council **January 2022**
- Public Interest Report – Blaenau Gwent County Borough Council **February 2022**
- Statutory Recommendations follow up - Brecon Beacons Park Authority **March 2022**

# Key themes

# Key themes



Some of the key themes from the latest set of reports are:

**1** Failure to understand and manage the risks associated with external companies

**2** Failure to address and resolve relationship difficulties between senior officers and members

**3** Finance function failures

**4** Cultural and governance failures

# 1. Failure to understand and manage the risks associated with external companies

- a lack of understanding of roles and responsibilities
- Lack of business case and effective monitoring
- a lack of skills around commercial decision making
- an optimism bias that does not reflect the true position or performance of a company
- a lack of scrutiny over investment or loan decisions to companies
- a lack of strategic rationale surrounding the creation of companies
- a reluctance to listen to challenges
- inadequate financial governance and monitoring of group entities.



## 2. Failure to address and resolve relationship difficulties between senior officers and members



- Deteriorating senior officer and senior member relationships seen over a number of years, with a significant amount of time being spent responding to internal allegations and complaints.
- Resultant failures to identify and mitigate conflicts of interest in investigating and ruling upon whistleblowing, grievance and disciplinary processes
- Unlawful or ill-advised payments to former Senior Officers following long standing relationship breakdowns
- Failure to involve elected members in good time or to provide them with adequate information to form a considered view on relationship issues

### 3. Financial governance failures

- Late accounts produced over many years, without sufficient robust working papers
- Poor finance capacity and skills
- Poor oversight over levels of borrowing and levels of reserves
- Failure to set a prudent minimum revenue provision
- Governance failures where these issues were not challenged. Some audit committees failed to challenge and failed to take action on long standing issues



## 4. Cultural and wider governance failures

- A lack of effective political and/or corporate leadership
- An overreliance on interim statutory officers and acting up arrangements
- A complete failure to accept the outcomes of external reviews and a culture of denial
- Confusion of roles and delegations
- A culture of secrecy, overuse of confidential reports
- Inadequate internal processes
- A failure of leadership
- Poor and inappropriate councillor conduct and also insufficient information provided to members



## 4. Cultural and governance failings continued

- Conflict and distrust among and between members and senior officers
- The absence of effective scrutiny, including inadequate protections for whistle-blowers
- A lack of awareness and acceptance of the need for improvement
- A lack of appreciation of the Nolan principles and the requirements of the Member Code of Conduct



# What is needed to address failings?



- ✓ Cultivate an open and transparent culture
- ✓ The views of statutory officers must be given appropriate regard
- ✓ Review and ensure delegations are appropriate and properly used
- ✓ Ensure staff can raise concerns/whistleblow, ensure this is encouraged and ensure this is independently investigated – formal channels needed for both S151 and Monitoring Officers
- ✓ Embed an active review of all complaints and a zero tolerance approach to inappropriate behaviours
- ✓ Take appropriate and timely action when budget overspends are identified, or when it's clear savings cannot be delivered

# What is needed to address failings?



- ✓ Ensure members listen to challenge and take action to tackle long standing issues- treat external review seriously
- ✓ Provide sound formal training in external companies and update this regularly, for both members and officers
- ✓ For members, especially audit committee chairs, consider handover arrangements and ensure all issues of which you are aware are formally handed over.
- ✓ Treat internal audit and external audit as critical friends – not as suppliers whose fees you need to beat down

# A few choice quotes

“The breakdown in relationships between senior officers and senior members is central to the governance issues identified ... with a significant amount of time being spent responding to internal allegations and complaints. This has impacted on the Council's ability to focus on service improvement.”

**Sandwell Value for Money Governance Review**

“In obtaining external legal advice and not fully considering or implementing that advice, it is our view that the Council failed to ensure it was acting lawfully. The absence of records documenting the rationale for decisions in relation to a significant project is a failure to keep the records required”

**Croydon Public Interest Report (2022)**

# A few choice quotes

“There is no evidence that the Council has properly understood the risks involved in running down reserves. The Council has failed to put adequate arrangements in place over a number of years to ensure robust financial management.”

## **Slough Statutory Recommendations**

“Senior Officers’ behaviour was found to fall below the standard expected on a number of occasions. Follow up action taken was not sufficiently robust or consistent with action taken against other Senior Officers”

## **Thanet Statutory Recommendations**

“Weaknesses led to serious governance failings. There was no budget monitoring in place. Members did not receive accurate and timely financial information on which to base informed decisions.”

## **Copeland Statutory Recommendations**

# A few choice quotes

- The Council failed to establish or operate adequate or effective governance arrangements to manage its relationship with Silent Valley from 2012 onwards
- The process that led to the Council's former Chief Executive being appointed as Silent Valley's new General Manager in June 2016 was uncompetitive and deficient in several material respects
- On 3 April 2012 members of the outgoing Silent Valley Board voted to make gratuity payments of £11,569 to each retiring Board member contrary to Silent Valley's governing document, even though all but one of those present stood to financially benefit from the decision"

## **Blaenau Gwent Public Interest Report on Silent Valley Waste Services**

# Concluding thoughts



**“In Local Government there is no substitute for doing boring really well. Only when you have a solid foundation can you innovate.”**

Best Value Inspection by Max Caller CBE – March 2018

**“Trust is not a control.”**

Chris Buss,  
Consultant and Interim Croydon Finance Director

# Concluding thoughts



The Best Value legislation states:

**“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”**

The concept of continuous improvement describes a **process**, not a destination. The good authorities, in our experience, are the ones which assume nothing based on past performance and are always looking to improve.

# Further information



We published our first lessons learned report on public interest reports in March 2021. Still available from our website.

A follow up, covering lessons learned from the subsequent PIRs and Statutory Recommendations is due to be published mid-May 2022.

Public Interest Reports referred to and other audit reports are public documents - published on council websites or via a web search.



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