

Local Government Support & Intervention Protocol

1. Introduction

- 1.1 Local authorities are responsible for managing and improving their own performance. At both a corporate and a service level, they should set, deliver and monitor improvement objectives, identify any specific governance and performance challenges and seek to address and manage these.
- 1.2 On occasions however, it may be necessary for the Welsh Government to provide formal support, directions or intervention to seek improvements. Intervention is usually a last resort or for emergencies only. This Protocol seeks to outline if, how and when such powers of intervention and support might be exercised by the Welsh Government.
- 1.3 The Welsh Government has broad powers to provide support to local authorities. It also provides general, ongoing support to authorities through a range of mechanisms such as grants, guidance and support for national organisations and improvement programmes. This protocol however refers specifically to 'support' (and intervention) in circumstances where there are concerns relating to specific governance or performance challenges faced by a particular authority.
- 1.4 The last support and intervention protocol was drafted in 2007 and reflected the law as it then was, as set out in the Local Government Act 1999. That Act has been repealed in Wales; and the protocol is now out of date.
- 1.5 A protocol also exists to cover the expression of concern, and possible later intervention, in social services. That protocol is broadly consistent with the principles of this one, and has functioned well since it was issued in 2003. But it is also in need of revision, and that need will become stronger once the Welsh Government publishes its Social Services Bill. If and when that Bill passes, the aim will be to incorporate the terms of social services support and intervention fully into this protocol. Until then, the distinctive features of that protocol (for instance, relating to formal expressions of concern by the Chief Inspector of Social Services) will remain in force, but CSSIW and Welsh Government social services officials will also participate in the processes and mechanisms set out in this protocol.
- 1.6 This new protocol reflects current law and practice, and in particular the Local Government (Wales) Measure 2009. That Measure both reformed local authorities' duties as regards improvement and Ministers' powers to provide support and to intervene. This protocol also reflects experience gained from recent actual cases of support and intervention.
- 1.7 This Protocol also covers other Welsh Government intervention powers, particularly in education and social services. Law in these areas differs in detail, but broad principles are the same. It has been formally agreed by Welsh Government and WLGA; and is consistent with relevant practices of major inspection, audit and regulatory bodies in Wales (WAO, Estyn, CSSIW)
- 1.8 Section 23 of the Measure requires these bodies to co-ordinate their functions. This provision aims to ensure efficiency in inspection, audit and regulatory work, and applies to the normal course of business for each relevant body, and in their work with individual local authorities. This protocol also anticipates that these bodies will work together. However, it applies in cases where there may be national-level concern

leading to support or intervention, and where as a result it is appropriate to involve the Welsh Government and WLGA. Accordingly, this protocol does not replace or duplicate the procedures in section 23.

2. Roles and Responsibilities

- 2.1 The Wales Programme for Improvement provides a framework whereby local authorities are responsible for improving and managing their own performance.
- 2.2 The Wales Programme for Improvement also places powers and duties on local authorities to collaborate when seeking to improve services. This collaborative approach to improvement is particularly relevant when specific governance or performance challenges are identified.
- 2.3 Identifying and dealing with performance issues requires effective working together of all those involved. It follows that all partners should share any relevant information on local authority performance; ensure that a joined-up national overview of the performance of the sector is available; and, in particular, raise cases of possible concern. In such cases partners will also discuss and agree the range of possible approaches to support and the respective roles of each in providing or commissioning that support. Individual responsibilities are outlined below:

Local authorities are responsible for:

- making arrangements to secure continuous improvement in the exercise of their functions
- conducting robust self-assessments of performance linked to the production of the Annual Governance Statement
- identifying local improvement objectives and managing performance
- accounting for and reporting performance publicly
- collaborating in improvement, and seeking support from partners where and when necessary

The Welsh Local Government Association is responsible for:

- Supporting councils on a local, regional and national level, by providing peer challenge and being a 'critical friend'
- Providing proactive and reactive improvement support and improvement capacity where necessary
- Ensuring that performance information and other relevant data is collected, collated and compared on a regional and/or national basis.
- Ensuring that 'soft intelligence' about local authority performance is gathered and monitored

The Welsh Government is responsible for:

- Managing and developing overall policy on support and intervention, in consultation with national and local partners
- Providing support to local authorities in appropriate cases
- The possible use of Ministers' powers of intervention
- Managing any interventions which do occur

The Wales Audit Office is responsible for:

- Co-ordinating their own work and that of other regulators
- Inspecting, evaluating and reporting on local authorities' compliance with their duties under the Local Government (Wales) Measure 2009
- Carrying out special inspections of local authorities which may not be complying with these duties
- Making appropriate recommendations to local authorities and to the Welsh Ministers.

CSSIW is responsible for:

- Encouraging improvement in the delivery of social services and social care
- Under the Care Standards Act 2000 the Registration, Inspection, Reporting and Regulation of: nurses agencies, adoption support agencies, adult placement schemes, children's homes, child minding and other day care settings for children under eight, public sector and independent fostering agencies, boarding schools, residential special schools, further education colleges accommodating children under 18yrs and residential family centres.
- Under the Health and Social Care (Community Health and Standards) Act 2003 Inspecting, evaluating and reporting on Local Authority Social Services in respect of their statutory duties and the Local Government (Wales) measure 2009. In doing so the Inspectorate must be concerned in particular with;
 - a)the availability of, and access to, the services;
 - (b)the quality and effectiveness of the services;
 - (c)the management of the services;
 - (d)the economy and efficiency of their provision and their value for money;
 - (e)the availability and quality of information provided to the public about the services;
 - (f)the need to safeguard and promote the rights and welfare of children; and
 - (g)the effectiveness of measures taken by local authorities for the purpose specified in paragraph (f).
- Advising the Ministers on the possible use of their powers of intervention and employing the Serious Concerns Protocol and monitoring visits to local authorities as required and agreed by the Minister.
- Providing professional advice to Welsh Ministers

Estyn is responsible for:

- Inspecting, evaluating and reporting on local authorities' compliance with their duties under sections 38 to 41 of the Education Act 1997, sections 25 and 28 of the Learning and Skills Act 2000 and sections 25, 26 and 51 of The Children Act 2004
- Inspecting regional consortia and their constituent local authorities under HMCI's powers as set out in statutory legislation
- Complying with its duty under the Local Government (Wales) Act 2009 to work with other inspection, audit and regulatory bodies to coordinate inspection activity and share good practice
- Carrying out special inspections of local authorities which may not be complying with these duties
- Making appropriate recommendations to local authorities and to the Welsh Ministers.

Further details of the work of each of the regulators and inspectorates can be found at:

WAO www.wao.gov.uk
 CSSIW wales.gov.uk/cssiwsubsite/newcssiw/?lang=en
 Estyn www.estyn.gov.uk

3. Principles

Self-evaluation

- 3.1 Local authorities are primarily responsible for improving their own performance. Where improvement does not occur, local authorities must identify, consider and put in place measures to rectify shortcomings themselves, and must be given reasonable opportunity to do so. They are also entitled to seek and receive appropriate support from partners.
- 3.2 Prevention is almost always better than cure. Approaches which allow local authorities to resolve their own problems, with or without external help, are better than more directive or imposed approaches which involve formal directions or intervention. These are a last resort and/or to be used in emergencies only.
- 3.3 In particular, the following approaches should serve to reduce or eliminate any need for intervention:
- Consistent and effective performance management arrangements
 - Strong accountability to local people, which provides constant challenge and drives improvement in priority areas
 - Rigorous and robust local scrutiny involving external support can identify service delivery issues and potential problems
 - Sharing and adopting good practice and knowledge between authorities.
 - Developing, adopting and acting on rigorous, robust and comprehensive self-assessment arrangements (including public accountability, scrutiny and/or peer challenge). This is essential to understanding actual or potential weaknesses and areas for improvement. This should include both delivery strengths and weaknesses, and the capacity of governance arrangements to prevent, detect and respond to problems linked to the production of the Annual Governance Statement.
- 3.4 An approach based on self assessment and challenge followed by an appropriate response would provide assurances to the public and partners. It should preclude any need for formal intervention other than in genuinely exceptional or emergency cases.
- 3.5 The above approach should enable authorities to prevent, detect and/or correct any problems before they become serious enough to merit outside involvement. They will also enable authorities to identify any issues of capacity or resources and therefore seek any appropriate external support.

External help

- 3.6 Where that does not happen or does not work, the terms of this protocol come into play, and national partners will take the initiative in seeking to resolve problems. In extreme cases, that may lead to Ministers deciding to intervene. But the overriding and common interest of all partners is to resolve any governance or delivery problems as quickly, efficiently and sustainably as possible; and in the case of formal intervention, to restore full local autonomy at the earliest possible opportunity.
- 3.7 That is the only legal basis for Ministers' powers to intervene. In particular, it would not be appropriate or lawful for the Welsh Government to intervene in order to pursue general policy aims, or as a punitive mechanism for local authorities in difficulty.

- 3.8 The 2009 Measure requires the Welsh Government to offer support before it can intervene in the running of the authority, except in emergency cases. The Welsh Government will adopt the same principles under other intervention regimes, whether or not there is a statutory duty to do so. Of course, support is a two way process and it assumes authorities themselves will work constructively and diligently to identify potential problems and, where appropriate, seek support in addressing them.
- 3.9 Support is available to all local authorities on request using the process described later in this Protocol and subject only to the financial and human resources that national partners have. Seeking support will in no way be seen as an admission of fault nor a means of assigning blame; it is rather a sign of an authority's self-awareness and commitment to improve, their ability to recognise the limitations of their performance and provides assurance to partners. This is a strength. On the other hand, denying the existence of problems and/or refusing to seek help in solving them is a proven and often serious corporate weakness.

4. Evidence for support or intervention

- 4.1 Support and intervention are both aimed at resolving governance or delivery weaknesses within an authority. The difference is that support is provided by agreement, and full local autonomy is retained. Intervention entails Ministers requiring the authority to act in some way, imposing constraints on how it exercises its functions, or in extreme cases removing those functions altogether and conferring them on another organisation or on commissioners appointed for that purpose.
- 4.2 Support and intervention are both concerned with circumstances in where a local authority is consistently or repeatedly failing (for whatever reason) to discharge certain of its broader legal duties effectively – or is at clear risk of doing so.
- 4.3 The law on intervention in matters of corporate governance and performance management is in the Local Government (Wales) Measure 2009. The Education Act 1996 contains the main provisions on education interventions. Relevant Social services law is currently more disparate. The Welsh Government has announced its intention to reform the law in both service areas by means of Bills in the current Assembly term.
- 4.4 The corporate duties (to make arrangements to secure improvement) in the Local Government (Wales) Measure 2009 are broad and purposive. They deal in how and to what ends local authorities should operate – rather than prescribing what they should do in specific or absolute terms. Duties as regards education and social services are more prescriptive in that particular services must be provided to adequate standards, and service-users have entitlements which must be met. But even there, the law generally recognises that the performance of a local authority in discharging those duties may depend on the context and the challenges that it faces. It follows that need for support and intervention is equally based on broad criteria.
- 4.5 It is impossible to give a detailed list of what that might entail, but in broad terms the following sorts of issues might well give rise to the need for support or intervention.
- *Corporate, under Local Government (Wales) Measure 2009*: some clear sense or aspect of failure 'to make arrangements to secure continuous improvement'. This might include actual or potential failures to discharge any of the duties in Part 1 of the Measure, especially if such failure appears to be consistent or systemic, and/or based in problems of organisational process, capacity or

culture. It would normally also be reflected in adverse findings and recommendations from WAO or, less frequently, inspectorates. It will often consist of linked failures of different aspects of governance and delivery, especially if these have become or risk becoming self-perpetuating 'vicious circles'. Annex B sets out some of the apparent sources of corporate failure in more detail.

- *Education: Failure in education often entails one or more of the following:*
 - Poor communication and direction by leaders and managers to local authority officers and schools;
 - Local authority officers and school leaders not held to account robustly due to poor use of data and inadequate scrutiny arrangements;
 - The authority does not deliver all its statutory duties;
 - Self-evaluation processes which lack rigour and do not make use of wide-ranging performance data;
 - Attainment indicators (Welsh Government data), over the last three/four years, have been well below the expected level when compared with similar local authorities and do not meet national benchmarks;
 - Lack of challenge to under-performance;
 - Inadequate partnership arrangements which have too little impact in practice;
 - Resource allocation not reflecting strategic priorities; and
 - Leaders, managers and elected members do not deliver value for money.

- *Social services*
 - Lack of corporate and political leadership and direction for social services
 - Failure to deliver statutory functions
 - Inadequate safeguarding arrangements
 - Poor understanding of population and community need leading to poor commissioning and procurement arrangements
 - Poor understanding and scrutiny of performance
 - Self-evaluation processes which lack rigour and do not make use of wide-ranging performance data
 - Inadequate partnership arrangements which have too little impact in practice
 - Resource allocation not reflecting strategic priorities

4.6 There is often a fundamental inter-relationship between corporate and service problems – corporate weaknesses can manifest themselves in service problems; and service problems can imply a lack of corporate control. So support or intervention initiated in one area or for one reason may need to diversify too. But this is by no means an absolute rule – and it is equally possible for support or intervention to concentrate wholly on corporate or service issues. And it is vital for any programme of support or intervention to have clearly defined terms of reference and exit criteria. The temptation for it to extend into addressing other apparent problems may be strong, but this should only be pursued if all concerned (including the authority) agree following full discussion that this is appropriate.

4.7 However, the following circumstances would not of themselves *normally* merit support or intervention:

- Missing individual service targets, failing fully to meet improvement objectives or failing to qualify for full outcome agreement grant. Service delivery is subject to numerous pressures, many of which are beyond an authority's control. Only where such shortfalls substantiate weaknesses within a local authority's internal arrangements could this lead to support or intervention.
- Complaints (eg to a local authority itself, to the Ombudsman or to police), legal action and other forms of redress in individual cases. While maladministration is of course a serious matter from the perspective of the person suffering it, it does not necessarily imply that the organisation as a whole is failing in its duties. However, a persistently high level of complaints, whether about one service or generally, may suggest wider weaknesses of process or culture – as may a demonstrated and consistent reluctance to address complaints or to provide appropriate redress.
- Welsh Ministers exercising quasi-judicial functions, such as planning call-ins and adjudications on school closures. Here, Ministers have an established and routine role in the decision-making process, and exercise their powers without there being any implied or actual fault on the part of the local authority. Accordingly, this is not intervention and this protocol does not apply.
- Adverse audit or inspection findings. Authorities should be able to deal with these themselves. However, a formal recommendation from an inspector, auditor or regulator (including a recommendation about support or intervention) should be accepted unless there are compelling reasons not to do so.

5. Sharing Intelligence and Coordinating Support

- 5.1 Identifying problems before they become serious, and forestalling any need for intervention, is a national as well as a local issue. National partners possess a wide range of information about actual or potential problems, and a wide range of powers to deal with them. It is essential that they co-ordinate their efforts to sustain the principles of this protocol.
- 5.2 To ensure sharing of intelligence and that partners are aware of ongoing improvement support, an 'information sharing' group has been established entitled **Improvement Support Conference (ISC)**. The group will meet on a quarterly basis and will be made up of representatives from Welsh Government, the WLGA, the WAO, CSSIW and Estyn.
- 5.3 The ISC will discuss the findings of published reports from external regulators, review all other available evidence, and consider any emerging 'early warnings' that might imply a cause for concern within a particular authority. It will in particular consider the strength and robustness of an authority's procedures for self-evaluation and, where appropriate, the results of those.
- 5.4 The ISC will ensure a coordinated, consistent and evidenced-based approach to support and intervention. It will seek to challenge any pre-conceived perceptions or emerging 'soft' intelligence about particular services or authorities, with a view to utilising available data and evidence in order to reassure or respond to concerns that might be raised by partners. Similarly, where concerns remain it will seek to ensure a coordinated and consistent response. However, it will not be concerned with the routine co-ordination of local inspection, audit and regulation work under section 23 of the Measure.

- 5.5 The ISC will also seek to identify any common improvement challenges faced across local government as a whole and consider how such issues might be addressed through future policy developments or national improvement support. The group will also seek to ensure emerging or good practice is identified, in particular to ensure that authorities with particular challenges may be referred to and learn from those that have successfully managed similar challenges.
- 5.6 The ISC will seek to build a consensus about problems and possible solutions. Individual members of the ISC will seek to implement that consensus, and to take any action which it suggests, within the limits of their own powers, budgets and accountabilities. The ISC will not have the power to bind or direct its members in the absence of any such consensus.
- 5.7 When considering individual services or authorities, the group will seek to identify an appropriate response, and may reach the following conclusions:
- no support required (concern is not significant or substantiated and/or the council is aware of the problem and is putting mechanisms in place to improve);
 - further information is required, from the authority or elsewhere, before a conclusion can be reached
 - limited support required - provision of limited support through partners
 - intensive support required - provision of intensive support through WLGA/peers and partners
- 5.8 The approach outlined here requires trust and understanding between all partners. It will be open to any local authority to raise a possible need for support with partners in confidence. Such a request would only be shared between ISC group members with the sole aim of informing and assuring partners that support activity is being provided and, where relevant, further developing and scoping the support provided. Such information would not be shared with third parties outside the group, except with the authority's specific consent. Equally, the group will normally invite an authority to participate in confidential discussions about emerging issues and/or possible support needs that the group has identified. Such an authority would be free to accept or decline such a request.
- 5.9 Any offer of support to an authority would be subject to negotiation and agreement with the authority. However, if an offer of support or an invitation to discuss possible support is declined and the same problems worsen to the extent that the authority is in breach of relevant duties, it would then be open to the Welsh Government to intervene without making a further offer of support.
- 5.10 Full and formal terms of reference for the ISC will be developed in due course and agreed between its members.

6. Support

- 6.1 It is **always** better to provide support at an early stage. This prevents problems from becoming critical, maintains local autonomy and avoids the need for costly and disruptive intervention.
- 6.2 Authorities can request support in any circumstances, not just via the ISC. However, they are encouraged to do so as soon as they become aware of problems in complying

with relevant duties, and that they are unlikely to be able to resolve these promptly and effectively on their own. In particular, if any of the circumstances in Annex B appear to persist, and if an authority does not feel able to address them, a request for support may well be appropriate.

- 6.3 There are many informal ways in which support can be provided, often within the local government family, but this document will focus only on formal requests/offers of support.
- 6.4 Support can take many forms. It might include coaching, training and mentoring, consultancy, peer challenge, best practice transfer, collaboration, capacity support, seconding staff or providing other resources. It may equally range in duration from one-off events to a prolonged engagement. The exact form will be tailored to the circumstances of each case, and subject to detailed discussion and agreement with the authority in need of such support.
- 6.5 Support can be provided by any of the national partners, another authority, or other agencies as appropriate and as agreed.
- 6.6 Support will normally be funded by relevant national partners. For prolonged engagements, a contribution from the authority may be sought.
- 6.7 Support can also take positive rather than remedial forms. In particular, if an authority believes that a particular Welsh Government policy, programme or statute is impeding its ability to improve, it is free to raise that with the Welsh Government and to suggest appropriate changes.
- 6.8 Support is not necessarily a precursor to intervention, and can be provided in circumstances where intervention would not be appropriate. Indeed the Welsh Ministers are required to offer support before they can intervene, except in urgent cases. However, should support not prove successful, then intervention may be considered as an option. It can also be (and has been) provided alongside intervention, for instance to help build local authority capacity before ending an intervention.
- 6.9 The Welsh Ministers have powers in section 28 of the 2009 Measure to 'do anything' to support improvement. Those words attracted much criticism during the passage of the Measure, on the grounds that the breadth of the power might enable draconian or precipitate action. The power was broadly defined for legal reasons: attempting to limit the forms of support that Ministers might provide would implicitly exclude any and all other forms. But as a matter of law the power does **not** allow Ministers to compel an authority or anyone else to accept an offer of support, or to do anything else. Support **cannot** be provided unless the authority concerned requests it or agrees to accept it.

Requests and offers of support

- 6.10 Authorities can request support in any circumstances. However, they are encouraged to do so as soon as they become aware of problems in complying with relevant duties, and that they are unlikely to be able to resolve these promptly and effectively on their own. In particular, if any of the circumstances in Annex B appear to persist, and if an authority does not feel able to address them, a request for support may well be appropriate.

- 6.11 Ministers are required by law to consider all requests for support reasonably and on their merits. If support cannot be provided, the Welsh Government will give a clear and reasoned account of the basis for this decision.
- 6.12 In practice, national partners will discuss any request for support in the ISC. They will normally invite the authority concerned to participate directly in those discussions from the outset.
- 6.13 Equally, if the ISC believes on the basis of shared intelligence that an authority may be in need of support, it may decide to initiate discussions with that authority, with a view to making an offer.

Providing support

- 6.14 As noted, the form and duration of support will be the subject of agreement between national partners and the authority concerned. If no agreement can be reached, no support will be provided.
- 6.15 An authority which accepts an offer of support should engage positively with it. That may include ensuring that members and officers contribute fully, and developing and implementing plans to adopt any changes or reforms that the support programme suggests.
- 6.16 National partners will monitor and evaluate the effectiveness of all packages of support. This will both allow general lessons to be drawn about providing support, and particular conclusions about whether support should be continued, or whether an intervention would be more appropriate.

7. Intervention

- 7.1 Intervention is a last resort. The Welsh Government values and promotes local democracy, and works in partnership with local government, an approach which is enshrined in the Government of Wales Act 2006.
- 7.2 The Wales Programme for Improvement promotes local accountability and places local discretion and flexibility at the heart of local government improvement.
- 7.3 However, statutory powers are available to Welsh Ministers for local government intervention in certain circumstances. In general, though Ministers will only use their powers where appropriate and proportionately to the seriousness of the failure. They cannot and will not take such decisions lightly.
- 7.4 As noted above, except in urgent and/or critical cases, Ministers will only intervene where an offer of support has been declined; where an authority has not engaged with the support provided; and/or where support has failed to resolve the problems concerned.
- 7.5 Urgent or critical cases are those where there is conclusive evidence that an authority has or may shortly become completely unable or unwilling to manage its own affairs, whether in corporate or service terms. Actual or potential risks to key services and their users, to the proper use of public money and/or to local wellbeing are aggravating factors in this regard.

- 7.6 The Welsh Government will discuss cases of possible intervention, and the form of any intervention, with ISC members and with the authority concerned if possible. But time constraints may mean that this is not possible in all cases, especially in those which are urgent or grave. Ministers have a duty to act immediately once problems requiring intervention are identified. As a minimum, it should be possible to notify national partners beforehand and in confidence. We will however publicly state our intentions, via means such as a Ministerial Statement.
- 7.7 If time allows consultation, then early discussion will be undertaken, to consider the evidence of the authorities failings and to share intelligence.
- 7.8 In principle, an authority which is subject to intervention will be expected to bear the associated direct costs – for instance of appointing recovery boards or commissioners. The exact mechanisms of this will be discussed with the authority at the beginning of the process; in many cases it will involve top-slicing a specific grant which would otherwise be paid to an authority.
- 7.9 Clear terms of reference will be drawn up for all interventions. They will set out the accountability, reporting and information sharing arrangements and, critically, the roles and remit of any individuals/bodies appointed by the Welsh Government, the authority itself and partners including regulators during a period of intervention. Where possible, standard terms will be used. These terms will be agreed between partners prior to any intervention being put in place – except where time does not permit this in urgent cases. Terms of reference will be subject to review as an intervention progresses.
- 7.10 The Welsh Government will manage all interventions and will provide appropriate policy, secretariat and administrative support
- 7.11 An authority which is the subject of intervention can continue to receive support under the terms of this protocol. This includes support which is funded by national partners.
- 7.12 Intervention may be accompanied by an enhanced audit or inspection programme. That is valuable in monitoring progress and supporting recovery, and relevant programmes or inspections should be co-ordinated to that end. However, they do not constitute part of the intervention, and responsibility for them remains with the relevant inspectorate audit or regulatory body, not with the Welsh Government.

Forms of intervention

- 7.13 The Welsh Government will seek to establish the most appropriate package of measures to address any failings.
- 7.14 The form and extent of any intervention must aim to resolve the problem as effectively and quickly as possible. Like support, intervention must be tailored to the circumstances. That means (a) the nature of the problem, (b) the risks attached to it (especially direct risks to service-users), (c) the capacity / willingness of the authority to engage with the intervention and (d) the likelihood of a successful early end to the intervention.
- 7.15 There are several models of intervention available under all of the various statutory regimes:

- Firstly, there are supportive approaches, in which an authority is required to work with a recovery board or similar but is otherwise free to take its own decisions. In general terms, this would be more appropriate where (a) the problems are known and self-contained; and/or (b) the risks to service-users are relatively low; and/or (c) the authority appears to have the capacity and willingness to engage fully and effectively. If the authority has used best efforts to meet its duties but has failed for whatever reason to do so effectively then this model will often be the most appropriate.
- Secondly, and where the opposite applies, a more directive form (removal of functions, appointment of commissioners etc) could be more appropriate. This is the most severe form of intervention and is only appropriate where there have been sustained and critical failures of governance or delivery, where other forms of support or intervention have not worked, and/or where the authority has been unwilling to engage with those and with the need for improvement more generally.
- Finally, it is possible for an intervention to require an authority to take specific one-off action to address a known, serious but self-contained problem; or to formulate a plan for doing so. This would clearly only be appropriate for problems of that nature. Isolated problems would not normally be a basis for intervention, so we expect this approach to be rare; but it might be appropriate to deal with urgent issues.

7.16 The exact approach adopted must depend on the circumstances of each case, and on the authority's capacity and willingness to address it. That approach may combine aspects of more than one model, or may evolve from one to the other as recovery proceeds (for instance, appointment of commissioners may be followed by a recovery board as and when matters start to improve sustainably). There is no automatic 'ladder of intervention' in which more serious failings automatically merit a more stringent intervention; the test is only to identify which arrangements are most likely to resolve the authority's problems as quickly and sustainably as possible.

7.17 Where the Welsh Government requests information from an authority in order to help define best intervention solution, the authority will be required to provide an accurate and timely response and co-operate with any action proposed.

7.18 Where intervention involves external appointment, eg. to advisory boards, this will be done on the basis of agreed criteria before possible candidates are approached. It will normally be neither possible nor necessary to follow a full public appointments procedure. However, all such appointments will be made on the basis of standard terms and conditions which regulate conduct in line with the Nolan principles.

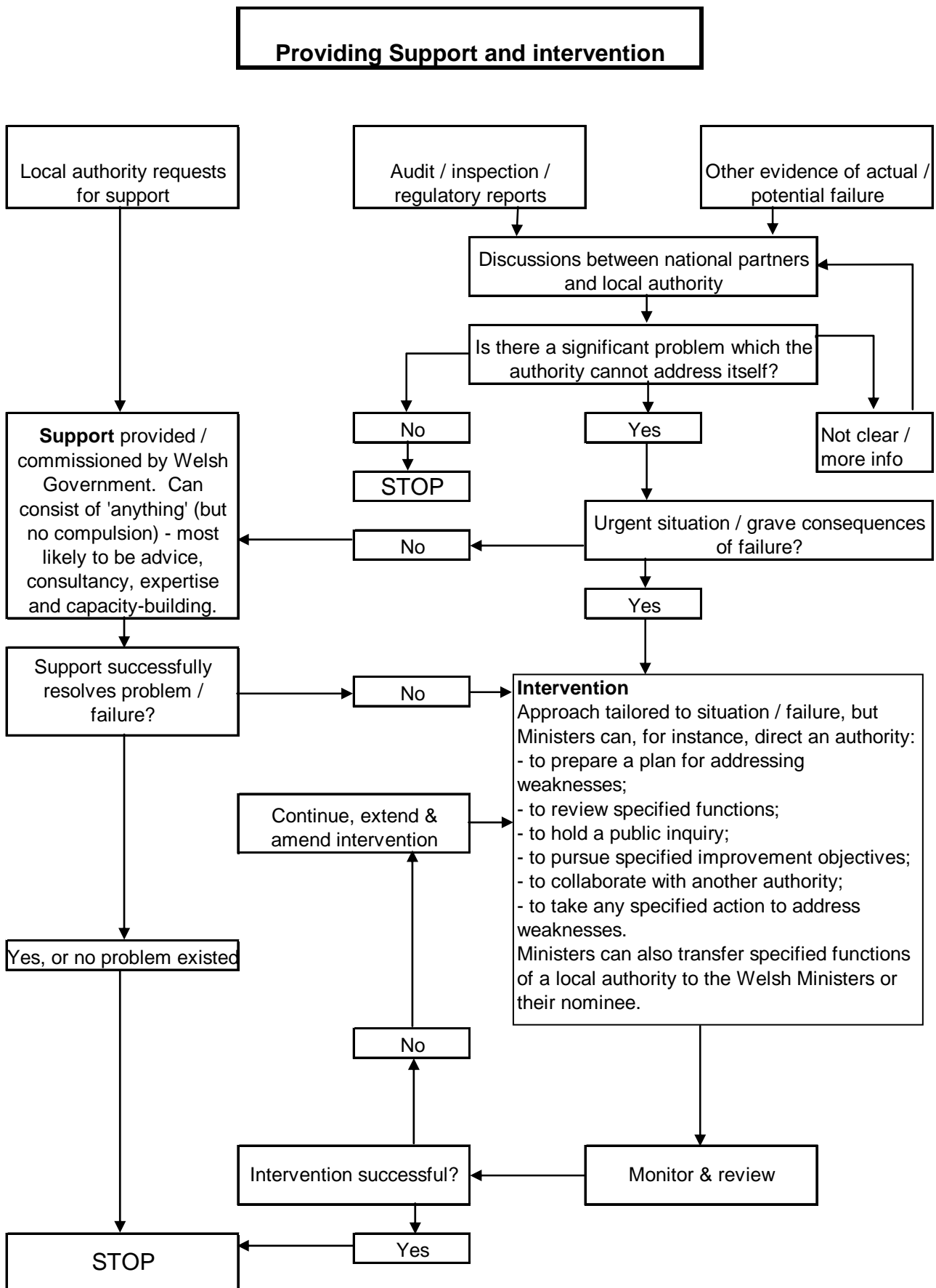
Ending intervention

7.19 It is in everyone's interests to bring an intervention to an end as soon as possible.

7.20 This means that an intervention will end as soon as it is clear that a sustainable recovery has been made, and that an authority is capable of operating autonomously. It does not necessarily mean that all identified faults have been completely eradicated – just that an authority can deal with them itself and/or with support.

7.21 For most interventions it will be helpful to scale down the level of involvement before bringing it to a complete end. This will allow the early return of some autonomy, and for the sustainability of that to be assessed in a controlled environment.

7.22 There will be an evaluation (by WG and partners) of any intervention to inform and shape future approaches. This evaluation will also consider 'lessons learnt'-why certain things went wrong at an authority and what could have been done, by the authority or partners, to manage or prevent emerging governance or performance issues in the first place. This will take place after an intervention has been concluded, and will normally be commissioned from an independent third party such as an academic expert. The findings will normally be published and will inform approaches to any future interventions.



Sources of Corporate Failure

Introduction

1. This annex describes some problems of corporate and service management in local authorities which might suggest that an authority is in need of support or intervention.
2. It is sometimes tempting to see serious corporate problems or the interventions that might result as special cause events, triggered by a unique combination of local factors. Experience dictates that this is incorrect. Local authorities face a broadly similar set of pressures and constraints, and that if those are not properly managed, they could lead to weaknesses or failures of corporate governance in any authority. That in turn means that it is possible to describe some of the common features of actual or potential corporate failure.

Unpacking the basic duty

3. The starting point for this analysis is the basic duty in section 2 of the Local Government (Wales) Measure 2009: *A [local authority] must make arrangements to secure continuous improvement in the exercise of its functions*
4. An authority which appears to fail to discharge this duty, or to be at risk of doing so is liable to receive support, or to be subject to intervention, under sections 28 and 29 of the Measure. Less legalistically, the underlying sense of managing the business so as to secure identified and tangible benefits for citizens is of course fundamental to any conception of public service. It also exists, with minor differences, in service-specific regimes and in other areas of the public sector.
5. The rest of Part 1 of the Measure explains and expands on this duty. But again, to avoid an unduly legalistic focus, it would be reasonable to say that the duty can be separated into four required elements, all of which need to cohere and interact effectively if an authority is to meet the basic duty, secure improvement and avoid “failure”:
 - Establishing a clear, valid and widely-understood conception of what ‘improvement’ is (ie short- medium and long-term organisational objectives)
 - Designing and maintaining a set of political, administrative, accountability and resource management arrangements which appear likely to make optimum sustainable progress towards these objectives
 - Operating those arrangements consistently, efficiently and effectively;
- and if all of this happens...
 - Actually securing improvement, or as much as reasonably possible, as a result.

Note that there is no duty actually to improve in the Measure. But consistently securing improvement is powerful empirical evidence that suitable arrangements are in place.
6. Equally, it is possible to identify in broad terms the sorts of circumstances which might lead to failure:
 - Inadequate or invalid strategic objectives (ie no clear, agreed and understood definition of “improvement”);
 - Incomplete or unfit internal arrangements for pursuing and monitoring improvement;

- Dysfunctional arrangements – which may be well-designed but which do not or cannot operate as intended: for instance fragile or absent corporate systems and processes that would provide the context in which arrangements could exist or flourish;
...any of which might lead to
- Not securing the improvement sought, or not securing as much of it as possible in the circumstances.

Again, not securing improvement or not meeting targets is not of itself a failure. But if that happens persistently, in one service area or generally, it may well suggest that arrangements were inadequate in some way.

7. Many if not most of these problems may interact or be causally connected. For instance, political instability might lead to a lack of strategic clarity which might in turn lead to poor resource allocation and/or operational management being inadequately focused on securing priority outcomes (which might in turn compound instability, creating a vicious circle). It is this sort of combination which would normally give grounds for concern and ultimately external involvement. The presence of isolated or self-contained problems normally would not. But that of course is no argument for ignoring such problems; indeed, it is an argument for preventing, detecting and correcting them before they create or interact with any other such problems.
8. A possible set of potential problems under each of these headings follows. It is not intended to be exhaustive, and should not be relied on as a checklist of good (or bad) governance. But the presence of any of these features should be a cause of concern. That would be even more true if there were evidence of causal connections between more than one such feature. This protocol should be invoked (whether by the authority or by the national partners) no later than that.

Inadequate or invalid objectives

- Strategic vision (eg community strategy etc) too vague, anodyne or unrealistic; not meaningfully deliverable
- Strategic vision too specific, lacking wider sense of context, coherence or long-term view
- Objectives not subject to adequate periodic review or revision
- Objectives changed too frequently; instability and impatience
- Insufficient member involvement in developing or revising objectives; not politically owned or steered
- Insufficient partner involvement in developing or revising objectives; conflicting or non-complementary partner objectives
- Insufficient public engagement in developing or revising objectives; sense of disconnection / apathy
- Strategic objectives not manifested in business or operational plans; not understood / accepted by service departments

Incomplete or unfit arrangements

- Performance management and reporting incomplete or too infrequent; neglecting important sources of evidence
- Too much / too little emphasis on particular sources (eg performance data; regulatory reports); tendency to monitor processes or outputs rather than outcomes
- Performance management and reporting not aligned with strategic objectives (eg emphasis on service / departmental performance rather than outcome attainment)
- Human, financial and asset management not aligned with strategic objectives, as above;
- Insufficient involvement of executive and scrutiny members in monitoring and challenging performance
- Inadequate consideration of collaboration; unduly short-term or narrow view of risks, costs and benefits
- Over-emphasis on collaboration; pursuing opportunities as ends in themselves within insufficient regard to risks, costs and benefits
- Lack of feedback from monitoring delivery into planning of future objectives, targets and budgets

Dysfunctional arrangements

- Confirmation bias: tendency in organisational culture to emphasise evidence of success and discount criticism (including public, political or regulatory criticism) or other evidence of failure
- Breakdown in key relationships (eg member/officer, scrutiny/executive, corporate/service or local authority/partner)
- Ineffective scrutiny, including lack of regular pre-decision scrutiny
- Sustained political instability, especially if focused on internal issues or jockeying for advantage rather than issues of policy or delivery
- Under-funding, un-managed overspends or inefficiency in key service areas; poor value for money in grant management, commissioning or contracting arrangements
- Key vacancies unfilled for extended periods and/or high levels of staff turnover or absence

No or insufficient improvement

- Inability to achieve outcomes or to demonstrate such achievement
- Persistent under-performance in key service areas (whether by reference to PIs, regulatory findings or otherwise), unexplained by challenges or constraints in the operating context
- Consistently high levels of complaints in key service areas, or other measures of user dissatisfaction.

Failure in education, which might be symptomatic of corporate failure, often entails a combination of the following:

- Leaders and managers do not communicate well and do not provide clear direction for schools and the authority's officers;
- Their vision does not focus enough on improving learning and wellbeing outcomes for learners and, as a result, they have been largely unsuccessful in making and sustaining improvements;
- Lines of accountability are blurred;
- Policies and initiatives are not implemented consistently;
- Leaders and elected members do not have enough relevant information about the performance of the authority's schools, and/or fail to use it to inform the authority's direction, identify under-performance or respond to national and local priorities;
- Elected members have too little impact on the direction and work of the authority and its school;
- Elected members do not challenge and hold to account the authority's officers and its schools enough to bring about improvement;
- The authority does not meet all its statutory duties;
- Self-evaluation processes lack rigour. The authority does not identify areas for improvement fully or accurately and as a result, officers do not focus on the most important areas for development;
- Self-evaluation of performance is not sufficiently wide-ranging and does not draw well enough on performance data and other evidence from all key partners. The self-evaluation process does not take enough account of schools and partners' views;
- The authority does not do enough to promote best practice among its own officers or with the learning community of its schools;
- Improvements since the last inspection are minimal and, consequently, schools have not made enough progress;
- Generally, attainment indicators for each key stage over the last three/four years have been well below the expected level when compared with similar local authorities (using Welsh Government data);
- Local authority officers do not provide enough challenge and targeted support where there is underperformance;
- Too many schools are placed in a follow up category of needing significant improvement or in special measures;
- School attendance rates are below expected levels and there are high numbers of pupil exclusions from schools;
- Some joint planning takes place but partnerships are tentative and have too little impact in practice;
- The allocation of financial resources is not linked directly enough to strategic priorities for action;

- Too high a proportion of schools in the authority are significantly overfilled or have significant surplus capacity and the authority is too slow in addressing this resource issue;
- Leaders, managers and elected members do not keep costs under regular review;
- There are some areas for improvement in the management of existing facilities; and
- Plans to improve resources or facilities do not deliver value for money.