

# Councils in Financial Distress: The beginnings of a guide to support VCSE mobilisation in areas affected



## Context

A recent LGA survey<sup>1</sup> revealed that almost one in five council leaders and chief executives in England surveyed by the Local Government Association think it is very or fairly likely that their chief finance officer will need to issue a Section 114 notice this year or next due to a lack of funding to keep key services running. Half are not confident they will have enough funding to fulfil their legal duties next year (2024/25). This includes the delivery of statutory services.

A Section 114 notice is when central government have been notified that the authority is about to incur expenditure that is unlawful according to the Local Government Finance Act 1988, the primary being because they expect their expenditure to exceed their income for a particular financial year. It results in a freeze on new spending commitments. In many cases central government appoints commissioners to explore options on how to achieve a balanced budget. In practice this results in a combination of spending cuts, reallocating budgets, Council tax rises, and although very rare, direct funding from central government (which could be in the form of covering deficits, repaying debt incurred by the Council, or lending money). In some areas it has been the catalyst for local government reorganisation (resulting in the creation of larger unitary authorities where this is an option).

The LGA estimates that councils in England face a £4 billion funding gap over the next two years just to keep services standing still but last month's Autumn Statement failed to provide the additional funding needed to protect services from further cuts.

In 2022, research published by Locality into the state of strategic relationships between councils and their local voluntary and community sector<sup>2</sup> identified that local services would cost an additional £8 billion between 2021 and 2024. This is on top of an additional £3.6 billion in costs for councils in 2024/25, caused by rising energy prices, spiralling inflation, and National Living Wage pressures. Undoubtedly, in most cases, this will detrimentally impact on the relationships between Councils and the VCSE (Voluntary Community Social Enterprise) sector.

The impact of financial distress could (and has already) manifested in the following ways:

- A fire sale of assets – auctioning off assets with little notice including community centres, youth centres, and libraries
- Making assets available for transfer for a short window with little notice leaving no time for communities to mobilise and build capacity
- Cuts, or threats of cuts, to council funded services provided by VCSE organisations. For Councils affected we have already seen cuts to youth provision, programmes linked to prevention or early action, advice & debt services, social care including day care services, community transport, and locally based neighbourhood staff with strong links with the VCSE

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<sup>1</sup> <https://www.local.gov.uk/about/news/section-114-fear-almost-1-5-council-leaders-and-chief-executives-after-cashless-autumn>

<sup>2</sup> <https://www.local.gov.uk/publications/state-strategic-relationships-between-councils-and-their-local-voluntary-and-community>

- An abandonment of preventative approaches, on the basis that scarce resources cannot be taken from crisis orientated services to fund that (as opposed to a rejection of the principle that prevention is the best approach)
- Maximum Council Tax increases which will disproportionately impact upon the most disadvantaged, increasing demand for VCSE services, which will already increase as a result of the cuts
- No appetite or Council capacity for creative approaches, innovation, or partnerships with the VCSE sector which could enable services to continue or community assets to be retained
- That scaling up of commissioning is adopted as the natural solution, particularly impacting on the ability of VCSE organisations of modest size to be able to participate in the procurement process
- A reduction in staff and a high level of Council staff turnover, eroding the personal relationships which VCSE organisations previously benefitted from
- Direct communication with officers becoming more limited or ceasing altogether, which could be a combination of low morale, limited capacity, and new restrictions upon the ability of officers to talk openly
- Little or no public or VCSE sector consultation on decisions
- Supportive local Councillors and Council officers disempowered by processes which consolidates decision making with fewer individuals
- In the cases of Councils, which have received Section 114 notices, an inability for the VCSE to engage with the appointed commissioner, and for any representations to be personally made

VCSE organisations (including VCSE representative bodies) within Council areas, therefore need to consider whether they have the appetite to collectively mobilise in an attempt to influence how the Council (or/and the appointed commissioner) regards the VCSE sector in the decisions making going forward. And fundamentally Locality believes that the “we have no choice” statements from Councils or commissioners should not be accepted as the irredeemable truth. If ever there was a time for the need for creativity and partnership, this is it!

On this basis, Locality is advocating pre-emptive action which could take the form of a campaign or at least the establishment of a representative body which could undertake lobbying, instigate dialogue with the Council, and potentially provide support to help the VCSE sector deal with the fall out.

Locality has already benefitted from the experience of discussing these issues with several Locality members as well as involvement in some of the local campaigns and lobbying bodies, particularly the “Save Birmingham” campaign. This paper represents the beginnings of what could become a more substantial tool kit for VCSE organisations looking to mobilise in a similar way.

## Convening

The catalyst for the formation of a body which could lead a campaign could be the convening of an initial meeting, by either a VCSE representative body or a high capacity VCSE organisation. The list of invitees could initially be selective, targeting those with a representative role or those with experience of providing sector support. The focus of the initial meeting should be related to:

- The process of determining the form of a truly representative body (which could be an existing representative organisation)
- Scoping the initial aims (but not finalising this at this stage and recognising this could change overtime)

- Determining what some of the initial activities should be, which could be related to consultation and building credibility as a representative body (both with the VCSE sector and the local authority/ appointed commissioners)
- The form of any communications, including those relating to the above and any direct communication to the Council at this stage
- Determining the form of a subsequent, larger meeting or summit event, which sector representatives could be invited to, to further shape the approach

With regard to the last bullet above, it may be worth considering that proactive communication with the Council at this stage may set the tone for more a positive relationship going forward. Great care needs to be taken at all stages not to sour relationships unnecessarily, especially when an ambition will be to have a dialogue with the Council on an ongoing basis. Individuals within Councils are likely to feel will be under enormous pressure and the people you are engaging with may be under threat of losing their jobs. It is important that campaigns take account of this.

At this stage, it may be useful to consider agreeing an organisation which could take the lead on implementing the initial actions associated with the above, or the assigning of responsibilities between several organisations.

Consideration should also be given, even at this early stage, to agreeing a single gateway for enquiries and controlling communications to avoid any detrimental or confused messaging at this early stage.

## Governance

There is no one size fits all approach to campaign governance and this should be shaped at a local level determined through discussion and the pre-existing representative sector support infrastructure. Governance could take the following forms:

- An existing organisation leads (In many areas there will be an established CVS with lines of sector accountability), potential with support and some functions undertaken by partner organisations
- An existing alliance of VCSE organisations (e.g. community anchor network, VCSE health alliances)
- A new alliance (organisations coming together for the first time)

Partners driving the process should be mindful of ensuring a truly representative body which proactively communicates and involves the wider sector, Any structure should recognise the variety of organisation and circumstance which exists in relation to size, activities, impact profile, community served (community of identity as well as geography), nature of relationship with the Council etc.

There is also an option to connect to national representative bodies (including Locality, as well as Co-operatives UK, Plunkett Foundation etc). Locality recognises the value and the potential for national / local alliances, but Locality's approach is to promote our willingness to help but not impose ourselves upon, or to try to instigate, what should be a home-grown movement.

Aspects of governance to consider includes:

- If the campaign is to be led by an alliance of organisations, as opposed to a pre-existing organisation, adopting a simple constitution or terms of reference, which includes sections on objectives, membership (and how this relates to committee membership), committee members, values, management committee (e.g. meetings, decision making, voting) dissolution

- Exploring a structure based on light touch membership – so encouraging organisations to join the campaign and sign up to receive information including about the opportunities to shape it. Numbers matter when it comes to being a credible voice!
- Having some external branding. This could involve a name, logo, website etc - all valuable in raising awareness
- Providing a single gateway for enquiries and potentially for sector views and experiences to be fed into. This will help to build an understanding of sector experience on an ongoing basis, potentially an open access section of the website for people to post about their experiences
- Aiming for a single united voice which is representative of the majority view but also reflects sector diversity including marginalised communities and those which represent them

Consideration could also be given to involving local funders, at an early stage and in governance, particularly locally connected trusts or foundations who may be willing to invest resources in the campaign (e.g. funding officer time, meetings cost, website hosting etc).

In other areas, which have not created consolidated representation for the sector, leadership on this issue can become fragmented. This could further compound a situation of confusion as multiple organisations seek to position themselves to represent the sector at a time when the communication with the Council will be limited. This will also detract from the ability of the sector to negotiate an effective channel of communication with the Council at a senior level.

## Campaign tone & messaging

The overarching ambition will be to develop as a body, which has the ability to strike the right balance. On one hand this should be an uncompromising campaign which “speaks truth to power” (although where the power lies, is not always clear in these circumstances). However, this needs to be balanced against an ambition to have a direct relationship with whichever authority is running the Council, and therefore the tone has to remain positive.

Therefore the tone needs to be honest but respectful, and when appropriate discussions between the campaign group and the Council may need to be confidential to allow for a dialogue where alternative options can be openly explored.

Those involved need to be conscious that Council officers they are liaising with could be on notice, could be about to be put on notice, or could be overseeing the redundancies of valued colleagues.

The big picture here is that despite the threat of the tap being turned off in relation to the VCSE receiving Council resources, the emphasis should be on Council/ Commissioners understanding that the sector is extending its hand with an offer of help - not a begging bowl.

Key messages could be that the VCSE sector:

- Should be viewed as an essential partner which can help (just as they were during the pandemic)
- Is built for adversity
- Has a crucial role in filling gaps in mainstream service provision
- Supports those most in need and has a key role in early help and prevention which reduces demand pressure on more expensive public services

It is therefore essential that the sector is viewed as more than a nice to have, but rather an essential valve which reduces demand pressure on stretched public services (which are about to be stretched further).

# Campaign priority areas

The following sections focus upon what Locality view as the two main areas of campaigning and areas which are particularly under threat:

- Assets (referring to property - land and buildings)
- Service commissioning, which is in two main forms:
  - Commissioning through contract awards, including through a competitive procurement process
  - Grant (many Councils continue to commission VCSE organisations using grants)

## Assets

A likely response to Section 114 notice (including the threat of a notice) is a “fire sale” of council owned property. In normal times Councils are more cautious in their disposal of property recognising that:

- A sale does not guarantee redevelopment
- That property may simply be banked for the future by institutions with no connection to the area
- That valued, iconic sites may fall into disrepair – a blight on communities which will come back to haunt the Council
- That community asset transfer can achieve value above the value of a capital receipt (in relation to the potential for inward investment and more importantly the positive impact they create for communities)
- That community asset transfer will enable the Council to make revenue savings (e.g. on utility costs and repairs and maintenance responsibilities)

The above are all messages that the campaign should attempt to communicate clearly to the authority and the latter point is critical – that commensurate impact can be created, which far outweighs the value of a receipt. Assets are therefore a crucial mechanism to support the VCSE sector to be able respond to emerging service gaps.

A key mechanism that can be used, which may provide some safeguarding of assets, is the Community Right to Bid (Assets of Community Value) mechanism, which is enshrined in law (Localism Act 2012). Under this the Council has no choice but to accept and process applications to list property nominated by qualifying local organisations which:

*“furthers social well-being or cultural, recreational or sporting interests of the local community”*

Assets successfully nominated cannot be sold without providing an opportunity for VCSE organisations to develop plans to purchase them.

The legislation is far from perfect. It can only delay the sale of assets (for approximately seven months) rather than preventing it, and even if the organisations raise substantial capital they could be outbid at an auction.

However, the legislation can be powerful in another way as the listing can be interpreted as a “material consideration” in relation to planning, which means the planning authority can take this into account when deciding applications for changes of use (and potential purchasers may be put off by a designation which could delay or prevent planning permission).

Therefore we recommend that the Assets of Community Value legislation becomes a keystone of any campaign relating to safeguard assets under threat. This could manifest in the following ways:

- An information campaign, guidance notes and workshops to promote the mechanism with a link to enable organisations to get to the section of Council website developed to process applications
- Targeting qualifying organisations in key geographical areas within the council boundary and encouraging them to list multiple sites in their area
- Ensuring that any VCSE organisation operating from a Council owned site lists them

In relation to the campaign body becoming an agency which can list buildings themselves, this is a possibility, as one of the permitted organisations which can apply for a listing is a locally connected voluntary or community body, including an unincorporated community group of at least twenty-one members which does not distribute profits.

However, such an approach should be undertaken with caution because of the bureaucratic burden this places upon an organisation with little capacity and potentially with little or no connection to assets it is being asked to nominate. It could also represent a missed opportunity to begin a process of community empowerment, which could start with supporting a local group to constitute or incorporate to list an asset themselves. And the latter point is crucial one, that a listing by a local organisation could represent the beginning of a journey and that further support organisations will need to access includes:

- Support to develop community led governance
- Business planning including financial planning
- Fundraising and investment
- Community engagement

Accessing quality support can be a challenge and local representative and capacity building organisations may need support to build their capacity to provide this.

In parallel to the above, a key pillar of the campaign should be to encourage the Council and the commissioner to be as cautious and as patient as circumstances allow in order to ensure that community asset transfer is properly explored and that community organisations are provided with the opportunity and the time to mobilise in response. Key lobbying messages could be:

- To take an individual approach to each property disposal (as opposed to clustering portfolios or asset types together)
- To have community asset transfer as an option for consideration for each disposal with criteria developed to objectively assess their suitability (e.g. pre-existing community use, within a sensitive area such as a public park, an interested community organisation, quality of the business plan etc)
- To promote the availability of assets which could be subject to transfer
- To give preference to organisations already using those buildings
- That once an application is accepted, to provide an appropriate time for plans to be developed (e.g. up to twelve months)
- That substantial long leases are provided with security (to enable organisations to lever capital investment to enhance them and provide the assurances they need to plan)

## **Commissioning**

In relation to commissioning via contracting (including via a competitive contract procurement process), many Councils have made great strides in developing process which enable VCSEs to compete in those processes which could now be under threat. The risks are threefold:

- Contracts are terminated early or are not renewed
- Future procurement processes seek economies of scale by increasing the contract size to a point where smaller VCSE organisations cannot deliver
- The contract value reduces substantially (e.g. top slicing), potentially alongside delivery volume and quality expectations remaining the same making the contract unviable

In relation to Council grant funding programmes, these could increasingly be viewed as a “nice to have” or an “easy cut”, and that activities funded by grant are not evaluated with the same level of scrutiny based on the perspective that this is funding for organisations in need rather than a recognised form of service commissioning. These could also be subject to:

- Whole programme cancellation (e.g. focussing on competitive procurement as a single mechanism for any previously grant funded services regarded as essential)
- Top slicing (percentage reductions) of grant value
- A refocussing on key priority areas and funding less organisations

Lobbying could focus upon:

- Reminding of the strong correlation between VCSE sector activities and Council priorities (within the Council Plan)
- Ensuring that recognition is given to the VCSE sector predominantly delivering activity focussed on early help and crisis prevention, which acts as a pressure valve on demand orientated public sector services, the benefit of which undoubtedly outweighs the amount expended
- Ensuring the sector (potentially through the campaign group) can feed into the form of any process used to determine refreshed or streamlined commissioning priorities, or reshaping commissioning mechanisms used
- That any structural changes should be considered against VCSE sector participation. For example, if the Council insists on delivery at scale, then processes should allow (or even encourage) VCSE-led consortia to compete
- With regard to grant funding, emphasising the inherent value for money associated with smaller-scale, often predominantly volunteer-led organisations, delivering preventative and early help activities

## More radical ideas

- Prior to a Section 114 notice, lobbying any council likely to be issuing one in the future, to **accelerate a pre-emptive programme of asset transfer**. This recognises that communities need time to develop plans and it could be that transfer is no longer on the table after a Section 114 notice as a result of wanting to maximise the receipt from any sale. Transferring property to the VCSE (with security) would ensure they are protected from any future fire sale.
- For organisations delivering early help, prevention, pre-crisis support, etc, **turning their attention from Council commissioning to NHS commissioning**, which could be via Integrated Care Boards (ICBs) or Primary Care Networks (PCNs). There has been a perpetual increase over several years of these bodies working more closely with the VCS, which has translated into commissioned services (direct commissioning, issuing grants, and commissioning via a competitive process). The “way in” to being commissioned bodies can be challenging to navigate but a strong VCSE representative body may already have links via membership of some of the fora created to join up service delivery (including ICBs)
- Promoting powers in the Localism Act 2012 - **enabling communities that want to set up a parish council in their area**. It could result in a democratically accountable local body which can become an anchor organisation for the area. This would enable the raising of

money through a precept (additional Council Tax), which could be utilised to support local priorities (e.g. green space management, maintaining community assets) filling a gap left by withdrawal of upper tier authorities. Therefore it is unlikely to be a solution suitable for disadvantaged communities.

To establish a local council, a Community Governance Review needs to be triggered by either the principal authority themselves or by the community through the submission of a petition. The number of minimum signatures required varies according to the size of the population. Once the petition gathers the required number of signatures, it can be submitted to the principal authority, who will validate the signatures and, provided that the minimum threshold is met, will conduct a Community Governance Review within a twelve-month period. During this time, the principal authority will launch a consultation, asking residents to state whether they are in favour or against the establishment of a local council. At the end of the consultation period, the council will review residents' responses before reaching a decision. If the principal authority decides in favour of a parish council, it will also set the date for the first election.

Therefore, this will be a long-term process and any group wanting to instigate this will need to be patient and ensure that residents are well informed throughout.