

NORTHUMBERLAND COUNTY COUNCIL

COUNTY COUNCIL

At the meeting of the **County Council** held at Council Chamber - County Hall on Wednesday, 8 June 2022 at 2.00 pm.

PRESENT

B Flux (Chair) (in the Chair)

MEMBERS

C Ball
J Beynon
S Bridgett
T Cessford
T Clark
L Darwin
R Dodd
L Dunn
D Ferguson
B Gallacher
C Hardy
C Horncastle
I Hunter
P Jackson
D Kennedy
S Lee
N Morphet
K Nisbet
W Pattison
J Reid
J Riddle
G Sanderson
C Seymour
E Simpson
M Swinbank
C Taylor
D Towns
A Wallace
J Watson
R Wilczek

D Bawn
L Bowman
D Carr
E Chicken
A Dale
S Dickinson
C Dunbar
P Ezhilchelvan
J Foster
L Grimshaw
G Hill
C Humphrey
JI Hutchinson
V Jones
J Lang
M Mather
M Murphy
N Oliver
M Purvis
G Renner-Thompson
M Robinson
A Scott
A Sharp
G Stewart
M Swinburn
T Thorne
H Waddell
A Watson
R Wearmouth

OFFICERS

Binjal, S.
Denyer, L.
Hadfield, K.

Hunter, P.

Monitoring Officer
Deputy Monitoring Officer
Democratic and Electoral Services
Manager
Interim Senior Service Director

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O'Farrell, R.
Roll, J.

Willis, J.

Interim Deputy Chief Executive
Head of Democratic and Electoral
Services
Interim Executive Director of
Finance and S151 Officer

Around 12 members of the press and public were present.

1 **APOLOGIES FOR ABSENCE**

Apologies were received from Councillors Cartie, Castle, Daley, Fairless- Aitken, Parry, Ploszaj, and Richardson.

2 **DISCLOSURES OF MEMBERS' INTERESTS**

Councillor Dale sought advice as to whether she could take part as she had instructed Ward Hadaway in 2014 to take action against a senior politician. The Monitoring Officer confirmed that she could.

Councillor Grimshaw declared an interest as a director of NIC and NEHL and as a previous Director of Advance. The Monitoring Officer confirmed that Councillor Grimshaw could remain and take part.

3 **REPORT OF THE LEADER AND DEPUTY LEADER (PORTFOLIO HOLDER FOR FINANCE AND GOVERNANCE AND CORPORATE SERVICES)**

Report of Independent Governance Review

The Leader introduced Max Caller CBE and his team to the Council, to present his report on a review of the Council's Corporate Governance arrangements. Mr Caller was accompanied by Mr Jim Taylor and Mr Gordon Mitchell and they spoke briefly to members about their background and experience. Members had been provided with a copy of the report at 1.00 pm.

Mr Caller stressed that the report was an honest reflection of their views and had not been influenced by any member of the Council. There were issues about trust, confidence and working together and about how reports were handled. The Leader had asked for this review to be done when he had taken office and this should have been facilitated by the Chief Executive at that time. Instead the Leader and Deputy Leader had exercised delegated authority to bring it about and it was a pity that that had had to happen as it had affected member confidence in the process from the start.

Mr Caller and his team went through the report sections in some detail. The Business Chair then invited member questions which included:-

- Councillor Dickinson felt there was a need to draw the line under this but members couldn't pretend none of this had happened. The Council needed to look at the detail and put things right and build on the good work of the Executive Team. He asked what Mr Caller would recommend in terms of moving forward.
- Councillor Kennedy felt that the current situation stemmed from

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2017 and evolved into the control failures, staff turnover and expensive interims which existed now. He asked Mr Caller what he felt the Council's chances were of getting things right.

- Councillor Reid thanked the team for the report. Members now had to accept the advice which was being provided and tackle the issues.
- Councillor Morphet welcomed the review and looked forward to dealing with the matters in hand.

Mr Caller responded that 2017 had seemed the appropriate point to start from. The Council had chosen to appoint a Chief Executive on a part time basis. In the team's experience and judgement, running a unitary authority of this size and complexity was a hard job. The Council should have thought harder at the time about the specification for the Chief Executive and what was to be done, and what effort was required to achieve that before making a permanent appointment. He acknowledged points from the Leader regarding current interims, but running the Council on these appointments was not the way to make progress. Permanent committed appointments was how local government worked. He urged members to see the report as an agenda to move forward and the LGA could support them on this.

- Councillor Bridget asked Mr Caller if he believed it was the role of a backbench member to challenge the Administration and officers to ensure the interest of residents and the County were represented adequately.
- Councillor J. Watson asked if the team were aware that Advance had received unqualified acceptance of its accounts this year. Also the Advance Board had made recommendations before Christmas regarding the independent people and no progress had been made for months.
- Councillor Hill felt the report was quite damning. It focussed a lot on officers which betrayed the fact that councillors were in charge, and Conservative members had been in leadership over this mess since 2017. Page 37 referred to a fundamental reset and the need for a seasoned local government professional input to start the process of change. She felt there was a need for more radical intervention and asked if there were opportunities for more robust support.

Mr Caller replied that they had not been aware of the Advance accounts but were aware of the other matters and they had been taken into account. He would defend the rights of councillors to ask robust questions of Administrations and officers but there was a requirement to behave with respect and some behaviours had been unacceptable. Matters should not become personal. Two of the team had been commissioners in intervention authorities and he did not feel members would want to be in this position as it removed their powers to act as democratically elected individuals.

- Councillor Dale asked whether Mr Caller felt the issue of member training was sufficiently covered in the report as there was no specific recommendation on it.

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- Councillor Ferguson asked if there was a need for a robust system to ensure the uptake of member training so that they had the knowledge to carry out their roles and he asked if Mr Caller believed there had been any unlawful activity either by the Council or by individuals.
- Councillor Ball asked how long the Council would get to improve and how and when would this be judged.

Mr Caller replied that para 10.1 identified that training was a fundamental part of this. However, members needed to help to fulfil their role and a change in mindset was needed. It was up to the Council if things were going to be any different.

- Councillor Murphy asked what Mr Caller's view was of the system inherited by officers and that it may not have been the best that it could have been. She wondered how much of the blame was systemic.
- Councillor Bawn asked Mr Caller what he would have done if he as leader to ensure the review had been carried out when it had been requested by the Leader.
- Councillor Ezhilchelvan asked how Mr Caller would rate the Council on a scale of 1-10 for the last five years and how he thought it could perform in the future.

Mr Caller replied that officers should not allow bad situations to stop them doing the jobs they were employed to do. He would not rate councils as he had never known one to be either all good or all bad. A motion could have been taken to Council but it was unheard of for a leader not to be able to get an item on a Cabinet agenda.

- Councillor Oliver commented on the three process themes identified in the report and asked how the Council could deal with the override of process theme.
- Councillor Dodd asked whether there was a need for a further look at the role and purpose of Scrutiny.
- Councillor Robinson asked if there had been a systems failure or a personnel failure, or both and if so, what needed to be tackled first.

Mr Caller replied that the authority could not move on until the right leadership was in place at officer level to carry this forward. Systems were operated by people and if the right people were operating the systems, then the override did not happen. If it did, the Scrutiny would pick it up. The Council might want to do a separate review by the Centre for Public Scrutiny.

- Councillor Cessford asked whether Mr Caller had seen any information which indicated any actions or decisions which had been less than lawful. If so, did he recommend any higher level investigation of these issues?
- Councillor Renner Thompson asked whether the democratic deficit which seemed evident was a common theme or unique to this Authority.

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- Councillor Wearmouth referred to paragraphs 6.13 and 7.11 and asked if the issues related to members or staff. He also asked how the workstreams would be taken forward and how many there were likely to be. He hoped Mr Caller and his team had not been asked to sign NDAs as referenced earlier.

Mr Caller advised that officers had to be robust sometimes in performance of their duties but that didn't mean that they should not respect the role of members. This was an issue for the Authority. There would be issues which came out and they would be referred to the individuals concerned but the aim was to focus on the future. They would be having conversations with the external auditors and he expected that the workstreams would come from the recommendations. Regarding NDAs, the Government had advised that these should not be used in the public sector, yet they seemed to be used a lot here, and not arising from any agreed policy. They had interviewed all the people who had been subject to NDAs and it seemed that some good people had been lost who would have performed well for the Council. This indicated concerns about how things were being run and there were policy and practice issues flowing from that.

- Councillor Gallacher commented that scrutiny task and finish groups did good work but often there was no outcome resulting from the work they did. He had been asking for planning training for a year without success and this was needed for old and new members.
- Councillor Swinburn asked whether the staffing structure should be decided from the top down with officers or by members. Should the structure be in place first?
- Councillor Jackson asked whether Mr Caller felt that the poor treatment of staff was more than a cultural issue and pointed to how HR had been managed for the last few years, and did this roll on into the potential unlawful activity

Mr Caller replied that Scrutiny should not be looking at policy and practice as it was being developed. The point about the structure came from having a chief executive in place who worked with members to follow it through. The structure and detail and delegation was a matter for the Council to decide. It was too difficult in this kind of review to respond to Councillor Jackson's points

- Councillor Hunter asked if Mr Caller had any suggestions should the Authority struggle to recruit to the new positions. Mr Caller replied that he would be surprised if this was the case. There were great opportunities at Northumberland.

The Leader made some closing remarks and thanked the team for the report. He proposed the report's recommendations, which was seconded by Councillor Wearmouth. On the required number of members asking for a named vote on the issue, the votes were cast as follows:

FOR:39

Bawn, D.	Mather, M.
Beynon, J.	Morphet, N.
Carr, D.	Oliver, N.
Cessford, T.	Pattison, W.
Chicken, E.	Reid, J.
Dale, A.	Renner Thompson, G.
Darwin, L.	Riddle, J.
Dodd, R.R.	Robinson, M.
Dunbar, C.	Sanderson, H.G.H.
Ezhilchelvan, P.	Seymour, C.
Ferguson, D.	Sharp, A.
Flux, B.	Stewart, G.
Hardy, C.	Swinbank, M.
Horncastle, C.W.	Swinburn, M.
Humphrey, C.	Taylor, C.
Hunter, E.I.	Thorne, T.N.
Hutchinson, J.I.	Towns, D.
Jackson, P.A.	Watson, J.
Jones, V.	Wearmouth, R.
Kennedy, D.	

AGAINST: 3

Hill, G.	Waddell, H.
Lee, S.	

ABSTENTIONS: 18

Ball, C.	Lang, J.
Bowman, L.	Murphy, M.
Bridgett, S.	Nisbet, K.
Clark, T.	Purvis, M.
Dickinson, S.	Scott, A.
Dunn, L.	Simpson, E.
Foster, J.	Wallace, A.
Gallacher, B.	Watson, A.
Grimshaw, L.	Wilczek, R.

It was therefore **RESOLVED** that:-

- (a) Council thank Mr Caller and the whole review team for their work and their report and recommendations;
- (b) a Steering Group be formed on a task and finish basis, consisting of:
 - a. The Leader and Deputy Leader of the Council
 - b. The Business Chair
 - c. The Vice Chair of the Audit Committee (Cllr Towns)
 - d. The Leaders of the Labour, Independent, Liberal Democrat and Green Groups

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- e. A second Member of the Labour Group nominated by the Labour Group Leader.

The Steering Group to meet within the next 7 days to consider the Council's response to the Caller Review and its recommendations and report back to the County Council on 21 June 2022; and

- (c) an Extraordinary meeting of the Council be convened on Tuesday 21 June 2022 to receive the report of the Steering Group.

The meeting adjourned for a short break at 4.10 pm and reconvened at 4.30 pm.

4 **REPORT OF THE LEADER AND DEPUTY LEADER (PORTFOLIO HOLDER FOR FINANCE AND GOVERNANCE AND CORPORATE SERVICES)**

Statutory Report under Sections 114 and 114a

The Chief Finance Officer of the Council, appointed under S.151 of the Local Government Act 1972, issued a formal report to members of the Council on 23 May 2022. Legislation required the County Council formally to consider the report within 21 days of it being sent to members. For a Council to receive such a report was very unusual and plainly a matter of great significance.

The purpose of the report was to formally place the Chief Finance Officer's report before the Council and to invite the Council to accept its contents and recommendations. The statutory report was attached at Appendix 1. A number of additional appendices had been circulated to members as follows:-

- Report to Cabinet meeting of 7 June 2022 (App D)
- Draft resolutions of Cabinet dated 7 June 2022 (App E)
- Letter from Chief Executive to all members dated 6 June 2022 (App F)
- Email from S151 Officer to External Auditors dated 8 November 2021 (App F)
- Letter from Chief Executive to S151 Officer dated 13 May 2022 (App F)
- Supplemental advice from Nick Giffin QC dated 7 June 2022 (App G)

Councillor Wearmouth made a brief statement about the matter. The serious failures in governance had to be addressed and any appropriate remedial action taken. He welcomed the report and thanked Mrs Willis and her team for their hard work and meeting the challenges the situation had presented. He was determined that the issues were addressed and steps taken to ensure it was never repeated. He also reported back on the outcome of Cabinet's deliberations the previous day on the matter.

The S151 Officer detailed the key points of the report for members. She advised members that a further letter had been recently circulated to all members from the Chief Executive where she made a number of additional points. Nothing in this changed her view regarding the legal position. The limit of her responsibility was to inform members that in her opinion the Council had incurred unlawful expenditure. Members had been provided with a copy of the Chief Executive's letter and supplementary advice from Nigel Giffin QC. In his view, there was nothing in the Chief Executive's letter of 6 June which altered his view .

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The S151 Officer responded to questions which had been raised with her regarding the Nick Grubeck advice and why she had changed her view on the legal position opinion. She was very clear to members that she had not in fact done this as he not provided a formal written opinion. He had been asked during a conference call if there were any other powers the Council could rely on to undertake this activity. He had outlined a potential argument which she had shared with the external auditor, who did not feel that it would pass muster. Therefore a full legal opinion had been commissioned from Nigel Giffin.

Regarding questions about how much money the international company had made, this was very difficult due to incomplete records, but the best guess she could make based on partial records was in the region of £800,000-£900,000.

A number of members raised questions as follows:-

- Councillor Dickinson sought confirmation that members of the EAC could take part. He also asked with regard to recommendation 6 how this could relate to a member, and how extensive the investigation was likely to be and who would be involved. How much would the investigation cost bearing in mind that no money had been lost and money had been made.
- Councillor Kennedy asked if it was £200,000 in international allowance which had been paid, what the QC advice had cost and which councillors had failed in their responsibilities.
- Councillor Reid asked if the issue had been lack of paperwork or had it been deliberate.

The Monitoring Officer confirmed that the EAC did not have a remit regarding member conduct however she had suggested that it be looked at in total by a group of members looking at all the facts. Part of the investigation's terms of reference would be to consider whether there had been a breach of the code of conduct. If there had, it would need to be considered by the Standards Committee.

The S151 Officer advised that she had suggested that there be an investigation into the international trading under the auspices of the Audit Committee. The Deputy Chief Executive would draw up the terms of reference for the Audit Committee to agree. It was important that the investigation was independent and that the facts were established even if the issue was now a historic one. She did not know what the QC advice had cost but would get the figure for Councillor Dickinson.

Pension contributions had been paid on the £200,000 figure by both the Chief Executive and NCC. The QCs advice was that if it was unlawful then it cannot have been pensionable and work would have to be done to unpick all of that. It would affect her pension entitlement as well as any strain that would fall on the Council in any negotiated settlement. This work was already in hand with Tyne and Wear Pension Fund and she would report back on it.

Regarding the paperwork, this was difficult to comment on but there were some lax processes and controls and some were totally absent. If there was

any more to it than that, she could not say.

- Councillor Dale asked if Audit Committee could look at this.
- Councillor Bawn sought confirmation that legal privilege had been waived in respect of Appendix G and asked whether the Council would be pursuing recovery of costs/payments. Reassurances were needed that the EAC process would be properly followed.
- Councillor Hill asked if the S151 Officer had been aware that in 2020-21 the external auditor had said this needed to be regularised and put into a limited company. Would the investigation look at why there had been resistance from the Cabinet at the time to implement that arrangement? She also asked if the unlawful set up meant that all expenditure was unlawful including member expenses.

The S151 Officer responded that the recommendation to the EAC was not in her report but she accepted the point regarding the need to arrive at a balanced judgement taking into account value for money and the wider public interest. Further legal advice had been commissioned regarding the recovery of the allowance. There were a range of options open and lots of factors to take into account in making that decision. It would be for the Audit Committee to agree the terms of reference and any specific issues to be included.

The unlawful set up did not mean that all expenditure was unlawful. The Council should have taken a proper decision, a decision had not been delegated and it didn't comply with the pay policy statement.

- Councillor Cessford asked whether any more S114 reports were likely.
- Councillor Bridgett hoped that if the EAC did make recommendations then the substantial backlog of complaints for Standards Committee would be dealt with first. He also asked if the full amount paid by the Chinese and other partners had been put on the risk register because if it had been illegal there could be potential for them to ask for their money back. He also asked for further information regarding the detail of para 7.7 of the report.
- Councillor J. Watson asked why proper records had not been kept and whose responsibility had it been to ensure that they were.

The S151 Officer replied that she did not know if further S114 reports would be issued as she was still looking at other matters including two exit payments paid to senior officers. There were recommendations in the report asking members to note that she was still looking at issues and actions she had put in train. She had asked officers to look at all payments over £100,000 for the last two years but would go back as far as she needed to. Nigel Giffin was of the view that any claim to recover payments made would be highly unlikely to succeed. The records issue would be a matter for the investigation but there had been a failure in process. It was primarily the responsibility of officers to ensure that process was followed properly.

The Monitoring Officer added that the EAC would decide what it did and what it looked at in terms of its investigation. Regarding any standards or code of conduct matters, it was for Standards Committee to adhere to the locally agreed protocols.

- Councillor Jackson asked if the S151 Officer had the records of the questions

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from Cabinet members to officers on this and on the whistleblowing allegations from himself and two Cabinet members about the potential illegal activity.

- Councillor Ball asked whether the poor record keeping could be repeated elsewhere.
- Councillor Oliver commented that the former Deputy Chief Executive had advised him that if former officers had been found guilty of gross misconduct then the Council had a duty to report it to their new employer. He asked if this would be done if it had been found to be correct.

The S151 Officer advised that she was aware of the whistleblowing issues which were relevant to her considerations. The record keeping failures were those of the Council, not the company.

The Monitoring Officer added that it would not be possible to take disciplinary action against a former member of staff but in certain circumstances, matters could be referred to their professional regulator, the Police or their employer.

- Councillor Robinson sought confirmation that there was still £700,000 sitting in an inert company.
- Councillor Riddle asked if the best estimate of profit took into account officer time and travel/subsistence costs.
- Councillor Murphy asked what the role of the Council's own legal team had been before external support had been brought in which had allowed this to happen. Was there a need to expand the legal team?

The S151 Officer responded that £300,000 from the estimated profit had been used as start up capital for NIC last year. £800,000 was the best guess up to 31 March 2021 and it did include travel and subsistence costs but it had not included the fuller picture on officer time spent. Regarding the role of the legal team, the practice had developed of bypassing the legal team and the MO so there was no oversight of what was being done. This wasn't a satisfactory position.

- Councillor Ferguson asked if the failure in process was due to no policies being in place, or poor policies, or policies not being followed.
- Councillor Wearmouth commented that there had been a number of warning flags raised during the process and lots about unlawful activity. He asked if there had been earlier instances where concerns had been raised by the MO or S151 Officer.
- Councillor Kennedy asked if the tax authorities had been alerted about the failures in record keeping.

The S151 Officer responded that regarding the process, it was not just about the policies though some were in place and some were wrong. It was also about how decisions had been taken and recorded. There had been no formal decision or advice which was why she could not respond to Councillor Wearmouth's question either. She did not believe there was any tax liability as the activity had not been carried out by a company and the Council was not liable for corporation tax. The Council may want to consider making a voluntary payment in the amount which would have been due. She would confirm the position with HMRC.

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Councillor Wearmouth moved the report's recommendations which was seconded by the Leader.

Councillor Reid felt there was a need to learn lessons from this as it should never have happened. The priority should be to get out completely and concentrate on Northumberland doing business. He asked what the Chief Executive had done to earn the allowance and what work had been involved.

Councillor Dale urged members to look forward and get on with the work which needed to be done. Breaches of the Data Protection Act needed to be looked at which included the accounts for International. Payments made to officers were included in the Council's annual accounts and members should take notice of that and highlight if they had any concerns. She thanked Mrs Willis for her work and urged members to work together and keep politics out.

Councillor Bridgett commented that when legal advice was sought, then members should know what was being asked in the first place as this was crucial.

Councillor Jackson welcomed the fact that details of the Council's international business were now coming out. In August 2020 he made a formal whistleblowing complaint to the Council's MO, to the external auditor and to Northumbria Police as he been convinced that the operation was acting unlawfully. Officers had a duty to ensure good governance and that the Council acted lawfully, they were the experts. He felt members had been let down by the Statutory Officers of the time. Council officers had been asked to operate this business in a company both in 2017 and 2018. Officers had promised income of around £2m pa which would have supported services. It was his view that the Council had actually incurred significant losses in the first couple of years and that was why a company couldn't be created as it would have been insolvent from the start. He felt that the failures of process were deliberate and should be investigated. All members had a right to information and Cabinet members had been denied the information they had asked for by officers acting together. Finally, he did not recognise any of the comments made in the Chief Executive's letter regarding the allowance and references to a meeting in county hall on 31 October 2017 were incorrect as he had been in London that day.

Councillor Riddle commented it was insulting to suggest that members had been asleep at the wheel on this issue. He had evidence that Cabinet members had consistently asked for financial information about the company. Members had been told to destroy the spreadsheet which had been leaked under data protection but the public interest was not being taken into account. He felt that a proper forensic investigation was needed.

Councillor Oliver commented that what members had heard already was just the tip of the iceberg. He became a Cabinet member in 2017 when the company was already in existence and for 4 years had struggled to get any information on it. Members and officers had been attacked for trying to get to the truth and the Council's auditors had had serious concerns about the business and the fact that they had still not signed off the Council's VFM statements for the 2019-20 and 20-21 accounts was a clear sign that all was

not well. Concerns had been consistently raised by senior officers for a number of years and any questions from members about the business had been met with attacks. Members had been deliberately misled and good officers raising concerns about this business had been driven out of the Council and more should have been done to protect them. He hoped the officers who had been involved in the business who had now left would be held to account. Cabinet had been given presentations on the business but with no meaningful financial information and he was very sceptical that any money had actually been made. What was clear was that there had been substantial travel costs as these were in the Council's accounts. The £40,000 pa allowance was unlawful because it had not been properly authorised and the story to justify it kept changing. This represented a 40% uplift on an already large salary. There were three basic questions to be answered – if there had been unlawful activity would people be held to account and would there be proper disciplinary action? If money had been paid unlawfully, would the Council take action to recover it and if there had been illegal activity then would referrals be made to the Police, and would the Council consider civil action for activity that did not meet the criminal threshold?

Councillor Dickinson remarked on the number of prepared statements from members and the accusations being levelled against officers without investigation. Members were being asked to approve an investigation so the facts could be established. He welcomed the report's recommendations and was dismayed that members had already disregarded Mr Caller's recommendations regarding standards of behaviour and treating people with respect by throwing out allegations when officers were not present to defend themselves.

The Leader commented that when he had asked for the governance review he had known that he was taking a risk in terms of what it would say and the reaction from members. The report had shown many positives for the Authority and he called on all members to work together to tackle the issues at hand.

RESOLVED that:-

the Statutory Report of the Chief Finance Officer made under S114 of the Local Government Finance Act 1988 dated 23rd May 2022 be received;

Council agree the contents of the Statutory Report addressed to the Council under S.114 (in relation to the non-executive functions of the Council);

Council note the resolutions of the Cabinet at its meeting on 7 June 2022 in relation to those matters subject to a Statutory Report under S.114A of the Local Government Finance Act 1988;

the recommendations to the County Council set out paragraph 6.2 of the Statutory Report dated the 23rd May 2022 be agreed;

a meeting of the Staff and Appointments Committee be convened to take place within 14 days, to consider the contents of the Statutory Report in relation to the payment of the International Allowance and the matters referred to it in the recommendations of the Chief Finance Officer; and

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a meeting of the Employment (Appeals) Committee (EAC) be convened to take place within 14 days, to commence consideration of who knew what, when and whether any grounds exist to take disciplinary, capability or other action in relation to any officer or former officer of the Council, or whether there are circumstances relating to Elected Members to be referred for consideration under the Council's Code of Conduct for Members arising from the circumstances set out in the Statutory Report.