

## Appendix B - Summary of Consultation Responses

Consultation Response	My Comments
<b>Head of Paid Service</b>	
<p>The HOPS is not aware of any legal advice that the business had to be conducted through a limited company prior to the relevant company being established.</p>	<p>Council records show that legal advice received from Ward Hadaway in June 2019 stated at paragraph 1.1 that</p> <p><i>“Under section 1 of the Localism Act 2011 (“LA”) any local authority has the power to do anything that individuals may do. Importantly, the LA provides that a local authority can exercise that general power of competence in any way, including for a commercial purpose. Section 4 of the LA places a condition on the exercise of power for a commercial purpose, requiring such a commercial matter to be carried out through a company”.</i></p> <p>Whether officers or members were aware of this requirement is not relevant to my report, however. The Council was trading for a commercial purpose otherwise through a company at the latest from 2018 to 2021 and the expenditure incurred in relation to this activity was therefore unlawful.</p>
<p>The legal advice received was that there was no requirement to establish a company until such time as the Council was seeking by itself to deliver international services and sufficient income was received to warrant it.</p>	<p>The Ward Hadaway Guidance Note on Use of Corporate Vehicle for Commercialisation dated 8 November 2018 or any subsequent written advice from Ward Hadaway does not state that the requirements of the Localism Act only apply once the Council begins to generate substantial income from commercial activities in its own right.</p> <p>Even if that were a correct interpretation of the legal position (and clearly it does not accord with the Opinion of Nigel Giffin QC which is emphatic in this respect) by November 2018 the Council had already entered into commercial contracts with a value of £3.8m and by September 2019 the second Chinese contract with a value of £646,000 and a forecast profit of £236,000 was already in delivery. By March 2021, when NICL was eventually established, commercial contracts with a value of more than £2.7m had been delivered, none of it through a company.</p>

<p>The [then] Monitoring Officer advised Cabinet and Officers that the arrangements that were in place were suitable given the requirements of the Localism Act.</p>	<p>I have not seen any written advice from the Monitoring Officer to either Cabinet or Officers regarding the legal powers on which the Council was relying in undertaking international consultancy activities for a commercial purpose; or how the arrangements in place complied with the requirements of the Localism Act. Indeed, there was no formal report to Cabinet at all until 2020.</p>
<p>This position is supported by further legal advice commissioned by the [then] Section 151 Officer from Nik Grubeck, of Monckton Chambers, in September 2020</p>	<p>Records suggest that the former Chief Finance Officer did consult Mr Grubeck in September 2020. There is no record of written instructions or detailed advice being given at that time. Certainly, there was no written opinion.</p> <p>I further consulted Mr Grubeck in September 2021. Again, no formal advice was given. However, Mr Grubeck did draft a response to queries received from the external auditor which was sent in November 2021. Mr Grubeck’s argument to as set out in the letter to the auditor concerns whether there were powers other than the general power of competence that the Council could have relied upon in undertaking commercial activities other than through a company.</p> <p>The legal analysis is dealt with in paragraphs 17-20 of Mr Giffin’s Opinion. Specifically, Mr Giffin states at paragraph 17 that “...<i>the instructions seem to have had in mind an argument that the Council could not have been acting for a commercial purpose until the point arrived at which it had actually made an overall profit. But any such argument (which was not adopted in the draft letter) would be plainly wrong – an authority’s purpose is a function of what it is trying to do and why, and it does not depend on whether or when its objects are realised.</i>”</p>
<p>The incorporation of a group holding company for Northumberland County Council was made in February 2020. The outbreak of the COVID pandemic delayed new company registrations as they were</p>	<p>Companies House records indicate that NEHL was established in September 2020. Companies House have confirmed that no restrictions were placed on the registration of new companies, limited liability partnerships nor limited partnerships during</p>

<p>suspended by Companies House in March 2020.</p>	<p>2020, although “same day” registrations were suspended temporarily.</p> <p>Even if that had been the case, it does not explain why between June 2019 when Ward Hadaway advised that a company needed to be established to comply with the requirements of the Localism Act and the onset of the covid pandemic in March 2020 no subsidiary company was formed.</p>
<p>The establishment of a trading company was further delayed by the suspension of the Chief Executive/HoPS on 7 August 2020.</p>	<p>Whilst the CX/HoPS was suspended for a period of time, nevertheless, the Deputy Chief executive, Monitoring Officer, Chief Finance Officer or Director of International Projects and System Transformation remained at work and the formation of the company could have taken place during this period.</p> <p>Whatever the reasons for the delay, this does not alter my view that the Council acted commercially between 2018 and 2021 and that no company was in existence for the whole of that period and that the expenditure incurred was therefore unlawful.</p>
<p>The decision to establish NIC Limited, together with a supporting business case, was considered by Cabinet on 19 January 2021 with approval given to proceed. Deliberate targeted behaviours by Cllrs and initially prevented the company being registered. A further report was made to Cabinet on 21 February 2021.</p>	<p>The report on 19 January was not to the Cabinet but to an informal cabinet briefing. It could not have given formal approval.</p> <p>The report to Cabinet was made on 21 February 2021, by which time the Council had been engaged in the commercial activities outside of a company structure for over 3 years, given that the first contract was signed in December 2017.</p>
<p>The report to Cabinet on 21 February 2021 stated “Since the registration of Northumberland Enterprise Holdings Ltd in September 2020, a significant publication on commercial activities in another Local Authority has been published which draws attention to risks associated with governance arrangements for commercial trading companies within a local authority. The report produced by Grant Thornton has highlighted a need to review the arrangements initially proposed to Cabinet in February 2020, to identify and mitigate further risk to the Council based on this</p>	<p>This is not relevant to my consideration of the lawfulness of commercial activities during the period 2018 to 2021.</p>

<p>Public Interest Report and the legal advice sought on behalf of the Council setting out the recommendations for change.”</p>	
<p>From February 2021 the former chief finance officer handed over to the current chief finance officer, his responsibilities. On your appointment it was agreed that Internal audit would undertake a review of the International Business. This review reported directly to the CFO and raised no concerns.</p>	<p>I was appointed on 24 February 2021. From the outset of my appointment concerns were being raised with me by members of the Audit Committee, other members and the external auditor regarding the legal basis for the international business and whether the financial performance of the business had been accurately reported.</p> <p>I commissioned a detailed examination of income and expenditure relating to the international business from 2016/17 in the Spring of 2021. This was undertaken by the Council’s finance team and Internal Audit were asked to review and validate their analysis. The terms of reference for this review this did not include the vires under which these commercial activities had been undertaken.</p>
<p>On 08 November 2021 12:25 following advice from Nik Grubeck (received on 23 September 2021) you set out the Council’s position to the external Auditor.</p> <p>The text of that letter indicates the sequence of events and shows all was properly done and regarded by you as properly done.</p> <ol style="list-style-type: none"> <li>1. <i>Section 1 of the Localism Act 2011 provides that a “local authority has power to do anything that individuals generally may do”, including for a commercial purpose. Section 4 of that Act imposes certain limits on doing things for a commercial purpose in exercise of that power. In particular, section 4(2) requires that “where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.</i></li> <li>2. <i>The meaning of “commercial purpose” in section 4 was considered by Mr Justice Warren, sitting in the Upper Tribunal, in R (The Durham Co.) v HMRC and HM Treasury [2017] STC 264. He stated at</i></li> </ol>	<p>Following continuing concerns raised with me by the external auditor and members regarding the legal basis of the international business, I arranged a further consultation with Mr Grubeck in September 2021. During that consultation Mr Grubeck suggested that it would not necessarily be helpful to the Council’s case that it had not acted ultra vires for him to give a formal opinion.</p> <p>Mr Grubeck did however advance an argument that in undertaking international consultancy activities the Council might have relied on Section 2B(1) of the National Health Service Act 2006, at least at the outset. This argument was summarised in a letter to the external auditor in December 2021.</p> <p>Statutory officers were informed at the time of my reservations about whether this argument would stand up to serious scrutiny and that it was unlikely to be accepted by the external auditor. It is therefore untrue to suggest that no concerns were raised. At no time did I state that I was of the view that I regarded everything as having been properly done.</p> <p>Indeed, from late 2021 I redoubled my efforts to obtain a clear evidence trail with reports, decisions, and reasons why the</p>

*paragraph 63 that “it is a question of fact, in any particular case, whether the [local authority] is carrying out the relevant activities for a commercial purpose or otherwise than for a commercial purpose.”*

- 3. This approach was cited with approval by the High Court in R (Peters) v Haringey LBC [2018] EWHC 192 (Admin). Mr Justice Ouseley went on to hold, at paragraphs 135-136, that “[section 4] requires an overall view to be taken of “the thing” being done, and of the overall purpose for which it is done”, that being the “primary” or “dominant” purpose. He noted that “if the purpose which is said to be commercial is simply an incidental or ancillary purpose to the non-commercial purpose, it is correctly seen as part of the non-commercial purpose, and not as a commercial purpose at all.”*
- 4. Mr Justice Ouseley also made clear that “[section 4] should not be interpreted so as to bring in a requirement for a company to be used where no such requirement had previously existed in respect of the same activity” (paragraph 117). He emphasised that “I do not consider that Parliament, which had already accepted that certain Council activities should be undertaken through a company, intended that those other “things” that could be done already without a company, now had to be done through a company, if they were to be done at all” (paragraph 132).*
- 5. Both of these findings are relevant in respect of the Council’s international consultancy work.*
- 6. First, the Council’s international activities did not initially have a dominant commercial purpose. These started out as an exploratory venture, driven by aims of international information exchange, learning, and the improvement of public health as much*

international business had been conducted in this way and encountered significant difficulties in obtaining basic facts, reports, minutes and decision notices – many of which are simply absent.

*as by any commercial opportunities. Over time, the commercial aspect of the exchanges became more pronounced. Eventually the Council considered that the dominant purpose had become a commercial one and therefore, on 17 September 2020, incorporated a company to undertake any international consultancy work. It does not follow, however, that all prior activities had a dominant commercial purpose from the outset. As such, the absence of a company before 17 September 2020 does not mean the activities were ultra vires.*

- 7. Second, and in any event, the Council's international activities are activities that it could already undertake without a company prior to the Localism Act 2011 coming into force:*
  - 1. Section 2B(1) of the National Health Service Act 2006 provides that "each local authority must take such steps as it considers appropriate for improving the health of the people in its area." Subsection (3) makes clear that such steps include, amongst others, "providing or participating in the provision of training for persons working or seeking to work in the field of health improvement."*
  - 2. This covers the kind of health focused international learning and information-exchange projects at the heart of the Council's foreign efforts. The power to carry out such projects therefore existed prior to the Localism Act 2011.*
  - 3. In the circumstances, section 4 of the Localism Act 2011 imposed no new compulsory requirement for a company to be used.*
  - 4. The fact that the Council ultimately did decide to undertake its international work through a company does not change that position. In any event, as explained*

<p><i>above, that decision reflected the evolving purpose of its international activities.</i></p> <p><i>8. In light of the above, the Council considers that none of its international work was ultra vires.</i></p>	
<p>The Executive Team were always advised by the Council's Head of Legal Services who fulfilled the role of Monitoring Officer. He advised that, given the arrangements and the partnership, the Council was providing technical services so a report to Cabinet was not required.</p> <p>Framework agreement and contracts were entered into on the advice of the Monitoring Officer and Section 151 Officers, who were fully involved in meetings, advice and briefings. They advised the International Team on oversight and control.</p> <p>The Monitoring Officer advised Cabinet and Officers that the arrangements that were in place were suitable given the requirements of the Localism Act.</p> <p>The Monitoring Officer oversaw the development of contractual documents, the taking of legal advice and counter signed the contracts.</p>	<p>I have not seen any written advice from the statutory officers to either Cabinet or Officers regarding the legal powers on which the Council was relying in undertaking international consultancy activities for a commercial purpose; or how the arrangements in place complied with the requirements of the Localism Act.</p>
<p>In October 2018 both the Northumbria Healthcare Chief Executive and the Leader of the Council, Cllr Peter Jackson, gave a commitment to representatives of the Chinese company for a 10-year programme of support. Therefore, all contractual arrangements were based on the joint partnership working model. A briefing to Cabinet in November 2018 described why and how and identified progress with next steps including consideration of form.</p>	<p>The fact that the contractual arrangements were based on a joint partnership working model are not relevant to whether they complied with the requirements of the Localism Act.</p>
<p>The joint international service was launched at the House of Lords by Cllr Jackson and the Chairman of the Trust on 11 June 2018. The oversight of the programme was conducted through the Trust's finance and</p>	<p>My report is not concerned with the oversight arrangements in place at the Trust, but the lawfulness of expenditure incurred by the Council.</p>

<p>performance committee with a formal audit report being taken in November 2018.</p>	
<p>A further briefing was made to Cabinet in September 2019, this included an update on the potential for a company. On 29 April 2020 a paper was taken to a Cabinet Briefing meeting with oversight of the Council's Monitoring Officer for consideration to sign ...Stage 2 [of the Chinese contract].</p>	<p>Again, this was an informal Cabinet briefing.</p> <p>In my view the requirement to establish a company to ensure compliance with the Localism Act had already been triggered a year before this, as set out at paragraph 4.10 of my report.</p> <p>At this point where the potential for establishing a company was being discussed, a contract with a value in excess of £600,000 and forecast profit of £236,644 had already been signed and was in delivery and negotiations were underway for phase 2 with a prospective value of £16m over 10 years. Negotiations with another client based in the UAE with a prospective contract value of £39.6m were in progress with contract signature expected in January 2020.</p>
<p>The matter was at all stages sufficiently reported</p>	<p>It is not clear what is meant by the word 'sufficiently'. It is not suggested in my report that either the Cabinet or officers did not know that there was an international consultancy business or that members were not kept informed of relevant matters.</p> <p>Briefing meetings, of the cabinet or the Executive Officer Team do not constitute legal meetings at which decisions can be taken.</p> <p>To the limited extent that it is relevant, I have found no evidence that there were any decisions made by the Cabinet in relation to the international consultancy business before the resolution to establish NEHL in February 2020 or that the County Council made any resolutions, nor are there any delegated decision notices signed by an officer (or a member) in relation to the international business.</p>
<p>The International Allowance was first paid as part of my appointment as Deputy Chief Executive role [sic]</p>	<p>Records show that Mrs Lally was appointed as Deputy Chief Executive in October 2015. I have not been able to find any record of any international allowance being referred to in her appointment in 2015 or conditions of service as Deputy Chief Executive. Nor is there any reference to such a payment in the payroll records until December 2017 following her appointment as Chief</p>

	<p>Executive. There is no reference to any authorisation for the Deputy Chief Executive to receive an international allowance in any version of the pay policy statement, as would be required by law.</p>
<p>In August 2017 the Leader of the Council advised me that my substantive role of Deputy Chief Executive was being deleted and I would be invited to apply for the role of Chief Executive/Head of Paid Service, which he would set out to full council on 6 September 2017. The report is attached. The Leader took the report to Council on 6 September 2017.</p> <p>That report set out the duties of the role offered to me on a full time basis but remunerated jointly with the Trust. The Leader's September 2017 report to full Council also formally set out the commercial role which was remunerated separately, and this was also agreed by full council.</p> <p>The payment was clearly set out as part of the Chief Executive/Head of Service role in the report to Council by the Leader of the Council on 6 September 2017, where it states that this is '(remunerated separately)'. Recommendation 3 agrees the remuneration of the proposed Executive Team. The International Allowance is stated as an Allowance in Appendix 2, and is referred to at background point 4. This report was agreed by Full Council on 6 September 2017. This is the first approval for the payment.</p>	<p>I do not agree that payment of the international allowance was authorised by Council on 6 September 2017.</p> <p>I have reviewed the report (taken in confidential session and therefore not available to the press and public or reported in the public minutes) dated 6 September 2017. The resolution at paragraph 3 is to agree the remuneration of the [new] Executive Management Team as outlined in the report.</p> <p>Recommendation 5 in the report delegates responsibility for nominating a Deputy Chief Executive [in the new structure] to the [new] Chief Executive in consultation with the Leader of the Council and makes provision for that new DCX post to receive an additional allowance.</p> <p>The report does acknowledge that the then Deputy Chief Executive [in the old structure] had responsibility for leading the nascent international business. However, there is no mention that this work was separately remunerated or by whom any additional payments were made.</p> <p>Appendix 2 to the report shows the [new] Chief Executive would be on a gross salary of £186,915 with the column showing the 'cost to the council' as £123,081, including on-costs. This is consistent with that post being 0.5FTE.</p> <p>The next line shows an 'allowance' for the [new] Deputy Chief Executive of £20,000 (cost to the council £26,460) which is consistent with recommendation 5, referred to above.</p> <p>The only other mention in this report of the international work appears on page 5 of that report, where there is a note on bullet point 8, which states that the "Chief Executive (not Deputy) will be responsible for the Commercial International lead for NCC and</p>

	<p>System Transformation Support with Northumberland Commissioning Group (CCG) (separately remunerated)". This does not specify who would be paying any separate remuneration, or how much it would be, or what it is for. Indeed, given that the role had not been advertised, it is surprising that this specification was included at all, three months ahead of the recruitment process</p> <p>I therefore conclude that this report does not provide authorisation to pay an international allowance of £40,000 per annum to the new Chief Executive once appointed (whomsoever that might be).</p>
<p>Following the invitation to apply for the role of Chief Executive/Head of Paid Service, the appointments committee was called as a panel of the Staff and Appointments Committee (SAC). At the panel there were a number of questions put including a detailed discussion of how the joint arrangements for the full time role of Head of Paid Service would work.</p> <p>I was clear that the roles I had held had always required me to work full time hours for my Council role and that the NHS work was then conducted additionally including quite a lot of work at weekends. I was clear that I would not expect two salaries i.e. a full time one for the Council role and half for the Trust and that I would be paid the equivalent of one whole time salary but that my Council role was a permanent substantive role, which is also stated in recommendation 3 of the Council Report dated 1 November 2017.</p> <p>The panel agreed the arrangements and authorised the Leader to finalise the details with the Director of HR. The issue of the commercial work was discussed and that it was remunerated separately at that interview.</p> <p>When I was informed by Cllr Jackson and Kelly Angus that I had been successful, Cllr Jackson advised me that he had been delegated by the panel to confirm the contractual arrangements and payment of the commercial allowance. Kelly Angus then drafted a letter to the SAC to confirm my</p>	<p>The Interview Panel was not a committee or sub-committee of the Council and could not take any decisions.</p> <p>The recommendation to Council to appoint Mrs Lally as Chief Executive was made by the Leader of the Council and not the SAC (despite its terms of reference). I can find no report to or minute of any meeting of SAC (Democratic Services confirm that no such meeting took place during that period).</p> <p>I have not been able to verify that the draft terms and conditions were circulated to the Council as suggested (see separate response below).</p> <p>It is irrelevant to my consideration as to whether these conversations took place with Cllrs Jackson and Daley. My responsibility is to determine whether lawful decisions were taken by the council or a duly delegated committee/sub-committee or officer. As Mr Giffin confirms a non-executive function, such as those under S.112 of the Local Government Act 1972 (appointment and remuneration of officers) cannot be delegated to an individual member.</p> <p>For all of the reasons given by Mr Giffin, this account of what took place does not amount to such lawful decision taking, and it does not in any event deal with the issues relating to the required inclusion of all elements of remuneration for chief officers in the Council's Pay Policy statement for each year.</p>

successful interview. The Leader of the Council Cllr Peter Jackson oversaw the contract drafted by Kelly Angus along with Liam Henry and legal support. The contract set out the half time salary and included the allowance, on page 1 of the Statement of Particulars.

The payment was set out and agreed in the Leader's full council report of 6 September 2017 stating "commercial international lead for NCC and system transformation support with Northumberland Commissioning group (CCG)". This was discussed as part of my interview in 2017, and is shown in my contract of employment first received in 2017 from HR.

On 31 October 2017 the then Leader Cllr Peter Jackson, Cllr Wayne Daley the then Deputy Leader and Kelly Angus had a discussion in the Chairman's Dining Room at 12md when Cllr Jackson confirmed agreement to the allowance by the SAC members. The then leader of the Council, Cllr Jackson, the former deputy leader of the Council Wayne Daley and the former HR director Kelly Angus were aware of the international allowance and it had been approved as part of the report in September 2017, approved by the interview panel sub committee of the SAC, which was then reflected in the contract that was shared with members at Full Council on 1 November 2017.

On 1 November 2017 full Council were presented the report of my appointment by Cllr Jackson and a copy of the contract (on pink paper) was circulated to all members present (61 in total). Liam Henry gave out the pink paper which contained my contract which set out the allowance as part of the terms and conditions.

The report of the Leader dated 1 November 2017 along with the pink copy of the contract presented and agreed at the full council meeting confirmed the arrangements including terms and conditions.

I have checked with Democratic Services. There is no record that this information was circulated, nor do the minutes refer to it.

Firstly, the terms of the appointment authorised by the Council do not mirror the contractual arrangements eventually agreed.

Even if they had, the resolution of Council relating to remuneration of the post makes no reference to any additional allowance (and the minutes of the meeting show that the Leader was asked a specific question and replied in the negative).

Even if these hurdles could be overcome, the pay policy statement for 2017/18 made

	<p>no reference to an allowance payable to the Chief Executive, and thus any such payment would have been unlawful in any event.</p> <p>There is considerable correspondence between officers of the Council and with officers of NHCT relating to the international allowance from January 2018 onwards, in the course of which the character of the allowance changed from contractual to ad-hoc, and there was debate in writing about whether it was pensionable or not. If the terms and conditions referencing the allowance had been placed before and agreed at Council in November 2017 as suggested, there would have been no need for this correspondence.</p>
<p>In terms of the Pay Policy, the paragraphs assume that chief officers may receive fees and allowances other than basic salary, your view is that this would not include post-appointment allowances.</p> <p>As this allowance was agreed by the SAC as part of the appointment process and as set out to Full Council, the International Allowance would therefore be included as part of the Pay Policy statement.</p>	<p>This is not my view. It is permissible for post appointment allowances or revisions to a Chief Officers pay to be agreed. However, they can only be agreed by (in the case of the Chief Executive/HOPS) the full council, or possibly the SAC and would in any event require an amendment to the Pay Policy by the full council.</p> <p>I have seen no evidence that either of these things happened.</p> <p>Whilst it is possible that, if the SAC or Council had agreed expressly for there to be an international allowance (and always provided that it was reasonable in terms of justification in all the circumstances (see paragraphs 23 and 24 of Nigel Giffin's Opinion)), that is not in fact what took place.</p> <p>There was no express authorisation, there was no apparent consideration of reasonableness, and it was not in the pay policy statement. I have therefore concluded that it was unlawful expenditure. The fact that the payment of the allowance was reported in transparency data is not relevant to its lawfulness.</p>
<p>The international allowance has also always been stated both in the transparency data outlined on the Council's website, and in the Accounts for each Financial Period since it has been paid. The transparency data is</p>	<p>I have checked the published accounts for the years in question. In 2017/18 the notes to the accounts state that Mrs Lally's remuneration as DCX and Interim CX were jointly funded posts with NHCT and included</p>

<p>referred to clearly from the Pay Policy statement. Accordingly, the international allowance has always been properly authorised and recorded.</p>	<p>an international allowance. The CX and HoPS was a 0.5 FTE post and in addition the CX receives an international allowance paid by NCC. The note does not specify how much the allowance is, or why it is paid.</p> <p>In 2018/19 the note to the accounts says that the CX and HoPS post is 0.5 FTE and the remuneration and allowances are conflated into a single figure. The note It makes no reference at all to an international allowance.</p> <p>In 2019/20, the note to the accounts state that the CX post is 0.5FTE. The note refers to a £40,000 taxable allowance shown separately from the salary paid, but it does not reference why it is paid. That remained the case in the draft 2020/21 accounts. This lack of specificity or disclosure of what the allowance was, or why it was being paid, means it cannot amount to a resolution or authorisation for the payment.</p> <p>More fundamentally, authorisation cannot take place <u>after</u> the event, and cannot be prayed in aid of a decision that must be taken <u>before</u> the expenditure takes place.</p> <p>Even if I were wrong about that, again, there is no mention of it in the pay policy statements for the years in question and it would therefore fall outside the statutory requirements and amount to unlawful expenditure.</p>
<p><b>Deputy Leader</b></p>	
<p>It seems there may be changes that will need to be made to the constitution in the light of this. Please can the MO team and the finance team propose any changes that might be necessary.</p>	<p>This is addressed in the recommendations set out in the report.</p>
<p>It seems to me unlikely that we have other similar situations in terms of payments to individuals or other entities existing within NCC but please can we ensure that this is the case.</p>	<p>This is addressed in the recommendations set out in the report.</p>
<p>I would welcome clarity about what legal advice was sought and when officers became aware of the potential issue around legality and when this was brought to the attention of members.</p>	<p>This is addressed in the recommendations set out in the report.</p>

<p>Any investigation into the circumstances that gave rise to these unlawful payments should be fully independent.</p>	<p>This is addressed in the recommendations set out in the report.</p>
<p><b>Monitoring Officer</b></p>	
<p>The issues on which you intend to report are concerned wholly with Ss114(2) and 114A(2) and relate to unlawful expenditure by the authority. There is no suggestion of insolvency or inadequacy in the Council's short, or medium-term financial strategy. In short, I agree with your proposal to publish a statutory report and note with grave concern the circumstances that have led to the unlawful items of expenditure that you have identified.</p>	<p>Noted</p>
<p>The Act obliges you to consult formally with me as Monitoring Officer and with the Head of Paid Service. As you know the Head of Paid Service is currently absent from work and so I have not been able to coordinate a response to you in the way that might usually be expected. You have kindly shared with me the written opinion of Nigel Giffin QC whom you have engaged to advise you on the legal framework for issuing a report and the legality or otherwise of the actions which have led to the unlawful expenditure.</p>	<p>Noted</p>
<p>As you are already aware, none of these issues are new to me, and I have discussed with you my concerns over these and other items of expenditure, which appear to me to have taken place without the necessary legal power, authorisation or transparency. It is axiomatic that, for there to be unlawful expenditure, the Council is also in breach of an enactment or rule of law, or of any code of practice made under any enactment. This engages my statutory reporting duty under Ss5 and 5A of the Local Government and Housing Act 1989.</p> <p>Mr Giffin has identified the specific statutory provisions that have been breached in this instance. I agree with his analysis and can add nothing further.</p>	<p>Noted</p>
<p>I have considered whether I should issue a separate and corresponding report as the Monitoring Officer. As you are aware, I issued a note of significant concerns regarding governance issues at the Council on 10th January 2022 and invited responses from the Head of Paid Service and you, in contemplation of whether I should then</p>	<p>Noted</p>

<p>issue a statutory report under my statutory powers. On that occasion, I was sufficiently satisfied that my concerns were being addressed through the institution of an independent corporate governance review by Max Caller CBE, and, to pause further consideration of that until his report has been presented to Council.</p>	
<p>You have now brought two very specific issues to my attention. These relate to unlawful trading for a commercial purpose by the County Council between 2018 and 2021, and the payment of an International Allowance to the Chief Executive, without lawful authority and contrary to Ss112A of the Local Government Act 1972 and Ss 38 and 40 of the Localism Act 2011. These are serious issues and go to the heart of governance and accountability arrangements at the County Council. I add for completeness that we are both interim appointments and all the factual background took place long before you or, I were in post.</p>	Noted
<p>Having considered my statutory reporting role, the contents of Mr Giffin's advice, the draft report you have shared and the forthcoming Caller Review, I have concluded that, as the issues are already being brought to the attention of members under your reporting duty, it is unnecessary and would be a duplication, for me to issue a separate Ss5 and 5A report.</p>	Noted
<p><b>External Auditor</b></p>	
<p>As you know I have consistently expressed our concerns to Members and Officers over the lawfulness of the Council's participation in the Northumbria International Alliance and the 'International Business' since Summer 2020. You are also aware that our attempts to conclude have persistently been stymied by a lack of cooperation on the part of some officers and the absence of documentary evidence. However, the information provided more recently, including your letter and counsel's advice would appear to support our initial concerns around lawfulness.</p> <p>In light of the above it would appear to me that your decision to exercise your duties under the Part VIII of the Local Government Finance Act 1988 would appear reasonable</p>	Noted

in the circumstances as I now understand them.

Clearly we will also take this into account in relation to both our opinion on the financial statements and our VFM conclusion. We will also give consideration to the need to exercise our powers under the Local Audit and Accountability Act 2014 in relation to this issue as we have previously discussed.