



# **Northumberland County Council**

## **Independent Governance Review**

**Solace in Business**

Council 8th June 2022

**February-May 2022**

## **1 Executive Summary**

1.1 Local government is about people and place, managing, delivering, and integrating a range of disparate services to achieve a consistent level of service delivery and community leadership which improves the lives of all of the area's residents. Making this happen in the unitary council area covered by Northumberland poses particular challenges given the size, population density, geography, and connectivity issues. Doing this in a way that demonstrates compliance and understanding with good local government practice and procedure is a fundamental requirement, particularly when taking the hard decisions that this requires. Understanding democratic accountability, scrutiny, openness, and documentation needs to run right through every part of the organisation. A unitary council operation requires a real understanding of both strategic overview and local delivery.

1.2 The evidence, very clearly, points to Northumberland County Council (NCC) having forgotten much of this and lost its way over a number of years to the extent that leadership at both political and managerial levels is distracted, and no longer focussed on external issues but involved to an unhealthy extent on internal battles. Despite the relatively generous funding position, there are signs that services are starting to perform at a lower level due to this lack of attention. The evidence from the way in which NCC coped with recent major natural disasters, despite amazing efforts from many staff, signals a lack of oversight and leadership of the whole area and the outcomes from a range of sources demonstrates an unwillingness to learn and improve.

1.3 NCC needs to undergo a fundamental reset of its philosophy, processes, and relationships, starting with a clear understanding of what the council is about, the respective roles of members and officers, how decisions are formulated, taken, recorded, and challenged in a robust and appropriate way.

1.4 This will involve cultural change, a redrafting of the constitution to reflect a more appropriate system of delegation and proper member oversight of companies and partnership bodies.

1.5 The officer corps needs to be brigaded in a way which best delivers the goals of a Corporate Plan which reflects the people, place, and direction of travel of the elected administration and held to account through an appraisal process which starts with the Member oversight of the Chief Executive and Executive Directors and runs to the bottom of the organisation. This should be comprised of a substantially permanent group of appointees, all of whom understand and live local government.

1.6 NCC has delivered real wins for the area in the recent past and has a lot to be proud of, but some of this has been achieved through conflict rather than co-operation. It has many great hard-working staff committed to the area who need support but are constrained by the



tensions at the top of the organisation. The recommendations in this review are designed to move the whole of the Council on. The Council needs to start by putting aside its internal conflicts to come together for the best possible future for all those people they represent and who put their trust in local democracy.

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## **2 Introduction**

2.1 At the end of January 2022 Northumberland County Council (NCC) published a proposal to commission an independent governance review of the Council. The project brief indicated that it would be undertaken on a basis akin to a Best Value Governance Inspection, commissioned using the provisions of the Local Government Act 1999. It was requested that the scope of the review would include: -

1. The operation, culture, and structure of the organisation
2. The effectiveness of political and organisational leadership
3. The capacity and/or capability to provide the organisation with clear and effective strategic direction
4. Use of resources and the impact of governance on the organisation's ability to deliver best value
5. The impact of corporate governance on service delivery
6. The culture of openness, transparency, and trust within and between the officers and members
7. Openness to challenge
8. Effective engagement with external partners

2.2 'Solace in Business' proposal was accepted, and work started in February 2022. It was undertaken by a team of 3 consultants, Max Caller, Jim Taylor, and Gordon Mitchell.

2.3 Max Caller CBE is a former London Borough Chief Executive and is currently the Lead Best Value Intervention Commissioner at Slough Borough Council, following Directions being imposed. He has previously been a Commissioner at LB Tower Hamlets, led the Best Value Inspections at Liverpool City Council and Northamptonshire County Council and the non-statutory Review of Nottingham City Council. He was also one of the non-Executives appointed to Birmingham City Council to support their improvement journey. He was the Chief Executive of LB Hackney, the first authority to be subject to the Best Value Directions regime. He has been an Electoral Commissioner and has chaired the Local Government Boundary Commissions of both England and Wales.

2.4 Jim Taylor has been a Chief Executive in three metropolitan local authorities. He was previously a Director of Children's services and a former Headteacher and teacher. Jim was appointed by the Secretary of State to lead the Governance review of Slough Borough Council and subsequently appointed Commissioner at Sandwell MBC to assist on their improvement journey. Jim has also led many Corporate Peer Challenges for the LGA.

2.5 Gordon Mitchell has worked as interim CEO in four varied councils – after 9 years as a permanent CEO in 2 unitary councils. In these he has dealt with governance failings, financial

crisis, government intervention and operational challenges. He has dealt with immediate challenges, supported the senior management team to ensure stability, focused on delivery of the council's priorities, and managed the recruitment and induction of permanent CEOs in each case. Recently he led a strategic review into a London Borough which resulted in significant change in leadership and governance arrangements. He also led a review of the governance arrangements for a city council, of its wholly owned, and JV companies which led to strengthening of these arrangements.

2.6 When undertaking a statutory Best Value inspection, the legislation provides for an authority to make available all documents and records the inspection team might require. The team advised NCC that it would operate in the same way but that if NCC considered that it did not want to supply any item, the details would be recorded in the report. NCC met every information request made by the team in a reasonable timescale. Early in the process it was noted that a number of individuals who had been identified for interview or who had contacted the team unsolicited, were subject to legally binding Non-Disclosure Agreements. This meant that they could not speak frankly or at all. The Team sought waivers of all these agreements so that a full picture could be obtained recognising that when any individual leaves in such circumstances triangulation of the facts is an essential component of the review. It is worth noting here that the number of such individuals subject to these agreements is significantly higher than our collective experience in other authorities. NCC will know that Ministers have made public statements indicating their concern at the use of such approaches and discouraging their deployment.

2.7 In addition to the initial list of prospective interviewees suggested by NCC, the team requested an e-mail be sent to all Councillors and staff inviting anyone who wished to contribute to make contact and either, submit a note, or request an interview. This produced a significant level of contact. Existing and former staff, existing and former councillors, partner organisations and a residents group came forward and were able to provide their perspective. Well over 100 interviews were conducted.

2.8 It was of concern that a number of staff expressed a fear that if their contribution could be traced back to them their future with NCC would be compromised. The team made it clear that they would not attribute any statement to an individual without clearing it with them before publication but that the intention was to anonymise all contributions to ensure that identities would be protected. This approach has been followed throughout this document.

2.9 Concern was also expressed that the content of this report would be suppressed or amended if it was critical of the approaches followed or actions taken by officers or members. The team indicated from the outset that, in terms of progress it would only report to a cross party group of Members and that in terms of content, elements of the report may be subject to fact checking but the core content, conclusions and recommendations would only be

available when the report was presented to the whole council, in public. This approach has been followed. The cross-party group, with all groups represented, met in Morpeth to meet the team, face to face, and hear about progress. They also met Max Caller, via Teams, later in the process. The report as presented now, is the agreed text of the team without any prior clearance by NCC. It represents the collective and agreed view of the three individuals who undertook this assignment.

2.10 The team has received submissions which detail matters covering the period of the current political administration although some matters related to the changes and the justification for those changes, in the previous administration. The focus, however, has been the development of the authority during the incumbency as Chief Executive of Mrs Daljit Lally, starting from her appointment, as the approval of the terms and conditions of the CEx's appointment appeared to be an issue of corporate governance. In addition, the team have reviewed the frequently changing officer structure of the Council and Member oversight of this.

2.11 Many submissions from those interviewed or consulted have been lengthy and fully documented covering the entire period of the review. It is clear that some would have wanted each and every issue raised to be fully investigated and a specific conclusion reached on each concern. Such a task was far beyond the scope of this review, or even a formal Best Value Inspection. It would have taken a very long time and would not have added to the learning and conclusions necessary to assist NCC in moving forward. However, where such issues are of such significance to warrant further work the team will draw attention to them in separate feedback to the appropriate individuals and/or statutory regulators as appropriate.

2.12 In a number of instances, respondents drew attention to the proceedings at Council and other formal meetings of NCC. The team has viewed Council meetings, published on the NCC website together with Committee meetings published on the NCC YouTube channel. This has been a useful way of triangulating some of the issues raised.

2.13 Some of the evidence gathered was relevant to more than one of the themes specified in the scope of the review identified in para 2.1 above. Additionally, similar evidence was gathered by each of the review team in different strands of the process. Where appropriate, similar information is recorded under each heading.

### **Best Value – The Concept**

2.14 The Best Value legislation states: 'A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency, and effectiveness.'

2.15 The concept of continuous improvement must mean the best value duty must be a process. It must mean that even in the best performing local authorities, errors will occur, failures of policy and practice may result despite good intentions and that an instance of this would not automatically mean a failure to comply with the best value duty. However, it must also mean that an authority will learn from its past performance, rectify defects, and not continue along a path where failure is evident. Such events should be clearly isolated and exceptional rather than regular and repeated and should be immaterial in value, governance, or wider implications.

### **Local Authority Companies**

2.16 Many local authorities have failed to properly understand the differences in law, philosophy and practice required in operating through local authority-controlled companies and the provisions of the Localism Act 2011. Local Partnerships LLP, a partnership jointly established by the Local Government Association, HM Treasury and Welsh Government, published comprehensive guidance on 9<sup>th</sup> September 2021. This picked up issues highlighted in a number of reviews around the country and synthesised them into a single good practice checklist. Relationships and operating protocols have featured significantly in this review. Testing the issues raised against the good practice checklist has been very important as the companies' issues were seen to have impacted on relationships across NCC.

### **Thanks**

2.17 The team want to thank and acknowledge the efforts made by NCC to provide substantial documentation at relatively short notice. No doubt many staff were involved in making this happen so efficiently. Particular thanks are deserved by Matt Calvert, who coordinated the initial data request and Sally Plant who coped with the ever-changing diary issues admirably. The team were also impressed with the many officers who are just trying to deliver the best possible service to the people of the County and expressed their frustration and despair that the issues which seem to consume the bandwidth and energy of the top of the organisation, prevent attention being given to the very real challenges that they face. The team hope and expect that consideration of this report will provide the opportunity to reflect and reset by implementing the recommendations and moving forward in the best interests of the people and place of Northumberland and of a vibrant and relevant local government.

### **3 What is Northumberland?**

3.1 The administrative area of the Unitary County of Northumberland is one of the largest in area, 5013km<sup>2</sup>, and smallest populations, c320,000, of the English counties. On average this produces a population density of 64 persons per km<sup>2</sup> which disguises the fact that around half the population live in around 3% of the area in the southeast corner of the county and a significant majority of residents live in a reversed L shape along the southern edge of the county and the coastal strip northwards. The geography, connectivity, and climate all pose significant problems in service design and delivery for a unitary authority, particularly in ensuring consistency and equity for every citizen wherever they live in the area.

3.2 NCC became a Unitary Authority in 2009, with the first Council elected in 2008 to lead into the change of governance. The first 3 elections did not result in a majority of one party leading the administration, resulting in the first Council being Lib Dem led, the second, elected in 2013, Labour led and the third, elected in 2017, Conservative led. The Conservative party won the first overall majority in the elections held in 2021 but have subsequently lost a by-election to return to a minority administration. In some Councils, electoral variation of this sort would have produced a high degree of cross-party working, finding a consensus for many issues, and reserving for political debate those areas of real difference. This was not an approach that the team noted at NCC, more a winner takes all mentality. Neither approach is automatically right but if the equal legitimacy of the verdict of the electorate is not accepted in respect of individual councillors, then it is easy to fall into inappropriate behaviours and this was certainly evident in some of the correspondence the team received and the meetings that were viewed.

3.3 During the period of the review, NCC reviewed and updated its Corporate Plan. This is one of the most important documents any Council produces and ranks with its Medium-Term Financial Strategy, Local Plan, and annual Budget as part of the suite of documents that should provide the basis of target setting for the Chief Executive (CEX) and the start of a golden thread that connects NCC's goals and aims to the programmes and priorities of every division and every employee. In a majority led Council, it is, in effect, the political manifesto turned into a set of lawful activities, moderated by the need to ensure compliance with national legislation and guidance, and the challenges posed by the particular circumstances of the place referred to in para 3.1 above. Councillors will remember that after spending a considerable time on procedural matters, full Council hardly debated the Plan at all.

3.4 From the perspective of the Review Team (3 former unitary authority Chief Executives), the Corporate Plan is a rather incomplete document. It may be that health inequality is the priority challenge facing NCC, but it does not feel like place and people are at the heart of the plan and that issues with basic universal services, which are the lifeblood of unitary and district councils are relevant. More importantly, there is no sense of the goals that are being

aimed for and the milestones along the way. It would be hard to use this document to hold any CEx to account for either their personal performance or the performance of the organisation that they lead.

3.5 This is mirrored by evidence the team gathered from a number of sources through the review. Performance, both in absolute terms and in terms of geographic variation across the area is not seen as a priority and data is not a key component of the management activity. Individual studies are prepared for specific purposes, but a systematic approach is not seen as important. Even the NCC website contains key information that is a number of years out of date.

3.6 One of the key risk indicators for any local authority is the stability of the top officer team. An authority that, either fails to recruit to its statutory officer posts on a permanent basis over an extended period of time or has a high turnover in these roles signals a lack of stability. When this is compounded by the majority of top officers being in post on an interim or acting basis this becomes a major issue. This is not explained by the more recent difficulties in ensuring a top officer structure is presented to and agreed by full Council. The evidence from organograms over the past few years demonstrate that the top of the organisation is in a significant state of flux and is frequently being adjusted. Below the Corporate Directors, chief officer posts are being created and graded with functions being shifted around on a regular basis. Such moves appear not to be reported to Members nor appear to undergo much in the way of consultation. There is some evidence that posts are created and graded and then functions are moved to justify the grading allocated. It is hard to see how the brigading of functions flows from an operating philosophy which reflects corporate goals and priorities. Equally importantly, the structure does not reflect the need to ensure the right level of visibility in the organisation of key roles, as exemplified by the ranking of the Monitoring Officer (MO).

3.7 Overall, the level of change has created an unsettled organisation. Many respondents talked about the risks of being in favour one moment and out the next. Some parts of the organisation were able to insulate themselves from this more successfully than others even though they were conscious of the undercurrents. Being able to speak truth to power is an essential component of local government and power is held by both Members and top officers, but this did not appear to be either encouraged or even tolerated.

#### **4 Commissioning the Review**

4.1 When the review was announced, the review team received correspondence indicating that the writers believed the way in which the review had been commissioned and authorised meant that no credibility could be attached to its findings. Leaving aside any thoughts as to why the process before appointment could influence the way in which the individuals comprising the review team might be influenced to produce a biased report, the team decided

to review and report on the commissioning process. This provides a case study which encapsulates the issues which run through the review of NCC.

4.2 The electronic file documenting the process from the outset contains over 2000 pages. It is fair to say that some of these pages are duplicated as attachments and their various iterations are included but this is a significant amount of documentation to get a review going.

4.3 In the summer of 2021, the Leader, Cllr Sanderson, advised the CEx, that he wished to commission a corporate governance review of NCC on a basis akin to a Best Value Inspection. He therefore wanted an item on his Cabinet agenda to formally start the process off. It would be expected in most other councils that this would result in a discussion about the goals and outcomes of the process, the commissioning route, and the way in which the work to be undertaken would be overseen or steered and how confidence in the review by the whole council would be assured. None of this is overly complicated, as can be seen from para 2.1 above, the terms of reference are very broad as they should be, and a report could and should have been considered at a Cabinet meeting in early autumn. However, no report, draft or otherwise, was forthcoming. The file records a written instruction from the Leader to the CEx dated 22<sup>nd</sup> September, requiring a report, and expressing concern that no item was on the agenda and that he was happy to take this as an urgent item.

4.4 The file then records an extraordinary series of documents, which far from progressing a legitimate request from a political administration, appear to demonstrate a desire to frustrate and obstruct the process. Formal advice was commissioned from two separate firms of external lawyers, directly by the CEx, which asked questions about the legitimacy of using urgency procedures, the interaction with a more detailed review of the constitution and a range of other matters, none of which focussed on the review itself. The fact that the review was needed is evidenced by correspondence from Mazars, NCC's external auditor, who indicate that they are considering using their powers under Section 24 Schedule 7 of the Local Audit and Accountability Act 2014 to issue a statutory recommendation requiring the full Council to consider undertaking this action. Even this did not stop the attempt to delay matters. Instructions were issued seeking to prevent the other Statutory Officers from effectively responding to this, as they are required to do, without the consent of the CEx. Questions were raised about the procurement process, whether Cabinet had the powers to commission the review, could members be involved in the decision to award the tender and whether the Leader had sought to interfere in the powers available to the CEx. When the Leader expressed anger and frustration at the delays and obstruction, the CEx offered him a referral to NCC's Occupational Health service to deal with these concerns.

4.5 Legislation and the Council's constitution provide for the Leader to determine levels of individual delegations to Cabinet Members from time to time. It is understood that this facility has never been used in NCC previously. That does not make it wrong, and it is

understandable that, in an effort to make progress, the Leader delegated matters to a single Cabinet member. It would normally be expected that steps would have been taken to ensure that decisions were properly reported and subject to scrutiny and/or call in but instead this became an issue of political controversy and was subject to even more external legal advice being sought.

4.6 Eventually, a formal opinion was sought from James Goudie, QC on all these issues raised. In a very clear response, he confirms the legality of the approach proposed, dismisses the suggestions that powers do not exist and that it was legitimate for the Leader to have done what was done.

4.7 A number of reputable organisations were invited to be involved and an offer was accepted. It is not for the team to comment on that part of the process but, no doubt, Mazars will comment if there is anything to report on.

4.8 Any outside observer reading these papers would conclude that a corporate governance review was long overdue and that the lack of understanding of the basics of local government at the top of the organisation would, of itself, bring into question compliance with NCC's Best Value duty.

## **5 Governance of appointments, exit arrangements for staff, internal remuneration and promotion.**

5.1 The context for the three Local Government statutory officers (CEx, MO and Section 151 officer (S151)) appointments is clear. The regulations stipulate that full council should formally appoint officers designated as statutory officers. Generally, a proportional cross-party committee from full council is charged with the appointment of such posts and then produces a recommendation to full council, which can be discussed at a full council meeting and then the resolution is minuted.

5.2 Prior to full council approval, for a short period directly after the committee meeting, the regulations allow for any cabinet member to offer objection or comment on the appointment before a formal recommendation is made to Full Council. It is highly unusual for a member of cabinet to object, but nevertheless, the provision must be made. In addition, any dismissal, or in fact exit, from these roles also, should be reported to full council. In most Local Authorities, it is usual for the CEx to at least consult with the Leader and then cabinet and sometimes even more widely if an MO or a S151 is due to leave the council, particularly if exit arrangements involve payments and contractual conditions. Furthermore, any remuneration over £100K should be transparent and reported to full council.

5.3 These regular Local Government procedures and practices have not been universally followed at NCC.

5.4 The staffing structure at NCC indicates that the post of MO is a third-tier role (which speaks to the lack of understanding of and respect for this role). Nevertheless, good practice would suggest that full council, or at least the Staffing and Appointments Committee (SAC), should be involved in the appointment and departure of any MO. The role is unique in Local Government, the MO is for the council and as such should be appointed by that body.

5.5 One of the MOs left the employment of NCC, and the Staffing and Appointments Committee (SAC) had no official visibility in committee, nor opportunity to discuss the circumstances, nor the settlement agreement of the departing MO. Senior Members found out that the MO was leaving and asked for the SAC committee to be involved in the discussions. They were informed by a senior officer that it is not in the NCC constitution for the SAC to be involved in discussions about the MO as the MO role is 'not designated a chief officer post in the council constitution.' Senior officers justified this by stating that in the SAC terms of reference, the SAC is only able 'to determine appointments of chief officers and appropriate deputies' (as the MO was third tier). The exit agreement was signed off by the CEx and the S151 officer, based on a business case. However, the S151 officer later established that costs were added after her sign off.

5.6 Several senior council staff were joint NHS/Council appointments or on secondments from the Trust to the council. Many had their salaries paid by the NHS trust which were then covered on a 50/50 basis between the council and the trust in a shared cost model. The process for increasing salaries of these senior staff should have involved the council SAC or indeed full council. In one example, the salary of a senior staff member increased to over 100K, at which point SAC and full council should have been involved. The process to enhance any remuneration or alteration in responsibility were instigated entirely by NCC and were approved at the request of the council CEx. The Trust acted in good faith upon NCC written instruction to make any amendments. Normal Local Government process had not been followed within the council for these increases in remuneration. Even though in some instances only half the salary was being funded by the council, good employment governance was not followed.

5.7 The 'turn over' of statutory officers, particularly, MO's and the S151 officers at NCC, can be viewed as indicative of a culture where constructive advice and challenge has not been welcomed by senior officers of the council.

5.8 Many staff who have left the organisation signed settlement agreements with terms included which meant they could not speak to anybody about the circumstances of their employment with and exit from NCC. In effect Non-Disclosure Agreement (NDA) clauses, although the council would not use this terminology. The council SAC played no formal part in these arrangements.

5.9 The review team noted that a significant number of staff had left NCC under these circumstances, which again reflects on the culture in the organisation. Many staff who had left, described in harrowing terms how they had been treated extremely poorly by senior officers at NCC. The review team cannot make a full determination of all these circumstances, but at NCC there have been significantly more staff subject to these agreements that would be normally expected at other councils. Between February 2013 to May 2017, £1.1m had been paid out by the council in settlement figures for staff leaving the organisation. From May 2017 to February 2019 a further £1.1m was paid by the council. This is higher than comparable councils taking into account normal service redesign activity.

5.10 One interviewee described how a colleague informed them that they were retiring in a few months, and they would hand over their responsibilities to another colleague. The interviewee was surprised to then find that the colleague had left within a few days of this conversation. This happened to be immediately prior to the government rules on a cap in exit payments of £95K coming into force. The final settlement figure for this employee was a considerable six figure sum. Senior members were not involved with or had no knowledge of the details of this settlement. Members only discovered the amount of the exit payment when it was listed in the council's statement of accounts. Considering the magnitude of this settlement, proposals on this arrangement did not go to SAC or senior Members for discussion. There is no proper audit trail for the approval of the exit, it is unclear which senior officer signed off this agreement.

5.11 The International project, which is described later in this report, was initiated as a joint partnership, by the NHS Trust and the Council. The Trust stated that they had no part in agreeing a £40 000 responsibility allowance paid to NCC's CEx for the International partnership.

5.12 There are many accounts of staff (both past and present) feeling extremely aggrieved by Human Resource (HR) processes at NCC. This is not unusual in any organisation as staff may become disillusioned if they are themselves unsuccessful in application processes. However, the view of the review team is that at NCC there have been too many examples of HR practice and process relating to senior staff which is at best inconsistent and in certain cases contrary to local government legislation.

## **The Chief Executive's Disciplinary Process**

5.13 It is not the purpose of a corporate governance review to determine the validity or otherwise of potential charges against a Chief Executive, this should be tested via the JNC approved disciplinary process. Nevertheless, the way in which this process failed to reach a conclusion provides pointers to issues of corporate governance.

5.14 The team were advised that before commencing the process, NCC took advice from the Joint Secretaries of the JNC. These officers, appointed by the LGA, on behalf of the employers and ALACE, the Trade Union representing Local Authority Chief Executives, have no interest in providing advice, other than to ensure the jointly negotiated process is understood and adhered to. Their advice will have covered constitutional issues and the need to ensure that charges are correctly formulated so that the employees can know what the allegations against them are so that they can defend themselves appropriately. It is surprising, therefore that the process commenced without either of those two points being checked and corrected.

5.15 Of the two failures, not spending time on properly determining what allegations are being made is the most fatal. It is always possible to start the process again from the beginning to correct an error in the constitution. What is important, is for any member appointed to serve on any investigation panel to demonstrably not be biased one way or another. Making public statements about the presumed guilt or innocence of an individual is grounds for disqualification.

5.16 It is also crucial that the officers managing the process are also seen to be completely impartial and not subject to any taint which might interfere with the proper handling of the issue. That is often very difficult inside an authority, where officers have longstanding relationships which can be put under pressure or can become disqualified for other reasons and that was the case here. That is why many authorities in such circumstances ensure that the handling of the process is managed outside their authority.

5.17 At NCC, the issue was initially handled by the then MO, until it was clear that he was conflicted and was then passed, by a process which is entirely unclear, to an officer who had been significantly promoted by the CEx over the recent past. There is no suggestion that the officer concerned behaved inappropriately, but, given so much had gone wrong already, it was not the wisest choice. Some outside advice was provided by two individuals with appropriate experience.

5.18 The Independent investigating officer realised that the allegations she was asked to report on were not framed in an appropriate way and decided to prepare a more accurately drafted set as part of the preliminary work. It would appear that these were not drawn to the investigating committee's attention.

5.19 As a consequence of Counsel's opinion, Members were advised that the proceedings were fatally compromised and that they were personally at financial risk if they decided to proceed. They decided to abandon further action. An unfortunate outcome of the handling is that the charges are neither proved nor dismissed, which is a totally unacceptable state of affairs. However, it is clear that it is not now an option for NCC to reopen these matters.

5.20 Since the abolition of surcharge on Councillors, members have generally been indemnified against financial loss as a consequence of their individual and collective decisions, provided they can show they acted in a reasoned way. This does not mean that they have to agree with either officer or counsel's advice where there is a judgement to be made. Every action has risks and these need to be balanced which is why elected individuals make them. The case for terminating proceedings may have been an appropriate decision but equally, starting again correctly could also have been appropriate. The most worrying thing about the whole of this episode was that the two external individuals involved produced a 'lessons learned' report and that does not seem to have been considered by either a senior group of officers or reported to any member forum. This tends to provide more evidence that NCC does not learn from past experiences which is another fundamental Best Value issue.

**6 The operation, culture, and structure of the organisation. The culture of openness, transparency and trust between the officers and members; openness to challenge.**

6.1 The operation of the council is described by many Members and officers as being dysfunctional. One Member described how the council and senior officers spend too much time '*fighting with each other*,' rather than doing business for residents. Too much time has been taken up dealing with broken, confrontational relationships between senior officers and senior Members. Claim and counter claim dominate proceedings and effective working relationships do not exist between the CEx and the cabinet, and between the cabinet and a significant minority of elected Members. Two points of view prevail, Members and officers polarised in support for, or in opposition to, the CEx. The council meeting in February 2022 was prolonged due to constant procedural interruption, leaving the agenda item for the new Corporate Plan minimal time to be presented. The plan was accepted without any appropriate strategic debate, in effect, 'nodded' through.

6.2 The numbers of Freedom of Information requests (FOIs), grievances, complaints, standards and conduct issues between officers and officers and between Members and officers reflect an absence of effective communication in the upper levels of the organisation. Many Members and officers resort to such processes as they feel it is the only way they can effect change. Much of the council business is now done via prolonged email trail, for example, the correspondence regarding the commissioning of this review.

6.3 Much external legal advice has been sought by senior officers independently of the MO. The MO did not until recently have this legal overview which was a significant risk to the council. There appears to be constant disagreement between officers and Members about the instruction given to counsel and the advice received, to interpret or inform decision making. Many decisions are steered or justified by counsel's opinion as opposed to instinctive, sensible, open, and joint decision making between officers and Members.

6.4 The organisation is paralysed due to large volumes of procedural issues which demand an extraordinary resource. There have been 4792 FOIs in three years and 307 Subject Access Requests (SARs), many from senior officers and Members. One SAR for a member of staff took one colleague two and a half months to complete. The review team were informed that staff had been instructed by senior officers to prioritise some staff and Member SARs, the result being that SAR requests, for example, for children looked after, had been delayed. The council currently has a 30% compliance with SARs, which is extremely poor. This is not the fault of the central team processing these requests.

6.5 The review team noted some thirty conduct complaints, with only two from the public. The majority are between officers and Members and also Member to Member. This is not the prime purpose of the standards process, originally designed for the public to use. Due to these investigations, many senior officers and senior Members have been deemed to be compromised and are unable to communicate with each other on a day-to-day basis. This includes senior officers and elected Members, which has further hampered the effective running of the organisation. It is the opinion of the review team that there is an inappropriate use of the conduct complaint process by senior officers against Members, despite elements of some complaints made by officers against Members being upheld.

6.6 Sensitive council papers have been leaked on numerous occasions and as a result, all council papers are now watermarked with names. This is indicative of a failure in trust and a most unsecure position for the council to operate effectively.

6.7 There is little substantive trust in the most senior officer levels of the council and there exists a climate of fear and intimidation as reflected in many of the interviews conducted by the review team.

6.8 Several councillors have claimed that their data has been breached. Following five separate, lengthy investigations, no claim had been substantiated. The team were advised that only 9 out of 67 councillors have undertaken data protection training. Some councillors have not completed the data protection training for five years.

6.9 Staff colleagues reported that there is a traditional command and control approach to leadership and management, with little empowerment encouraged. Many operational decisions needing to be made at senior officer executive level, slowing down the

organisation and creating bottlenecks. Officers describe '*twelve organisations in one*' as services generally operate in silos.

6.10 As noted earlier, there is a lack of organisational stability. Middle leaders describe the executive team in a constant state of flux. Key appointments, in addition to S151 officer and MO's have seen significant, frequent change and many executives have been employed on an interim basis for considerable periods.

6.11 According to some middle leaders, there have also been a significant number of strategic change programmes and reviews, and management structures proposed, but middle leaders do not see any tangible improvement in the council as a result. Services have been regrouped; some staff believe to justify new job roles.

6.12 The CEx has for some time proposed a new leadership structure which has created diverse opinions from staff and senior members. Cabinet, understandably, has not been in favour of adopting a new leadership structure without their full involvement and consideration of several different options.

6.13 Some colleagues believe that some internal appointments have not been awarded on merit, or skill set. Whether senior management agree with this or not, if middle leaders have this view, this demonstrates a gap in communication, trust, motivation, and effective working in the council. Colleagues mentioned that they used to be proud to work for NCC, but not anymore. The council culture was described as promoting suspicion and mistrust, there being a fear of consequences and the working environment was described as harmful. Colleagues state that there is a difference between what is said, 'the values on the wall,' and what is done.

6.14 Middle leaders and senior councillors describe senior executive officers as being dismissive of Member views and that this has developed into contempt for the current cabinet. Many senior executive officers have had a career background in the NHS and had relatively little experience of working within a political environment. This has resulted in misunderstanding the concept of Member primacy, or of a 'Member led' organisation. This approach, at times dismissive to cabinet Members, whether deliberate or due to lack of experience, has led to the current situation.

6.15 The review team were informed that the executive team has gradually become less effective. Some senior colleagues report that there never was a sense of an executive 'team.' There was a 'shadow' senior meeting between the CEx and essentially two other senior officers, '*behind closed doors*'. Communication to the rest of the executive team was described as minimal. Areas of responsibility were moved frequently and 1.2.1s between the CEx and individual executive officers were very infrequent or cancelled.

6.16 The current executive team has only two substantive members. The remainder of the senior team, including the MO and the S151 officer are interim or temporary appointments. There is no effective capacity for improvement. There is a disconnect between cabinet and senior officers then between the senior officers and many heads of service.

6.17 There are many hard-working staff in Northumberland CC providing good services for residents, but they look to the dysfunctionality in the senior levels of the council with despair and embarrassment. The staff have no effective overall strategic direction, and they are unsure of their place in the council's journey. Performance in many areas is starting to fluctuate and, in the absence of clear direction and purpose, it is only a matter of time before performance in some services will have a more detrimental impact on residents.

## **7 The effectiveness of political and organisational leadership and the capacity and capability to provide the organisation with clear and effective leadership**

### **Political and operational leadership**

7.1 When political and operational leadership is working well senior councillors and senior officers work well together, with understood but complementary roles, and the effect of this collaboration is visible to other councillors, staff, and partners.

7.2 In NCC, the culture of mistrust and poor behaviour is widely described among Members, the CEx and many senior officers. Very many of the people interviewed who were directly connected with the council referenced this context and its corrosive and pervasive effect. It is also visible publicly on the video recording of council meetings over some months.

7.3 Recent meetings of Full Council have been dominated by procedural issues and disagreements. The team has been given dossiers of information by a number of Members as 'evidence' to support their claims of wrongdoing or allegations of one sort or another.

7.4 The processes and effectiveness of the executive leadership team of officers has deteriorated markedly over recent years and while some areas of service leadership continue relatively effectively, as a corporate organisation NCC is minimally functioning.

7.5 The working relationship between Members and senior officers follows the same pattern. One senior officer said, *'there is a lack of visibility of senior officers ... they seem to be providing tactical and operational guidance rather than managing the strategic approach'*

7.6 There appears to be an absence of a long-term shared vision for Northumberland. Another senior officer said, *'it sometimes feels like we are chasing the priorities of individual members ... rather than a plan.'*

*'Service managers are caught in the middle. Senior managers are distracted'*

7.7 The normal processes to ensure effective senior Member and senior officer communication, planning and agreement have broken down in part. Service Executives do maintain regular engagement with lead Members responsible for their service area, and there was even a suggestion that this had strengthened recently. However, on corporate issues the engagement has broken down.

7.8 'Awaydays' between senior officers and Members to explore longer term strategy and issues do not occur.

7.9 Regular meetings between the CEx and Leader and Deputy Leader do occur, but an inspection of the collected notes of the meetings reveal that on some issues the same ground is covered repeatedly. In addition, some reasonable requests from the Leader to officers are contested, denied, or delayed. In parallel there are extensive e-mail exchanges between the Leader and CEx covering similar ground.

7.10 There is also a pattern of informal meetings between the cabinet and the executive team, as is normal in many authorities. These are widely described as uncomfortable and unhelpful. They are dreaded by some and perceived as a place where the tensions between the CEx and Members often play out. During the period of the review, one of these meetings was held. It was reported to the team that those Members and officers attending found it positive and useful. That this was unusual and surprising triggered both parties to report this event to the review team.

7.11 There is excessive use of allegations of bullying, code of conduct breaches and misuse of SARs and FOIs by Members to other Members and also by officers. This has occurred to such an extent that it has prevented reasonable discussion between senior officers and Members of some issues.

*'it's got to a stage where you are afraid to say anything you might disagree with for fear of a conduct complaint being made ...'*

It has also commanded excessive resource to undertake investigations, produce reports and resolve.

7.12 There is a significant sense of a hiatus in the leadership of the organisation. 'a vacuum' was a word offered by several senior officers. The effectiveness of political and

organisational leadership has deteriorated significantly over several years and is currently at a very low level.

### **Capacity and capability**

7.13 Events and high turnover have led to a situation where the executive leadership team is comprised largely of secondments and interims. With the recent departure of the DCS to another authority, that now leaves only the CEx (who is on authorised absence) and one other. Turnover in the statutory roles of MO and S151 in the past 2 years has been excessive. This has resulted in additional instability and constitutes a risk to strategic management and delivery.

7.14 These events have also led to a situation where an unusually high proportion of the SMT have had a health background. Whilst, in itself, this might not be problematic, in this instance it does seem that there has been a weight of perspective at the top of the officer structure, unfamiliar with local government governance, and in particular the role of councillors in relation to officers.

7.15 The team were told many times of the extensive power given to, and taken by, the CEx, and the DCEX. So much so that many Members, officers and previously employed senior officers reported their experiences of this high degree of centralisation. This was described as one of the causes of the tension between senior Members and the CEx. It also resulted in a blockage on a range of matters where it had been decided by the CEx to personally sign off on matters.

7.16 Several Directors and Heads of Service reported very limited engagement with senior Members outside of recognised service silos, indeed several reported being told not to contact senior Members unless cleared through the CEx or DCEX.

7.17 A corporate plan has been written and was adopted by Full Council during the period of the review. However, engagement with Members appears to have been limited, and it would seem it is also not sufficiently connected to the 'real plans' guiding work. Several comments illustrate this disconnection to the management process:

*'The work on the Corporate Plan and Members' priorities seemed to be entirely separate processes'*

*'The corporate plan has been agreed after the service plans have already been written'*

*'There is lack of clear goals ... the corporate plan is not translated into how services contribute ...'*

7.18 As with many plans there is a statement of how the council intends to work, and a statement of its values. One of those is 'respect.' This is palpably at odds with current reality in the leadership arena. There are posters on the walls of the offices repeating this. Normally an organisation does this to emphasize the importance of the chosen values, and the leadership works hard to model them for the wider organisation. The contradiction between the stated values and observable behaviour does the opposite. Indeed, it gives the message to staff that these values are not what the council really wants. It also suggests that the elected council does not necessarily mean what it says.

7.19 The capacity of the senior officer groups is severely restrained by a lengthy period of turnover, an excessive use of interims and secondments, diversion from primary roles to support the plethora of investigations related to conduct.

7.20 By common consent this has taken very significant resource and focus. This massive internal focus is at the expense of developing appropriate external views, devoting time to discussion, and developing a broader strategic view. The organisation does have specialist posts and teams to support this strategy work, but it was reported to us that they have been marginalised and, on some occasions, diverted.

7.21 Unsurprisingly, there is no substantive shared understanding about the council's strategy between officers and Members. There is no doubt the organisation is busy. There are, of course, extensive day to day services to run, and a multitude of initiatives.

7.22 While some key individuals and highly experienced interims are keeping the organisation functioning week to week, the political and cultural context has neutered effective strategic direction for the organisation as a whole, and a major reset is required.

## **8 Use of resources and the impact on governance of the organisations ability to develop best value, and the impact of governance on service delivery**

8.1 NCC has financial resources and assets that would be the envy of many other local authorities and the organisation has not had to address budget reductions on the scale of some authorities. The council has recorded underspends against its planned budget in each of the previous 4 years. This is despite setting savings targets each year and not fully achieving them.

	Variance from planned budget	Savings target	% of savings delivered
Projected outturn 21/22	(£3.7M)	8.2M	80%
Provisional reported 20/21	(£12.6M)	9.8M	77%
Provisional reported 19/20	(£2.0M)	12.2M	90%
Reported 18/19	(£11.2M)	?	?

### Governance and a performance management framework

8.2 Good governance would feature a ‘corporate plan,’ and a range of subsidiary plans, and KPI’s or targets at different levels matched by a hierarchy of monitoring and reporting against the plan. This allows awareness of progress, the opportunity to challenge and to understand or authorise mitigating actions.

8.3 The council has published corporate plan documents both recently and previously. Doubts about the connection of these to the real activity of the organisation were highlighted some paragraphs above.

8.4 There has been some reference to a corporate performance framework, but this is not manifested in the form of a policy paper, or protocols or corporate guidance. This means that there is no single account of what is expected by different departments, or officers or even an annual cycle and timetable of preparation and reporting of performance. New staff, or indeed new Members, in this circumstance would be unaware of what is available or expected or, at best, need to ‘pick it up’ from colleagues.

Several comments from senior officers seem to reflect this ignorance:

*‘Calls for monthly workplans and Member exception briefing. This feels like wasted effort. However, I think they are probably needed in the absence of a more structured governance framework’.*

8.5 In contrast, officers have been developing a recognisable framework in practice, which is said to have evolved significantly over the previous 2 years. There is an on-line system that draws together data on 4 elements: operational services; finance; workforce information and cabinet Member priorities.

8.6 It was reported that this system triggers the request for an exception report when there is evidence of falling KPIs. It is also reported that portfolio holders have become more involved in improvement meetings in the last year. Quarterly reports are seen by portfolio holders, presented to informal cabinet and scrutiny chairs.

8.7 It seems unclear how much of the performance information is genuinely presented in the public domain, and open to challenge either through scrutiny or by councillors of the non-administration parties. A review of the agenda of cabinet for the previous 3 years do feature quarterly finance reports, but no service KPIs, or broader monitoring of performance.

8.8 It was suggested to the team that the data is available on the website if you search for it. As this system matures, it would seem an excellent feature. However, reporting to individual cabinet Members or informal meetings clearly does not constitute evidence of active performance management, and public accountability. It is no substitute for appropriate presentation at a public meeting of cabinet, where proper public accountability can be exercised.

## **Finance**

8.9 There is evidence of regular reporting of financial performance to Cabinet on a quarterly basis. These reports are detailed and extensive. They do not appear to track progress on savings plan activity until later in the year which would be more common in some other authorities. It is not clear the extent to which this financial management information is interrogated. The minutes regularly record 'report noted.'

8.10 The financial performance of the council companies has not been a long-standing feature on cabinet agendas. However, the S151 officer has begun to present a quarterly 'Trading Company Financial Report', commencing with the Q.2 report in December 2021. This is welcome development and to be commended

8.11 The financial challenge for the council is projected to increase over the medium term and will need clear management. The councils MTFS projects the use of reserves to support the budget, identifies a savings target of over £50M and in doing so expects its reserves to reduce over the period from £76M to £43M.

## **Are senior officers clear about governance and approvals processes?**

8.12 Unfortunately, a number of senior officers reported that they were not clear:

*'Navigation of governance is not straightforward. or well documented,' 'I have to ask around a range of officers to find out the process on particular issues'*

*'Many operational decisions have to be approved at exec level.'*

One senior officer described devising a framework of authority and approvals within their own service area to provide assurance of proper processes and controls.

*'The interaction between different meetings such as Executive team meetings, Heads of Service, Business Leadership Team meetings and where, and how, Member approval is required is both ill-defined and inconsistent'*

Generally, many officers described a breakdown of normal governance whereby any approval that was needed from the CEx was uncertain and processes unclear, while processes in service delivery areas were able to be controlled through individual Executive Directors.

8.13 It was reported that there has been a programme of service reviews, but the lead officer has not felt able to engage with relevant Members to incorporate their perspectives. Therefore, it is unclear whether any changes are understood by interested Members or even endorsed.

8.14 It seems clear that corporate governance is weak and fragmented processes have resulted in variable performance. Perversely, isolation from a robust system of corporate governance allows some good impact, e.g. In improving children's services several years ago, but in others allows poor practice, such as in trading activity mostly delivered through company structures.

8.15 The organisation does not appear to have or use the tools or processes to pursue Best Value consistently and has palpably failed to deliver improvements in some key areas.

8.16 The continuing vacuum in effective strategic leadership, and low confidence in a speedy turnaround of the conditions to restore good and effective visible leadership is undermining staff loyalty and partner confidence. This represents a significant risk to service delivery.

## **The Constitution**

8.17 All councils maintain a constitution. These are always lengthy documents, and normal practice is to review each year to enable updates to be considered, refined, and consulted upon, prior to an annual update. The constitution forms the 'rules' by which the council undertakes its business and creates clarity on how things are done, where authority lies or is delegated and the limits of powers, responsibility, and authority.

8.18 A good proportion of the perceived problem issues that were raised in the review should be addressed by clarity in the constitution, and by adhering to it.

We heard a view from a range of Members that, *'I know what it says in the constitution, but what we actually do is ...'* This is unacceptable and erodes good governance, fosters confusion and a culture of poor discipline.

8.19 The Team did not undertake a comprehensive critical review of the constitution, but a number of areas arose from the review activity where, in the team's view, updating is required. These include:

- The requirement for the Leader to publish and maintain an up-to-date description of the responsibilities of cabinet Members.
  - This enables clarity for all councillors, officers, the public and stakeholders. This also provides the basis for public accountability.
- Clarity on the powers of the 'Business Chair.'
  - Viewing of the recorded meetings of Full Council reveal poor discipline in debate and conduct. If Members do not believe the constitution is sufficiently clear, then it should be amended with the aim of clarity to enable meetings to be conducted for the benefit of all Members and the interested public.
- A comprehensive description of the processes for the appointment of chief officers, or their dismissal.
- Greater clarity on the powers of scrutiny committees.
  - Some Members on scrutiny committees were not clear on their authority to commission information and reports, potentially resulting in unduly fettered approach to appropriate scrutiny of the executive.
- A comprehensive description of the council's approach to the establishment and governance of wholly owned companies and JVs.
  - This needs to clarify why the council will use company structures and define the roles and responsibilities of the various bodies and individuals. This should include describing the distinct roles of cabinet, a shareholder committee, a shareholder representative, the formal governance processes between the council and company boards, and processes for revision and review.
- Clarity about the role of the Audit Committee.
  - In particular, NCC might wish to broaden the remit and clarify expectations or requirement on tenure of membership and training.
- An up-to-date description of the officer structure and responsibilities.
  - Timely updates to ensure clarity for all parties.

8.20 The team also found many instances where the provisions of the constitution were not being followed. As a selection this includes:

- Respect for the authority of the 'Business Chair' in the conduct of meetings.
  - Councils have such provisions to enable the transaction of business in an ordered fashion to enable communication, proper challenge, expression of difference of views, listening to other perspectives and to reach considered judgment.

- NCC constitution has many of the provisions common to all councils for this purpose. These include, in particular, the provisions of section 12.12 on handling points of order, and 19.1, 19.2, 19.3 and 19.4 concerning when speaking is permitted and not, when the meeting must be silent, and when a Member will be required to terminate a speech and requirement to leave the meeting.
- The ability of the Business Chair to apply these provisions appears to be routinely flouted and this behaviour undermines healthy exchange of views and debate in Full Council.
- Recruitment, appointment and dismissal processes and approval for Executive and statutory officers.
- Commitment to openness and use of 'pink papers' only when justified under the statutory provisions
- Stronger adherence to the rules on declaring potential conflicts of interest, and appropriate action

## **Company Governance**

8.21 The review did not set out to conduct an in-depth review of NCC's governance of companies, but issues related to Arch, Advance and 'international' featured strongly in a range of interviews as the work progressed. The issues raised related to historic poor practice, unresolved police investigations, allegations of conflicts of interest, perceptions about the dysfunctional role of the shareholders representative and an ongoing investigation of whether 'international' trading might be ultra vires.

Two areas are covered in more detail here.

### **'International'**

8.22 The issues summarised here are drawn from the team's own research and evidence gathering which is independently confirmed by the extensive investigations undertaken by the interim S151 officer.

8.23 In 2016, following participation in an UKTI trade mission, NCC and Northumbria NHS Trust formed the Northumbria International Alliance (NIA). NIA won a contract to work with a regional government in China, and pursued other business opportunities in other places, including UAE. Trading took place with contracts for considerable sums or money; however, this took place outside of a company structure until the formation of a fully owned subsidiary of NCC in March 2021.

8.24 It is reported that in 2017 the NHS Trust Board agreed a Strategy and Business Plan, but there is no evidence that this, or anything similar relating to NCCs participation, was

ever presented to the Cabinet, Council or Committee. In July 2017 there was a presentation made to an informal meeting of the cabinet and they agreed to continue the project. There are no published papers or formal decisions recorded.

8.25 The NIA began providing consultancy services in China, and a contract was agreed. It is also reported that in June 2018 a formal 'launch' took place at the House of Lords with attendance by senior figures from NCC. A further report was made to the Informal Cabinet in September 2018, but again no published papers, no formal decisions and no individual Member decisions were recorded.

8.26 A further briefing took place to informal cabinet in November 2018.

It appears that there had been some discussion about legal form, and indeed some concern expressed by the councils' then S151 officer, however the form of governance was not addressed.

8.27 It should be noted that the NCC accounts show a receipt of £600k from Rong Qiao in 2018 and the consultancy services agreement had a value of £16m over the 10-year life cycle.

8.28 For its own reasons the Trust withdrew from NIA in April 2019. This was not reported to Cabinet or the Council. No reappraisal of risks or issues appears to have been undertaken.

8.29 In February 2020 a formal report was presented to the NCC cabinet which proposed the incorporation of a holding company, Northumberland Enterprises Holding Ltd (NEHL). This was to be a holding company with perhaps up to 10 subsidiaries in a variety of the councils service interests through a limited company structure to undertake the traded services. In addition, it was proposed to establish a subsidiary to regularise the 'international' work, to be known as Northumberland International Consulting (NIC). This is the first formal decision that appears to have been taken, albeit 2 years after the trading activity appears to have commenced and perhaps 4 years after officer time and resources were being deployed by NCC.

8.30 In March 2021 Northumbria International Alliance Limited was incorporated as a wholly owned subsidiary of NCC, as NIC. In relation to NIA, it is only recently that the s.151 officer has been able to present a summary of accounts from incomplete records.

8.31 It appears therefore that this partnership, traded for some 5 years, involving serious negotiations for activity with prospective contract values in excess of £50M, and it remains unclear how this was justified outside of a local authority company structure. It is reported that there is no record of approval or endorsement. Commercial activity was invested in,

contracts entered, senior staff employed with no evidence of approval from the council. More recently the constitutional situation has been regularised by the council establishing a company framework, but in practice trading has ceased.

8.32 Some key individuals claim that informal discussions with the then Leader, and on occasion the cabinet in informal session, meant that there was good knowledge. However, whatever type of informal conversations were held, they are no substitute for proper governance. A meeting of informal cabinet is not a decision taking body.

This has been subject to extended investigation by the external auditor.

8.33 Before this review had reported, the Interim Executive Director of Resources issued a s114 report determining that the council has committed unlawful expenditure in relation to the international business. This relates to undertaking trading activity outside of a company structure and the payment of an allowance in addition to salary to the CEx. The report was published on 23<sup>rd</sup> May 2022. At the time of finalising this report, the formal process of consideration by the council is still to be completed.

## **Arch**

8.34 The council established Arch Holdings Ltd in 2011. This operated through a number of subsidiary companies in the areas of housing, development, business support and regeneration. Following allegations, a major review was conducted in 2017, and part of the action was to close down Arch, and to transfer those operations to a newly formed, and rebranded entity. Advance Ltd was registered and the operations, assets and contract transferred to Advance in June 2018. There have been a number of adjustments and developments to the arrangements, but essentially Advance currently continues to operate in the same fields as before.

8.35 As noted in the previous paragraph, in 2017 NCC commissioned a major review of the way in which the company had been operated. This was to be commended. The review revealed extensive governance failings that NCC had allowed to develop in Arch over some years. These related to very poor governance practices in the company and its subsidiaries, a range of unexplained questionable business decisions, and *'very significant failings in financial procedures and record keeping'*. (Final report, 2019)

8.36 The investigation was undertaken by internal audit, and 2 reports on the emerging findings were presented to NCC audit committee in July and October 2017. All councillors received a letter from the then Chair of Arch setting out the situation and actions. It does not appear that this was reported to the cabinet (who hold the executive authority for company performance), except perhaps as informal briefing. The final report on Arch was considered at a meeting of the Audit Committee in March 2019.

8.37 A number of reports were submitted to the Audit committee in 2018 outlining a number of actions and changes intended to improve the *'ongoing concerns about governance'*. These included the provision of corporate services by NCC to the company and that the CEx would now regularly attend the board.

8.38 Some findings from the review were referred to the police at that time, i.e., 2017. In January 2022 questions were asked at an audit committee on the apparent lengthy delay. It has become apparent that the senior police officer handling the case had lodged a request for a witness statement from the council over a year previously and the council has yet to respond. It was reported that this was addressed to the CEx and is likely to have been received by the acting CEx, the DCEX, at the time. The team has been unable to see the relevant documentation.

8.39 Part of that change was to create a successor company, Advance Northumberland, in order to have a fresh start presumably with reset governance practices. This was agreed at a meeting of NCC cabinet in June 2018 and planned for the transfer of assets, staff, and contracts to take place in July 2018.

#### **Advance Northumberland Ltd - NCC governance**

8.4 The Final report on Arch as presented to the NCC Audit Committee was focused on the governance and financial failings within the companies. These were clearly important and should have provided learning about how to improve this in subsequent operations. However, the report did not address perhaps the more important part of the story – which was an evaluation of the role of NCC as its whole owner, and sole shareholder. This is clearly a very significant issue, and there was a suggestion in interviews that the early drafts of the reports did indeed raise some of these issues but were removed prior to the submission of the final report. This raises concerns about openness and learning.

8.41 The cabinet report of June 2018 does however set out a number of recommendations for the council in setting up the new holding company, Advance. Many of these raise appropriate issues for good governance by the council and within the wholly owned companies. While some important procedures appear to have been progressed around alignment of procurement, financial systems, communication, and forms of mutual engagement, a number of key issues have not been developed as effectively as, perhaps optimistically, hoped.

8.42 Almost 4 years on from the establishment of Advance the arrangements for an effective governance framework by the council are not yet in place.

### **The Council's framework of governance of companies**

8.43 The council's constitution makes very little reference to governance of companies. There is no explanation of why and for what purpose the council might establish a company. There is no description of the various roles that need to be fulfilled or how they will be undertaken, how the objectives of the companies are to be set and reviewed, and performance monitored.

8.44 There appears to be no statement or policy about the council's framework of governance of its companies. This is a significant gap. There is no basis set out to guide arrangements, and no information for Members to understand the differing roles of different bodies or their role in them.

8.45 In respect of Advance there have been several iterations of the articles of association which have been drafted and filed at Companies House, but the existing filed documentation is not up to date, nor are they well aligned.

The weaknesses in the framework present a significant risk.

### **The shareholder function**

8.46 The proper and effective exercise of the shareholder responsibility remains in development at NCC. It would appear that some of the initiatives to improve governance have been designed in response to a sense the Council needs 'to take more control' of Advance. However, the forms of control in a number of instances seem to be more akin to directly managing services rather than designed to gain the benefits of establishing a company structure.

8.47 The NCC CEx was designated the NCC shareholder representative. This is not unusual, but it seems clear that the CEx has undertaken that role without an adequate understanding of the limits of that role, the proper role of company directors and how to report to the cabinet on the issues of relevance to the shareholder.

8.48 Many interviewees described how this function was exercised through excessive intervention in day-to-day activities and decisions, effectively undermining the Board, councillors, and the MD. This dysfunctional relationship appears at one point to have led to the collective resignation of the 3 independent Board directors together. The shareholder, supported by their nominated representative, needs to hold the board to account, not to manage its work in detail.

8.49 A current Board Member has expressed exasperation about progress. *'What is the point of taking decisions at the board when they are simply over-ruled by the CEx.'* Other Members have made similar points, *'the CEx controls everything.'*

8.50 It was reported in interviews that proposals were brought forward mid-2021 to recruit independent board members, and an independent board chair. These were a good step. However, they have been delayed. Draft job descriptions, and draft adverts are said to have been with the NCC CEx since autumn of 2021 awaiting clearance.

8.51 There have been a number of versions of 'shareholder assurance groups' over the previous 4 years, with at times various membership combinations - councillors, cabinet lead, the CEx, and other officers. Despite perhaps best intent, the current arrangements do not meet the requirement of good practice.

8.52 The shareholder function is an executive function. It is good practice to establish a sub-committee of the cabinet to act as the shareholder committee. The membership would not include those cabinet Members whose portfolio would give rise to potential conflicts of interest. This is where decisions reserved to the shareholder would be considered, and where the shareholder representative would report on relevant issues, including council strategy, company annual business plans, and company performance and to be given instructions on how to exercise their role. The role of scrutiny is to consider the actions of the shareholder in developing the company or holding it to account. It is not to oversee the arrangements between the council and the company, as is currently described in the remit of the scrutiny committee. This remains confused and unclear at NCC

### **Conflicts of interest**

8.53 There has been an on-going exchange over several years about how to manage this in relation to councillors on the cabinet and on company boards. At NCC this has been contentious and clearly at times a challenging discussion. It is fair to record that this has been an issue of consideration in a number of councils in recent years, so NCC is not alone in seeking to address this dilemma.

8.54 NCC has no written policy on how to manage potential conflicts of interest. However, it has been the practice at NCC, even in the years of Arch, to appoint councillors to the company board. There have been many changes in board membership in recent years. While there is nothing preventing a council appointing councillors to company boards, effectively managing the potential conflicts can at best end up being very cumbersome.

8.55 These provisions also apply to officers, and the current arrangements feature twin-hatted roles, which is not advisable.

### **Board composition and experience**

8.56 There has been very significant turnover in the membership of the board of Advance since its inception. Inevitably this undermines the ability of individuals to develop deeper

knowledge and understanding of the business for which they are responsible. Good practice suggests regular use of a skills audit to guide recruitment of board members who have the skills and experience to guide the company effectively.

8.57 It is good practice to have a number of non-Executives on the board. Indeed, the latest national guidance referred to in para 2.15 suggests they should be in the majority. All board members should be supported by appropriate training. This seems underdeveloped at Advance. This is especially true if councillors are chosen to be board members, and if the council chooses to change the membership frequently.

8.58 High turnover, a lack of independent board members, and members recruited without relevant experience constitutes a high risk for the effectiveness of a company board. This is the case currently at NCC and Advance.

### **Councillor roles in the governance of its companies**

8.59 In interviews, many Members acknowledged that they did not fully understand the different roles required, and some of those who do hold directly relevant roles also conceded that they did not fully understand their role.

8.60 There is an absence of appropriate training and support for councillors in this regard. This is despite the companies of Advance undertaking significant work in pursuit of the aims of the council. The companies have had a turnover of c £280M in the previous 5 years, hold assets of c £300M and hold council loans to the value of c£300M – and undertake a range of high-profile activity in the community.

### **Recent Progress**

8.61 The last 9 months has seen sustained effort from a number of individuals, including in particular 2 interim Executive Directors, but the council infrastructure is not yet in place to ensure effective governance.

8.62 The development of the 'Advance Shareholder Group,' an officer group, is clearly a forum that has led some good progress on appropriate closer working between the council and the company board. Practical issues about alignment of project planning, authorisation of new work, a revised approach to loan provisions and repayment, and annual business planning appear to be progressing.

8.63 Fundamentally, the council needs to clarify why it operates through one or more companies, their purposes, and regulate the relationship between the council and its companies through articles of association, an Operating Agreement, agreed long term and annual plans, and a range of operational bodies between the company and the council to manage the progress of work, ensure timely shareholder involvement, and month to month

performance. This whole framework needs to be described and defined in the council's constitution, and Members supported to take appropriate responsibilities in various roles. It may be more appropriate for Members to recognise that they need to appoint others to act as Company Directors.

### **Learning and taking improvement action**

8.64 The handling of the issues around NCC's governance of its companies seems so significant as to provide a good indication of the ability of the organisation to recognise weaknesses, evaluate necessary responses and delivery improvement in a timely fashion.

8.65 The establishment and management of controlled companies has been poor. The approach of the council to address known weaknesses in its governance of its companies also reflects a story of slow action, leading to less than best value.

8.66 The serious failings in Arch discovered in 2017, almost certainly took years to be recognised, as a result of inadequate governance and awareness by the council. Upon establishing the scale and extent of the problem in the company the council decided to replace it with a new entity and make a fresh start. Reports were presented to the Audit committee during 2017 outlining the nature of the issues of failure in Arch, and therefore provide a potential focus for the things to be put right in a new company. A report was presented to cabinet in June 2018 which outlined some of the necessary changes in the establishment of the new entity and to develop the council's own governance.

8.67 The cabinet report says:

#### ***Next Steps and Deliverables***

1. *(i) Revised governance arrangements will be introduced on creation of the new Company (Advance Northumberland).*
2. *(ii) Following creation of the new Company, the plan to transfer assets, staff and contracts to the new company will be implemented during July 2018.*
3. *(iii) The company and the Council will review and agree service level agreements (SLAs) for all support services being provided by the Council, by September 2018.*
4. *(iv) An interim review of the new arrangements will be performed and reported to Cabinet within 6 months of the creation of the new company.*

*(Cabinet, June 2018)*

8.68 There was no report reflecting an 'interim review' within 6 months. Some 13 months later, a report was agreed at cabinet (July 2019) which did enact a number of issues (a draft

operating agreement, a Teckal agreement and approach to loans) but clearly did not deal with the wide range of issues outstanding.

8.69 By this time, the council were aware that the external auditor had delivered qualified opinion on VFM in the years 2017, 2018 and 2019 in respect of Arch and subsequently Advance.

8.70 It should be noted that the pandemic emerged, and the introduction of national restrictions caused operational and financial challenges across the country and also impacted on the operation of Advance.

8.71 In 2020, a consultant was engaged to review the arrangements between the council and Advance and highlight what needed to be addressed to improve the situation. This resulted in a presentation to a meeting of informal cabinet (25 Jan 21), a paper to the Audit committee 27<sup>th</sup> Jan 21 and a report to cabinet on 23 February 2021. The cabinet report is quite extensive and highlights a wide range of issues where improvement is needed. The report ends:

*'The findings of the review are reflected in the Recommendations in this report, set out above, which must be introduced as priority as this is essential to the effective discharge of the County Council's own governance and stewardship responsibilities.'*

(Cabinet report 23 Feb 2021)

8.72 Progress on this improvement journey has been covered above, and despite recent progress NCC's development of its governance framework remains limited. Also at this time, at the suggestion of the External Auditor, KPMG had been commissioned to undertake a forensic audit of the processes in the company, Advance. In March 2021 KPMG reported to Audit committee a cautiously encouraging report about the internal processes in Advance. They refer to immature development but do observe improvement.

8.73 In summary 5 years after receiving a report about serious failings, and various subsequent reports about limited progress, the council has yet to resolve its framework for governance and receive full assurance about the effectiveness of its wholly owned companies.

## **9 Conclusions**

*Had I been present at the Creation, I would have given some useful hints for the better ordering of the Universe. (Alfonso the Wise, King of Castile 1221-1284)*

9.1 NCC is currently operating in a dysfunctional way: the behaviours and practices observed and documented fall well below good or acceptable practice and are preventing

the effective transaction of business. Although there are published values displayed around County Hall, they do not appear to guide the culture of the organisation at every level and there is considerable misunderstanding or rejection of the legitimate roles of officers and Members, individually and collectively. This is highlighted by the considerable number of Subject Access Requests, Whistleblowing complaints, standards investigations and other challenges lodged as claims and counterclaims, to the extent that the use of these processes are in danger of being brought into disrepute.

9.2 As a consequence, NCC appears to have lost sight of its role and function as a major Unitary Council providing a full range of services to every resident, visitor and business in its area and leading the development of the total place in line with elected Members, acting through the Council, priorities, and goals.

9.3 In every good local authority, despite their very different ways of working, it is possible to see clear articulation of the principles of democratic accountability. It involves a recognition that officers are held to account by elected representatives for their performance and delivery of properly agreed lawful policies. Members respect the advice given by professional officers even if it is sometimes uncomfortable. Good authorities have good codes of conduct that regulate the relationships and expectations that councillors and officers have of each other but never need to refer to them. This is very different from the culture that runs through other public sector organisations, both central and local, yet it is a fundamental part of the web and weft of local government. Many leaders, gaining their experience in a different environment, find the public accountability of officer advice linked to a recognition of Members' legitimacy stemming from election, hard to internalise. When the top officer structure of the organisation is heavily health biased, in terms of background, governance issues become magnified.

9.4 Given the scale of the challenges in this large unitary county, it is hard to see how this could be led by a CEx on a part time basis, switching between two public sector organisations with such different drivers and financial regimes. The team have not found any document which articulates the issues involved, the risks and how they might be overcome or mitigated. Indeed, the appointment of the current CEx was not undertaken with the sort of process, which starts with an appraisal of what NCC might need, that is common in the majority of local government.

9.5 Services have been maintained but are starting to deteriorate due to the lack of direction and focus as the top of the organisation has lost focus on what such a unitary authority is intended to do. All in all, the council has turned inwards, has defaulted to service silo behaviour and in doing so has failed to exploit the opportunity afforded to the establishment of a unitary council to achieve best value through colocation, alignment of workforce and resources, and integrated delivery to places.

9.6 What is required now is a fundamental reset to establish an appropriate operating model and clear working rules for both Members and officers. This cannot be commenced until there is some seasoned local government professional input to help NCC scope and start this process. At the very least, this requires the position of the current Chief Executive to be resolved. It is common ground between the Chief Executive herself and Leaders of the political parties that this improvement journey is not something she can lead on. The failure of the aborted process to investigate potential disciplinary breaches has both poisoned the atmosphere but more importantly prejudiced an investigation into the existing or similar issues and, if it were attempted, would result in a protracted period where things are likely to get much worse. Many individuals now have set out such strong views that it is hard to see how any objective analysis or judgement could be formed being fair to all parties. What NCC needs to focus on is the impact on the area itself. Bringing this episode to a speedy conclusion is essential.

9.7 There are some key components of the required reset irrespective of the overall approach. The Constitution requires a comprehensive review. It needs to start from establishing the principles of what is properly delegated, whether it be from Cabinet to individual Members, from Council to officers and how each and every decision can be documented and reported, individually or collectively, for scrutiny or as part of performance measurement and improvement. This will include ensuring that the use of exemption powers is properly controlled. It requires officers to understand both the limits and the extent of Members right to know having regard to the costs of obtaining information not necessarily collected in a particular form and that data is not the same as policy. It also requires the consistency of the use of delegation to be adhered to. It needs to be recognised that informal cabinet meetings are useful places to discuss issues and gain a sense of direction but are not places where decisions are taken. Part of starting this process will require senior interim support to work with the council to make sufficient progress in order for recruitment to permanent posts to be effective. The council will have to create an environment in which it can attract good candidates to posts. A prerequisite is for potential candidates to see sufficient progress to take assurance that they would be joining a council that is willing to improve.

9.8 Many local authorities have struggled with the establishment and control of subsidiary companies set up under the provisions of the Localism Act 2011. Common issues are a failure to understand the differences in law owed by those charged with governance of companies and the authority. Some have tried to operate them as though they were some strange form of Council department. The most common failing is not understanding the conflicts of interest issues and that having the skills necessary to be a good councillor is no recommendation to being a successful company director. It is clear that NCC has had both successes and failures with its company structures but none of the past experiences has

prompted it to undertake a more fundamental review starting with answering the question about why NCC wants to do this activity and why through a company structure. Given the experience in many other places, understanding, reporting on, and recognising changes in risk profiles is, in terms of trading matters, a company issue, but in terms of why you are operating in this area and the benefit it brings to the Council is a completely distinct set of decisions. The limits to the powers of the shareholder representative and how they gain legitimacy for their approach is also not understood.

9.9 A fundamental review is required, tested against best practice guidance for local authority companies and for those subsidiaries that are to continue, it will be necessary to establish a new shareholder agreement, and a job profile for each company director to be appointed linked to the company's needs. Council will appoint the shareholder representative, which will be a personal appointment, that is, not capable of being delegated without authority, and Cabinet should establish a commercial sub-committee to consider progress reports on physical and financial issues required to be referred under the shareholder agreement and direct the shareholder representative.

9.10 The council's Corporate Plan needs to be a key document which sets out the goals and desired outcomes for the administration. It will always contain some organisational goals required by the CEx to help the organisation deliver. It is also a core document for holding the officer organisation and its professional leaders to account. Not to have a formal systematic way of doing this is bad for the CEx and for the council as a whole. Following the JNC processes, whether on a cross party basis or just an administration basis is a matter of local choice and practice is mixed across the country. However, not having a process at all means it is very difficult to demonstrate that a CEx has failed to deliver on a specified target. Further, being able to announce the targets to the whole Council means that every councillor can know what the goals are, whether they agree with them or not. Taken together, a Corporate Plan and a formal appraisal process at Member level for the top officer, linked to the budget and the hierarchy of business plans means that the whole organisation can be effectively held to account and be clear about what the goals are in a golden thread that runs through the organisation. Recently there is much evidence that this is not the case leading to confusion about what is required. Some Councils have chosen to involve Members in the appraisal of Corporate Directors in some way also. If this was to be contemplated at NCC, the rules of engagement need to be clearly understood by all participants.

9.11 The evidence shows that below Corporate Director level, NCC's officer structure frequently changes. Not much evidence exists of member oversight or knowledge of the various changes or that structures are designed to further the goals of the Council. The Head of Paid Service has the statutory responsibility of reporting to Council the numbers



and grades of staff needed to fulfil the administrations' objectives as documented in the various approved plans. Full Council does not need to consider the detail of this and can delegate it if it wants to, but neither is it sufficient to just report on the Corporate Director structure. Consideration needs to be given to ensuring that compliance with the rules on pay policy provides a meaningful insight into the workings of the organisation. Certainly, not having proper member oversight of the numbers and financial impact of compromise agreements as part of the analysis of changes to the officer team is poor practice.

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## **10 Recommendations**

Northumberland County Council needs to: -

10.1 Establish what it means to be a Best Value Unitary Local Authority in its geographic area delivering appropriate services and community leadership to every resident and entity in its area. To do this, it needs new seasoned local government professional leadership at the top of the organisation now to help it do this.

10.2 Once this has been done, it needs to-

10.2.1 Redraft its Corporate Plan in terms of the Administration's Goals and Objectives, moderated by the capacity of the organisation and the legislative framework,

10.2.2 Ensure the values by which it seeks to operate are lived within the organisation

10.2.3 Use the data it holds, collects, or needs to collect to define priorities and monitor and improve performance in a systematic way and publish the outcomes.

10.2.4 Review and redraft the Constitution to ensure that decisions that should be taken at Member level, by Cabinet, Committee, Individual Member or Full Council are clearly identified and that the recording and scrutiny of officer decisions, both individually and in aggregate, is unambiguous.

10.2.5 Review and redraft the codes of conduct which regulate Member and officer behaviours and working relationships with each other, to make it clear what the expectations of each party should be and how robust challenge can be handled, to ensure proper accountability can be achieved. This needs to recognise the legitimate rights of Councillors for information to enable them to do their role and for Councillors to recognise that policy is the preserve of the Council unless delegated and saying no is a legitimate outcome.

10.2.6 Establish a rationale for the establishment or continuation of any company established under the provisions of the Localism Act 2011.

10.2.7 Establish a specific governance framework by which, for those companies wholly or partly owned by NCC, their Directors are appointed, report on performance are presented to a Cabinet Sub-Committee, conflicts of interest are dealt with and risk and how shareholder agreements are ratified, by both the company and NCC.



10.2.8 Establish an officer structure which is designed to deliver against earlier recommendations and seek to appoint permanent employees to fulfil those objectives.

10.2.9 Establish a scheme of performance appraisal, starting with the Chief Executive at Member level, in line with the JNC provisions, which cascades throughout the organisation so that every employee is clear about their targets and how they fit into plan delivery. As the Chief Executive is accountable to the Council as a whole for their performance, publish the targets and how they have been achieved as an annual statement to Council.

10.3 With the help of the Local Government Association, establish a challenge board with appropriate experience at both top officer and elected Member level in unitary authorities to work with NCC, on a cross-party basis, as it addresses these recommendations.

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