

NORTHUMBERLAND COUNTY COUNCIL

AUDIT COMMITTEE

Independent Investigation into International Activities

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1. Background, Review Methodology & Report Structure

1.1 This report was commissioned following the formal publication of a Section 114 report, which was received and accepted by Northumberland County Council (NCC) at its meeting on the 8th June 2022, (minute 21). Following this meeting, the Council's audit committee drew up terms of reference to request an independent investigation to take place into the circumstances that gave rise to what was deemed unlawful trading activity and issues surrounding International activities. The terms of reference set out 10 questions that were prepared and approved by NCC's audit committee, subject to minor amendments, on the 27th July 2022, (see *Appendix 1*). This report is intended to be focused more as an evidenced based '**lessons learnt**' report, less on individual failings, but where key learning points need to be noted and taken forward.

1.2 As report author, I have been involved in working within Local Government for over 40 years. During my career, I have managed a wide range of Council services. I have been a Director of Children Services and then a 'twin hatter', which included being the Director of Adult Social Services (DCS/DASS) for over 10 years, prior to being a Chief Executive. I have previously worked for various councils across the country, within Staffordshire, Shropshire, Suffolk, Kent and Wiltshire. Shortly after my retirement as Chief Executive, I then established a consultancy business, which has quickly expanded into different areas of work, including individual Chief Executive coaching and mentoring; leadership top team development and a wide range of bespoke and/or sensitive projects for a number of local authorities and/or on behalf of Solace or the Local Government Association. I have worked with an increasing number of executive/corporate and senior leadership teams across the country to help them develop as top teams and re-shape their ongoing priorities. These Councils include the full spectrum of both political complexities and sizes, including Counties, Unitaries, Borough and District Councils, across the whole of the UK.

1.3 I had access to several of the Council's shared folders that were related to International activities and/or supported the publication of the Section 114 notice. These shared folders were the same ones available recently to Max Caller CBE and the S151 officer in the preparation of their respective reports. I was also sent a large amount of other documentation directly from many of the individuals that I interviewed during this process. In total, the written information I received and read was over 650 documents, which equated to over 15,000 pages of information.

1.4 I was formally appointed to undertake this investigation in late 2022. I soon realised that in order to fully understand the background and challenges encountered over the time span of the review (2017-2021), it would be required to help give the context for decision making at that time. A number of key individuals were initially identified as being helpful to be interviewed for this review. However, as the participation into this review was on a voluntary basis, there were some individuals who didn't want to be involved as they didn't want to relive the experience and upset this would cause them. Nevertheless, the majority of individuals that did participate represented a comprehensive cross-section of contributions that were able to add value to the issues raised. I initially read all the documentation that was provided to me on the available shared files (as referred to earlier), in order to help me

understand the background and context during this period and then created a timeline (see *Appendix 2*), which captured a number of key issues that took place regarding any International work. This helped me to think through any organisational context to help paint a more informed picture as to what was or wasn't happening at that point in time across the organisation.

1.5 This report looked at the how this journey began and what processes were in place at the time. It was felt that whilst there were some continuing practices that should have changed, from 2021 onwards, there was a stronger understanding of governance arrangements that should have been in place much earlier.

1.6 The nature of a **'lessons learnt' report** is to not only look back to understand what went well, but also what could have been improved. The report goes into much more detail in the period between 2017-2020. From 2021 and beyond, the beginning of International activities started being discussed at formal Cabinet, and was the precursor to the incorporation of NEHL and subsequently NICL.

1.7 The remit of the audit committee TOR questions is focussed on the **'how'** and the **'what'** and not the **'who'**. It is therefore **not** a report which is seeking to attribute individual blame. The main purpose of the investigation is to help the Council better understand how it found itself in this situation and importantly, what needs to be in place to prevent it from happening again in the future.

1.8 I received a lot of comments from a number of individuals which were very subjective, which I have not included as this is an evidence-based report. Equally there has been a lot of information that I have received that wasn't relevant to the specific questions and remit of this review, which I have also not used.

1.9 This report refers to the Governance and Best Value report authored by Max Caller CBE, received and accepted by NCC in June 2022. That particular report looked at much wider issues of poor governance across the organisation, but broadly concluded that (1.6`), *'the Council needed to put aside its internal conflicts and to develop a culture change across the whole organisation to make this happen'*. To look at the work of International in isolation of the context that was happening across the wider organisation would have been a mistake.

1.10 I interviewed over 20 individuals who ranged from past and present staff and/or councillors, as well as several senior NHS Trust staff, as well as the external auditor. I sent a written summary of each conversation to each individual who took part in this investigation, in order for any corrections to be made. I then cross-checked these comments related to each question, to any supporting documentation that was available or was sent to me. Whilst drafting the report, I followed up with some individuals with any clarification questions, where there may have been gaps in information, or supportive documentation available. Finally, as part of the voluntary terms of engagement with those individuals who were interviewed, due to legal Maxwellisation issues I was later formally made aware of which further delayed the process, were sent some excerpts of the report that may have identified them and/or could be seen as critical of them. They then had the opportunity to respond accordingly. Following the various responses received, I then made further accuracy changes and amendments to highlight in particular, the **'lessons learnt'** aspects that

needed to be brought out more in the final report. The final report sets out executive summary and conclusions, followed by an overview of the lessons learnt and any further recommendations going forwards. The report also sets out the more detailed responses which I have tried to summarise for each of the 10 TOR questions set out by the audit committee, referred to in (1.1).

1.11 Finally, I would like to take this opportunity to put on record my particular thanks to Sally Plant the Executive Director of Finance and Section 151 Officer's PA, who has been extremely helpful in sorting out diary appointments and any other support or information when required.

Disclaimer.

1.12 The remit of this report is **not** to comment on the Section 114/114A report, which followed the identification of unlawful expenditure outlined in June 2022. Nigel Giffin KC, provided the legal analysis supporting the judgements reached by the current Chief Finance and s151 Officer, Jan Willis, as part of that work. Furthermore, it does **not** seek to attribute any individual blame or responsibility for actions or omissions that may have taken place during this time.

1.13 For the avoidance of doubt, it is important to note that all comments I had received in their entirety cannot realistically be included in my report. For the purposes of my specific remit, I have tried to report factual information which has been supported by documentary evidence. Where applicable, I have also tried to comment upon the context that was prevalent across the organisation at the time under investigation. I am not at liberty to report on information which might be deemed as subjective, speculative, hearsay, or of a personal bias. Although it is an 'evidenced based' report, it needs to be stated that due to the poor governance that was taking place at the time, some conclusions that have had to be finally drawn are as much through a lack of evidence, rather than evidence supporting it.

2. Executive Summary/Conclusions.

2.1 The committee will be aware of the challenges and shortcomings highlighted by the 'Caller Report' which followed the issuing of the s114 report by the s151 Officer just over a year ago. Nevertheless, the Council should be credited for recognising that this was an area of concern that was identified in the 'Caller Report' that needed further investigation. The intention of this report will help to identify where things went wrong, but importantly what needs to be in place to help mitigate the chances of this from happening again in the future. It has been over a year since that report was received and accepted by the Council, but they need to be complimented that a number of the recommendations I have identified in this report, have already been implemented as operational good practice going forwards.

2.2 The 'Caller Report' published in June 2022 highlighted (9.1), '*an organisation that was operating in a dysfunctional way with the behaviours and practices observed and documented falling well below good or acceptable practice and are preventing the effective transaction of business*'. It is rare for the sort of issues that have been

identified in International, to be the fault of just one or two individuals. It was clear that there was a wider organisational and negative operating culture in place.

2.3 The evidence supports that International was seen as an opportunity to generate a positive income stream into the Council. This started off as a clinically led Trust initiative, although some 'twin-hatted' officers did initially seem to have had an involvement, at least in relation to their Trust responsibilities. There were no 'formal' arrangements put in place at the outset of this venture in 2016, as in the early stages, it was mainly more of a Trust initiative. A number of staff were then appointed into a joint International team away from their normal substantive role. It should be stressed that on the evidence that I have seen, many of these staff should be complimented on some very good work undertaken in trying to support this initiative. The work required the International team to be proactive and 'fleet of foot'. However, this doesn't mean that public money could be spent without due regard to public decision making and proper formal governance oversight.

2.4 The work of International was never set up on solid foundations. A number of cost centres were initially created that covered a range of the work of International. The first one was created in March 2017, which covered a range of staffing costs and contained a range of admin support costs, such as telephone, printing and stationery. Further cost centres were created later on for some specific contracts/projects. It should be noted that cost centres are really no more than budget allocations and not proper management trading accounts. There were no formal SLA's or time recording systems in place and trading accounts were not maintained or reported on a full cost absorption basis, (which attempts to identify all the costs associated with supporting this work), making it virtually impossible to accurately track overall trading profit. Any cost allocations were always looking back retrospectively and were not contemporaneous, (which reflects real time accounting). This created a lack of transparency and agreement regarding what charges and costs should be apportioned to any International work going forwards.

2.5 In most of my discussions, both officers and members I spoke to, talked about the "*increasing toxic environment*" it felt like to be working in. The poor behaviours across the whole Council during periods of International work contributed to a high turnover of statutory officers in particular. This in turn, meant that there was an absence of any consistent 'formal' input from the statutory officers, thereby creating a vacuum of any corporate memory upon handover from one officer to the next. From 2017 until the time of writing this report, the Council had 8 different s151 Officers in post, involving 6 different individuals.

2.6 Looking back at the beginning of the International journey, with all eyes on budget setting and reducing costs, the role of assurance and critical friend/challenge becomes even more meaningful as every pound is squeezed. The evidence supports that in the first couple of years of this work, a number of members '*assumed*' proper governance was in place. More 'formal' detailed questioning should have taken place at a much earlier stage. Repeated comments I heard throughout this investigation by different individuals were "*I assumed that the proper governance had already been carried out*" and "*I felt that we did have checks and balances in the organisation, but we just didn't bother to follow them*". In my

conversation with members, a number of them realised that initially they too readily accepted the verbal assurances that officers were giving.

2.7 However, it is recognised that although members cannot initially be expected to know the legal and financial requirements and regulations, they might have asked more searching questions as set out in (3.2.25). Apart from the issue of legality of this work, perhaps most importantly, “is this a business that we should be in and would it help to support our strategic priorities and corporate ambition as a Council, or would it be a distraction?”. I have been advised that many questions were being verbally asked at an earlier stage, but I have only seen evidence of the first written questions commencing from September 2019. A number of members I spoke to said that their questions were often rebuffed, or were told by officers that everything was going well. This fundamental information was not being offered up to members in any ‘formal’ forum, by the professional officers responsible for the project from the outset. This meant that the work of International was kept away from the normal processes of further internal challenge and scrutiny. A recurring theme from many of the interviewees was that the International business was operating within an environment where constructive challenge was discouraged. As a result, potential increasing risks and the effectiveness of internal checks and balances was eroded.

2.8 From 2019 onwards, the evidence supports that the Leader of the Council and the portfolio holder for finance did begin to ask more probing questions, but these reasonable requests for additional information appear to have been dismissed by some officers and the information was not provided in the manner and speed that members were anticipating. As a result, members felt deprived of the information they needed to carry out their role effectively.

2.9 This report highlights a continuing theme of poor and/or inappropriate governance. From the member perspective, there was a continual pattern of having *informal* Cabinet meetings, which are in effect ‘*informal briefings*’. This is not a decision taking body. It offers no transparency or opportunity for public scrutiny or basis for the overview, scrutiny or audit functions of the Council to review or interrogate the information. This resulted in inadequate formal governance arrangements, such as the lack of opportunity for the s151 and Monitoring Officers to give their formal advice for members to consider; wider internal checks and balances being constrained, reflecting an overall weakness in the Council’s ‘control environment’, thereby diminishing transparency.

2.10 This meant that some officers believed that ‘decisions were taken/approved’ which in fact are not decisions, but were treated as if they were. Furthermore, the continual *informal* nature of such meetings and the minimalistic minuting of such meetings were often not properly formulated or recorded. These shortcomings created an environment where officers took decisions without being properly bound to follow a more formal and transparent route of governance. It diminished transparency, blurred accountability and created an element of uncertainty. This resulted in a lack of recording of the ‘single version of the truth’, including if any decision was actually agreed at all.

2.11 I have seen a number of risk registers which were occasionally presented to *informal* Cabinet briefings, with a number of these reflecting some medium and high-risk categories. However, in my conversations with several members, they were of the belief that it was of lower risk due to the payments being structured to ensure that the Council was never in a position where it was not recovering its costs and the incremental approach to future contracts being won. Due to the poor internal governance across the Council, this meant that the work of International was not picked up as a potential risk area at a level that audit should have overseen, until much later in the journey. Fundamentally, it seemed that members didn't really understand the risks potentially involved. Insufficient consideration was given to the nature of the partnerships and the challenges of working with such a range of different organisations in different countries, all bringing a layer of complex structures to navigate. From the outset, the work of International was never a focus for internal audit, and did not feature on the Council's corporate risk register, so was not on the radar of audit committee to investigate. Furthermore, there is no evidence that I have seen that the Council's internal audit function was instructed to examine any aspect of the International business.

2.12 Members do not appear to have been aware of increasing concerns on the part of the Trust Board about the financial viability of the business and the associated risks. This culminated in a Trust Board decision in September 2018 to withdraw from the 50:50 commercial arrangement with the Council and to replace it with an overarching co-operation agreement. This meant that the Trust would no longer contribute to business development costs and the Council would take the lead in future contracting. The evidence supports that the significance of this change in risk profile was not fully understood by members, or more formally within the wider Council operation, thereby missing a further opportunity to pause and reflect.

2.13 It would have been expected that an organisation about to enter into a range of multi-million-pound deals with an established strategic partner, would have regular diarised and minuted strategic governance meetings taking place. There was no evidence that I have seen of any 'regular' strategic meetings with the Trust between councillors and the Trust Board. I was informed that when they were held, they were very sporadic and were regularly cancelled at the last minute. This would have been another opportunity for councillors and senior Trust Board members to pause, reflect and seek independent assurance if need be.

2.14 For a local authority, the 'control environment' is a system of internal controls, backed up by legal and professional frameworks. In the case of the International programme for example, frameworks such as the Accounts and Audit Regulations 2015 and the role of the s151 Officer (CIPFA) are very important. The wider system of internal controls is provided through such functions as internal audit, risk management, including reporting against performance indicators. Furthermore, there are other external oversight regimes such as external audit, Ofsted and other less formal channels such as peer reviews to provide evidence and confidence that the authority is working well. The formal internal checks and balances that one would expect to see, which would have provided challenge and possibly prevented this situation from arising were either weak or wholly absent. As a result, the actions taken by officers were never subject to any meaningful challenge or formal oversight.

2.15 There were a number of contracts that the Council entered into, where the value of them exceeded £500k, which in most local authorities is deemed as significant. Regulation 8 of the local authorities (Executive Arrangements) Meetings and access to Information England regulation 2012 defines a 'key decision' as '*an executive decision which is likely to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates*'. Therefore, any decision that would 'trip' this level should be on the Council's forward plan, or dealt with under the urgency procedures in the regulations, which normally requires giving notice to the chair of the appropriate scrutiny committee.

2.16 In the case of International activities, this is a grey area as the 'value' of the contracts were related to potential income to the authority in return for providing services such as feasibility studies, assessing clinical needs and developing master plans etc. I have not been able to substantiate what was in place within the Council's Constitution at the time but it seems highly likely that there was no specific financial limit in place, meaning that officers would have felt that there were acting within the policy in place at that time.

2.17 A critical issue I found in this investigation was that the Monitoring Officer at the time was structurally operating at 3rd tier level, reporting to a director or corporate director. This meant that they were 'perceived' by the rest of the organisation, including staff later appointed into the International team, to have little influence over some key decisions that came later on. This further lack of understanding of the important role the Monitoring Officer had, didn't help in this regard. Whilst the role of the s151 Officer is well defined in law in accounting standards, that is not the case for the role of the Monitoring Officer, where only a small part of the remit - a reporting duty on unlawful activity, is set out in law. This lack of clarity and importance of such a role, coupled with a number of officers filling the absence of the Monitoring Officer for a period of time, would not have helped the 'control environment' referred to earlier.

2.18 The role of the s151 and Monitoring Officers should have been critical in the development of work such as what International offered. However, for whatever reason they were not as close to this work as they should have been. For example, they were not formal members or attendees of the International officer group. From the range of information, I have seen, there is no evidence to support that they received invites to, or received completed minutes of the officer International meetings. Furthermore, I have seen no evidence of any formal written legal instructions being given by the Monitoring Officer to gain any external legal advice, for example concerning compliance with the requirements of the 2011 Localism Act. Nevertheless, there is evidence of involvement of the Monitoring Officer, and the various s151 Officers in post at that time, in several aspects of this work along its journey.

2.19 In all Councils, the three statutory officers of Head of Paid Service, (Chief Executive); Chief Finance Officer or (Section 151 Officer) and the Monitoring Officer have a key statutory role to help ensure good governance. In order to discharge this responsibility, all three must work together and freely share information. In the case

of the international business, it does not appear that this happened. The continual changes of personnel in a number of these posts during this period of time, didn't help to develop a supportive formal governance foundation to build from. Proper governance would have ensured that the light of audit and scrutiny was shining brightly throughout.

2.20 A number of senior staff were from an NHS background where governance is dealt with very differently and operates within a different legal and regulatory framework. This issue was referred to in the recent 'Caller Report', but this issue is amplified when looking at the specific issues concerning International business. This lack of governance awareness and respecting and understanding the critical role of the elected members and decision-making fora was missing. This also translated into a number of joint posts where some senior officers had roles in both the Council and the Trust, which also blurred accountability. For example, one previous Chief Executive of the Council who was also the Council's s151 Officer, as well as also being the then Clinical Commissioning Group's (CCG's) Accountable Officer. The Deputy Chief Executive of the Council became the interim Chief Executive when the previous Chief Executive left the council in circa June 2017. At this time, the interim Chief Executive of NCC was also the Executive Director of Community Services for the Trust. Further down the organisation, there were also a number of joint commissioning posts. Whilst this at one level, demonstrated good integration, it also presented an opportunity for confusion and/or conflict of role, both for the individual themselves and to others either reporting to them, or to members working with them.

2.21 This situation developed an environment where the training, development and support of senior officers and members in particular was not regarded as a priority. Through my discussions, it seemed that the member and officer training development programme tended to focus upon induction to basic operational functions of the Council. From the member perspective, this tended to run for the first few months following an election. The programmes tended to be generic and high-level briefing sessions on quite broad-brush topic areas and was voluntarily attended. The absence of such a training programme, together with from the member perspective, inadequate responses to questions by officer's, created an inhibiting environment across the Council.

2.22 In the early stages of this work, the only good 'formal governance' that was taking place was within the Trust, which was verbalised informally to members by officers. From late 2018 onwards, it seemed clear that discussions were taking place about the need to establish a company structure. This was not actioned sooner for a number of possible reasons. Some explanations offered, including distraction with other internal Council company operations; national high-profile challenges regarding some authorities which led to a Grant Thornton Public Interest report; and in particular the commencement of the COVID pandemic. However, none appear to adequately explain why basic governance arrangements, such as the formation of a company, or the creation of a contemporaneous set of trading accounts had not taken place much earlier.

2.23 From the evidence and triangulated strength and weight of opinion, a major contributing factor in addition to the above issues, was the complete breakdown in

relationships and erosion of trust and confidence between some senior officers and executive members across the Council during 2019 and beyond. The 'Caller Report' again picked this up in more detail, but the frequent accusations of bullying and other such personal conflicts just helped to fuel an unworkable environment. This is an impossible situation for anybody to tolerate. This created an environment where Cabinet members were 'formally' asking a range of challenging questions about the venture, although late in proceedings, and responses that were being given were not at a level which satisfied them. This in turn resulted in more questions and more delay going forwards. It is clear that there has to be trust and confidence between councillors and officers and in particular statutory officers to uphold their relevant duties and inform councillors of the correct procedures going forwards. Due to the environment described earlier, it is evident that this trust was missing.

2.24 Finally, it is well known that looking back in the cold light of hindsight is relatively easy. The words of Anthony Hidden, the QC who investigated the Clapham Junction rail disaster in 1988 said, "*There is almost no human action or decision that cannot be made to look flawed and less sensible in the misleading light of hindsight*". We need to continually remind ourselves of this comment, before rushing to judgement on individuals making decisions in complex and testing circumstances.

Key Lessons Learnt/Recommendations.

(i) Governance Gateway/Transparency

Issues - *i) The continuing nature of informal Cabinet meetings created a lack of transparency regarding the activities of International to the wider set of members across the Council. Informal Cabinet is not a decision taking body. Had there been regular reports to formal Cabinet, then this would have required the s151 and Monitoring officer to have given formal advice, enabling the audit and scrutiny committees to perform their relevant assurance roles much earlier.*

ii) A formalised internal process for supporting or challenging the development of any potential new opportunity or business idea was absent.

2.25 Prior to any pre trading activities taking place, there should be a 'gateway process' where potential commercial ideas are presented to a Council formulated committee/board. This would present the opportunity to discuss the idea that is being formulated and agree any potential start-up costs if applicable. It is up to NCC to decide on the best format that this would look like, but in most cases, it would initially be presented to an officer-based group, (which should include the MO and s151 and/or their representatives), who would 'vet' the proposals and risks being presented, against the backdrop of an agreed set of different criteria. There may for example be a request to apply for support funding or start-up costs, but again this would be agreed and overseen by this group. This could be undertaken via a supplementary estimate, where agreed changes could be supported (within specific criteria), to reallocate, reduce or increase funding associated with this initiative. If this officer group believed that it met these criteria and it could trigger trading activity, then it should be presented to a joint member/officer-based board or committee, where consideration of any particular company formulation is agreed. In a number of

authorities, this is normally the shareholder committee, which could be a sub-committee of the Cabinet. It would be this sub-committee that would have responsibility to look at all the Council's shareholding activities; examination of company contracts; relevant appointments; business plans etc. This would give a clear line of sight to activities that are being planned, in action and even potentially being formulated.

2.26. A process of regular formal reporting should be developed on the performance of trading activities including any management accounts, which should be brought to Cabinet on a regular basis. Any financial information should be signed off by the s151 Officer. With regards to trading 'companies', the formulation of regular reporting should be made to the Cabinet shareholder committee, (see (2.25)).

2.27 There is some helpful support guidance information regarding developing company infrastructure, including The Local Authority Owned Companies Good Practice Guide produced by CIPFA in 2022, and the Local authority Company Guide published in September 2021 by Local Partnerships. This can help you test the range of issues against good practice going forwards if after undertaken the above practices it is decided that the most appropriate vehicle to achieve the outcome you are seeking is to set up a company, (see link below).

[local authority company review guidance](#)

(ii) Audit, Scrutiny, & External Challenge

Issues - *i) From the outset, International business was not on the corporate risk register, resulting in an inability for audit or scrutiny to review or interrogate the information.*

ii) The various risk registers were not formally picked up by internal audit, thereby preventing further independent evaluation of these risks. As a result, their internal annual planning process was flawed.

2.28 The Chief Internal Auditor should meet every director across the Council on a bi-annual basis to understand operational challenges and concerns, with a view to ensure the Chief Auditor's annual plan is robust. The outcome of the summary formulated from these meetings should then be initially presented to the meeting of the 3 statutory officers (see 2.46).

2.29 The Council's audit committee should gain feedback from all members of the Council on an annual basis, as to what they believe should be on the Chief Internal Officer's annual audit plan. This will allow the ability to listen to concerns that are being picked up by all members and could help respond to issues that officers may not have presented to them for consideration.

2.30 The Council should seek independent assurance that commercial risks are being evaluated and recorded on the strategic risk register. This should also ensure that the internal audit planning process is fit for purpose. To further support this process, the Monitoring Officer should maintain a register of all commercial trading activities going forwards and give assurance that such activities are lawful.

2.31 Consideration should be given to expanding your Risk Approval Panels terms of reference, as a vehicle to evaluate future potential trading propositions and advice to the shareholder committee going forwards.

2.32 The Council could also utilise the support of the national programme for Chairs of Audit and Scrutiny, via the national centre for Governance and Scrutiny, who are well placed to be able to advise them on initiatives, training support and latest thinking going forwards.

(iii) Decision making and Member Support

Issues - *i) Some members felt they were being ignored and were not receiving adequate information to their questions in some informal meetings.*

ii) There was an absence of formal reporting and decision making

2.33 A range of options are available to help address this, such as: - ensuring requests are put in writing; document your concerns even in informal settings when/where applicable, to demonstrate formal inquisitive enquiry; awareness raising with their relevant Group Leader; Political Peer mentoring and training and awareness raising by the LGA; formal requests/enquiries to the 3 statutory officers see (2.45). They could reach out to gain support from their own regional/national political group. Furthermore, this issue would have been greatly mitigated if the governance and gateway recommendations, set out in (2.25) above were enacted.

2.34 That each Cabinet member has a personal development plan as part of their annual review process with the Leader, which will help address areas of legislation or training development gaps that need to be covered going forwards.

2.35 There needs to be a review of member training that is undertaken. Some of this could be more bespoke going forwards. For example, any new members and/or Cabinet members, including understanding company legislation. Ensuring that 'if establishing a company is the best vehicle for undertaking particular activities, that there is a detailed analysis on issues such as ensuring there are regular timescales to review the memorandum of understanding; company law; role of the shareholder board; appointment of directors; powers of subsidiaries; ensure the board make-up has critical friends/NED's on it from outside the organisation who understand the ethos of local government and the public sector, public interest and duty of best value etc.

2.36 There needs to be a continual monitoring of the Council's Constitution to ensure that it picks up issues regarding schemes of delegation and levels of authorisation. Alongside this work, the s151 should undertake an analysis of financial and procedural rules around commercial trading authority, as well as any schemes of delegation for approval of contracts of this type.

2.37 The Monitoring Officer should issue formal advice setting out clear principles of decision making. This advice should include requirements for recording of decisions taken by officers under delegated authority.

2.38 The Monitoring Officer should issue formal advice on members' rights to information and act as an escalation point for members in the circumstances when they are unable to obtain information they are entitled to.

2.39 The Monitoring Officer should look to tighten up the arrangements for the commissioning of any external legal advice and should be the key statutory officer to formally request/sign off any external legal instructions, with a copy retained by the legal team.

2.40 Establish a programme of regular Cabinet/senior officer away days to ensure that there is cohesion and alignment and positive relationship building between the senior officer and members group going forwards. This will help to build a positive alignment between members and officers regarding vision, culture, policy support, internal communications and expected behaviours across the organisation.

(iv) Staffing, Policy and Training Support

Issues - i) *There was a lack of accountability and blurred responsibilities through the number of joint posts through staff being appointed into a joint International team away from their normal substantive role.*

ii) *The cost centres that were developed were administered on a retrospective cost allocation basis.*

iii) *There was a lack of understanding of key government legislation such as the 2011 Localism Act.*

iv) *Complaints and whistle-blowing was prevalent for much of the time International was in operation, which didn't seem to be properly addressed.*

2.41 The s151 should issue guidance on accounting and financial management requirements for all commercial trading activities. Once agreement that internal support services are to be provided, then these should be established and agreed through formal SLA's.

2.42 Upon the establishment of any future cross-council officer working group, any officers deployed to that group keep written records of correspondence with their director and/or statutory officer. Furthermore, minutes of meetings of cross-council groups are shared appropriately, including the statutory officers, which are available to be discussed at their monthly meetings (see 2.46).

2.43 There is a comprehensive review of officer training to ensure that is tailored to role, responsibility and risk, especially around government legislation. This should cover key issues such as the importance of the Council Constitution; authorities regarding decision making; the difference between *informal* Cabinet and *formal* Cabinet; the critical role of members in the governance framework of local government; the role of audit and scrutiny etc. This should also include understanding key national policies such as the 2011 Localism Act for example. It should also specifically include the key 'formal roles' that the s151 and Monitoring Officer have in ensuring good governance. The statutory officers or their representatives, need to be part of giving this initial training, thereby giving a clear demonstration of their important role within the organisation.

2.44 Examination and continual review of the reporting structure of the Chief Internal Auditor is undertaken, where 'good practice' is normally where they formally report to the s151, but has unfettered access to the Chief Executive, but is not a formal member of the managerial executive team, to help ensure that impartiality and independence is maintained.

2.45 There is a review of the number of 'joint posts' across the organisation, to ensure there is clarity of role, function and accountability. This will assist in establishing where any conflicts of interests may arise. These will need to be clarified and supported by appropriate training where applicable.

(v) Statutory Officers

Issues - i) *There was a high turnover of statutory officers.*

ii) There was a lack of formal 'sign off' by the statutory officers on a number of International initiatives. This included, the formulation of written instructions for external legal advice and the establishment of any contemporaneous trading accounts.

iii) The Monitoring Officer at the time was structurally operating at 3rd tier level.

2.46 In addition to the 'control environment' referred to earlier, the three statutory officers should work together and meet formally on a circa monthly basis, to form what is known as the 'golden triangle'. They need to ensure the effective running of the organisation so that the law, constitution and agreed policies are upheld and that information and appropriate democratic transparency is upheld. It would act as a forum for checking concerns, and any issues with each other to help mitigate any key areas of debate or evolving practice across the organisation that needs to be picked up via a more formal route. This officer group would continually 'test' if anything should be escalated to more formal proceedings going forwards, followed by appropriate formulation of actions.

2.47 When any statutory officers believe they are not being listened to, they need to be aware that they have a range of options open to them including: - ensuring any formal advice is given in writing; formal written representation is given to the appropriate members and that they can reach outside of the Council to their professional bodies and/or the Local Government Association or Solace for example.

2.48 At the beginning of any initiative that was potentially involving significant amounts of both expenditure and/or income and involving a range of legal complexities, the Council's s151 and Monitoring Officer as statutory officers must 'sign off' any formal documentation/reports. Again, this could be picked up as part of the gateway process outlined in 2.25.

2.49 It is recommended that the Company Secretary should be line managed by the Monitoring Officer to ensure appropriate linkages with other legal operations is achieved on an ongoing basis.

(vi) Partnership Working/Joint ventures

Issues - i) *There was no evidence of any 'regular' strategic meetings with the Trust between councillors and the Trust Board. When they were held, they were very sporadic and were regularly cancelled at the last minute. This would have been*

another opportunity for councillors and senior Trust Board members to establish a framework of scrutiny and governance and to share intelligence and concerns.

2.50 Where there is a likelihood of working in partnership with a key strategic organisation and/or the formulation of a joint venture, the establishment of a minimum of formally minuted bi-monthly executive meetings should be held, including Cabinet members and the equivalent non-executive board members where applicable. This should also include the sharing of 'governance intelligence'.

***Note**

- **It should be highlighted, that during the course of completing this investigation, the Council has started to formulate a formal governance process that pick up a number of these issues and recommendations set out from 2.25 - 2.50 above. This is supported by a number of Cabinet reports in late 2022 and in April 2023 which sets this out in more specific detail.**

- **Finally, the audit Committee need to set out timescales for the delivery and the financial resources required to undertake the development and support of these recommendations going forwards, including an initial 6 monthly monitoring of these going forwards.**

3. Detailed Analysis of the Key Questions.

- 1. What was the original basis of the agreement to participate with Northumbria Healthcare Foundation Trust in the Northumbria International Alliance in 2016? Who authorised this?**

3.1.1 The work between Northumberland County Council (NCC) and the Northumbria Healthcare Trust (NHCT), started back in 2011 with integrated working and a partnership agreement specifically around health and social care. This helped to support operational practice regarding ongoing integration particularly regarding adult social care.

3.1.2 A report went to the Trust Board in October 2015, which set out the International commercial strategy for discussion, which included issues such as core principles for engagement in any International commercial work; the emerging market; potential product offers and management processes and governance. In terms of governance, an International Steering Group was established which had a range of Trust officers on it. The evidence points to this being a solely Trust initiative with no formal Council input at this point in time, although some 'twin-hatted' officers did seem to initially have had an involvement, at least in relation to their Trust responsibilities.

3.1.3 In September 2016 NHCT along with a number of other NHS Trusts, were invited by UKTI (now Department of Trade) to consider exporting their models of Healthcare. This was mainly Acute Hospital systems information, and they were also being offered opportunities to bid for work overseas to manage Hospitals. Looking back at various government web-sites at that time, it was evident that there was a lot of International activity being debated nationally at that time, heavily driven by Healthcare UK. The initial 'drive' for the establishment of NIA came from the Trust being seen as a national 'Vanguard area', as a national NHS initiative supported by the UKTI at that time, to develop new Integrated Care Partnerships. Due to the number of joint senior post holders, the opportunity to involve NCC in these developments to formulate the NIA, which in turn became the 'flagship of opportunity', going forwards was quickly developed.

3.1.4 An article in the 'Healthcare Leader' in July 2017, stated that Northumberland was awarded 'Vanguard status' in early 2015 to form a Primary and Acute Care System (PACS). The County Council and Clinical Commissioning Group (CCG) were also co-located, which enabled relationships to develop positively. This Vanguard status was even supported by some specific one-off funding by UKTI at this time as well. The Trust were approached along with other organisations during 2016, about a specific opportunity in India, where the client was looking for an Integrated Care provider to support them in this context.

3.1.5 Integrated working over the 5 years or so prior to this, was seen nationally as a key driver for local government going forwards. It is well known that the highest spend within local government is related to supporting vulnerable children and adults, so developing a strong integrated way of working with health colleagues can only be viewed as a positive ambition. The Healthcare Leader article even went on to highlight the advantages of integrating the leadership, with the then Chief Executive of the Council also being the Accountable Officer of the CCG.

3.1.6 The Council's strength managerially at that time was that there were a large number of senior staff who were either jointly operating or funded with support from Northumbria NHS. Governance is dealt with very differently between the NHS and Local Government and has a different legal and regulatory framework. Whilst this demonstrated close integration, this can also be a weakness, when examining governance practices that didn't take place later on within NCC. This issue was referred to in the recent 'Caller Best Value Governance Report' in June 2022, but this issue is amplified when looking at the specific issues concerning International business.

3.1.7 In 2016, the Council's Chief Executive was not only the Accountable Officer of the CCG, but also the Council's Section 151 Officer. Whilst this in itself is not unlawful, it is not good practice. This position provides a lack of separation of responsibilities of functions between the Head of Paid Service as executive officer of the Council and the statutory duties of the s151 Officer. This is then further complicated, by needing to understandably protect the interests of the CCG, by also being their Accountable Officer at that time. The conflicts inherent in agreeing any form of joint financial arrangements between the Trust and NCC are obvious.

3.1.8 This growing interest became the pre-cursor to the establishment of the Northumbria International Alliance (NIA), which was formed around February 2017.

3.1.9 The first tangible piece of evidence or endorsement regarding the utilisation of the NIA, was set outside Alnwick Castle evidenced by a national publication on the 18th October 2016. This was the publicity signing of a Memorandum of Understanding (MOU), with a leading Indian Healthcare provider Indo UK Healthcare PVT Ltd (IUHP), to share expertise in Integrated Care. This was signed on the Council's behalf by the then Chief Executive and s151 Officer, on the 29th September 2016, as well as the Trust's Chairman.

3.1.10 The Trust in particular now saw some excellent development opportunities. Equally, NCC saw an opportunity to be a part of this initiative with a view to generate income which could be generated back into the Council to help support services across the Council, in particular social care.

3.1.11 In January 2017 there is a public record of the signing of an MOU for the provision of services in hospitals in China. The MOU was signed by the then Trust and NCC Chief Executives, with the article published in the Hexham Courant on the 24th January 2017.

3.1.12 These developments and opportunities encouraged both partners to develop a joint Director role who would be able to help both organisations capitalise on future International developments. A Director of International Projects and System Transformation post, was created and formally approved at Full Council on the 22nd February 2017 (minute 82).

3.1.13 Whilst this role had a key focus upon International work, the post holder had a wider expansive role, for example they were also responsible for transformation work and wider business development work across the Council. The post holder commenced their role in April 2017, just one month before there was an all-out election that changed the administration from Labour to Conservative.

3.1.14 In summary, formal approval was never given by members, with the then exploratory initiative supported by the Chief Executive at that time. NIA was not a legal entity in its own right, but more of an intent to positively work together in a 'spirit of endeavour', rather than via a formal contract. It was more of a 'go to market model' initiative and brand to explore future opportunities.

2. What arrangements were put in place at the outset of the venture in 2016 and prior to the commencement of trading to ensure that there was

proper oversight and governance and that the Council's interests were protected including technical due diligence, money laundering checks and risk management?

3.2.1 The responses given to question 1 sets out much of what was in place prior to 2017. There were no 'formal' arrangements put in place at the outset of this venture in 2016, as in the early stages, it was mainly more of a Trust initiative. Following the election in May 2017, there was a presentation by the new Director of International to both the Trust's Finance, Investment and Performance Board (FIP) and to the Council's *informal* Cabinet. This took place in July 2017 and in September 2017 to consider a detailed 5-year strategy for the Trust to develop the International programme. There is evidence of a 287-slide deck presentation which set out how the Northumbria Partnership will operate in the short, medium and long term, alongside what the Northumbria Partnership's vision is, the intended priorities and critically, areas to be focused upon. It also set out the UK Government approach to exporting Healthcare, and formed the basis of the 17/18 business plan for 'The Northumbria Partnership'. It also set out a financial pipeline of achieving £100m total contract value in 5 years.

3.2.2 The presentation was to update the Trust and Cabinet members on progress to date, and the intention for further discussion to be held with the NHCFT Board and NCC Cabinet. This presentation highlighted the intention of this work was to operate commercially and create an ongoing large-scale income stream from International activities for both organisations going forwards.

3.2.3 Within this strategy, there was a slide which set out a governance reporting structure. I have seen a variety of iterations of this over the first couple of years of International operation. The clear intention was to have an International Executive Committee which involved senior officers from both organisations, as well as a NED from the Trust and an NCC Cabinet member. This committee would then report to the Trust Board and Council's Cabinet respectively.

3.2.4 Although it was set out as a good intention, unfortunately, from the Council perspective, there is no evidence I have seen to confirm that this International reporting structure was followed through and involved any NCC Members, other than via the *informal* Cabinet route. Below this group, there was an International operational group which involved senior officers from both organisations. This group soon became the driving force of future International work. In both examples, the end result was that the group overseeing the day-to-day work of International going forwards was primarily officer based.

3.2.5 There is evidence of a paper considered by the Trust's audit committee on the 7th September 2018 which stated in one section, *'there is robust governance in place that has been approved by NHCFT Board and NCC'*. This could not have been given by 'formal Cabinet' at that time, as they only received the first report on International activities in February 2021, through the formulation of NICL.

3.2.6 The new Director of International Projects and System Transformation then helped to generate momentum to support the delivery of this work going forwards. A

number of officers from across the Trust and the Council were appointed into a joint International team in circa June 2017, called an International Executive Committee. Some staff who were involved from the Council were also legally qualified and they were supported in giving legal contractual and procurement advice, some of it gained from different internal Legal and contractual officers at various times. The majority of the officers in this very early period on the standing group of membership, were from the Trust. The financial officer involved in this work was also an officer from the Trust. I have been advised that the Council's s151 and Monitoring Officers occasionally attended such meetings. The evidence I have seen of a number of the minutes of different meetings, have not shown their attendance to such meetings, or that they were standing members of either of these groups, or received information directly from the group. It needs to be stressed though that this does not mean that they were not aware of some of the activities that were taking place at the time. Both statutory post holders whilst in post, had the right to require information on the project but the continual turnover of such posts, made this challenging. Equally, it is also recognised that the culture of the organisation during this time does not appear to have included the proper flow of information to these officers.

3.2.7 There is evidence of a number of emails over a period of time from officers appointed into this International team that had a range of titles, such as International Chief Operating Officer; International Project Support Officer and Head of International Business Development and Project Delivery. To an external audience, these titles would have given a perception of authority and status.

3.2.8 There was some very good due diligence work undertaken by a number of appointed officers in this team. This information covered a large range of issues, such as gathering Embassy support and intelligence; where is it safe to work; where is there support from DIT via a government initiative or policy; value of risk and best return on investment; major banks being asked to undertake money laundering diligence on an individual(s), and/or a company by way of a know your customer (KYC) process; net worth checks; checks on the various contracting parties involved; latest accounts; comprehensive risk assessments were regularly produced and shared; registered office and registration details; date the company was incorporated; nature of business; previous names; year-end report; business size risk; information about the directors; assets; reputation; competitors; work undertaken in the healthcare market; financial health; associated publicity links etc.

3.2.9 A number of cost centres were created that covered a range of International work. The first one was created in March 2017, which initially covered some staffing costs, called the 'Service Development Team'. It contained a range of admin support costs, such as telephone, printing and stationery. Further cost centres were created later on for some specific contracts/projects.

3.2.10 In some of the conversations I had, some individual staff members from the Council who were appointed into this International team, felt that they were operating with support of the Council's statutory officers, although this could not be formally part of their remit. For example, some of the officers involved in this team were legally qualified and were having some legal input to this work, but this is not the same as being the Monitoring Officer. They commented to me that they checked

issues with the Council's Monitoring Officer, as some of them worked physically in the same office. I did not see any evidence of any written proof of correspondence regarding any requests however. There is written evidence of advice and support given to some International officers from NCC contracts and procurement Lawyers, based in the legal services team.

3.2.11 In the early development of this work, the evidence shows some good officer work preparing the ground for such initiatives to take place, due to this type of work being opportunity based and bid responsive. Due to the informal nature of these debates, the governance around this has always been undertaken away from formal scrutiny and correct governance in the local authority environment. It was felt by officers involved in the International team that they needed to move at pace, as it was an environment and a venture where opportunities had to be quickly followed up. I have not seen any evidence of any s151 or Monitoring Officers 'formally signing off' of any due diligence work, but were clearly involved at various times as the International work was being developed.

3.2.12 A comment I regularly heard in my various interviews, was that "*it felt like there was a continual revolving door of statutory officers*". This resulted in little hand-over from one officer to the next, reducing any corporate memory and/or consistent involvement of these officers in any of these activities. From 2017 until the time of writing this report, the Council has had 8 different S151 officers in post, (involving 6 different individuals).

3.2.13 The evidence supports that officers were regularly briefing Cabinet members *informally* regarding International business, which occasionally included risk registers. I have seen a number of risk registers as part of the supporting documentation, which did highlight some medium and some high-risk areas. However, in my conversations with some members, they believed it to be of a lower risk due to the ways the funding model was prepared and there being an incremental approach to future awarding of contracts. Due to the fact that up until February 2021, these Cabinet briefings were always held *informally*, it has been virtually impossible to confirm what report was actually presented and/or discussed or agreed at some *informal* Cabinet briefings. I have seen a number of *informal* Cabinet briefing reports and minutes following such meetings where these were available. Some of the minutes of the meetings that may have been made are quite minimalistic and impossible to audit. For example, 'the report was noted'.

3.2.14 There were a number of events where a number of Cabinet members attended and supported a range of International initiatives. For example, the regular hosting over the years of several foreign potential partners, including a formal launch and an MOU signed by the then Leader of Council at the House of Lords in June 2018. It would be fair to assume because of these events, that *informally*, Cabinet supported the work of International and the proposed strategy presented to them.

3.2.15 From several discussions that I had with a number of different individuals I spoke to during this review, they had '*assumed*' that appropriate governance, due diligence and risk management practices had already been undertaken by either the previous administration and/or designated officers along the way. The Council's

Monitoring Officer at that time became a joint signatory to the first contract the Council signed on the 14th December 2017, with a hospital in the UAE, with a contract cost of £200k. It would be fair to assume that this action would have naturally given an indication to individuals involved in this work, that the Council were acting within the correct guidelines.

3.2.16 There is evidence of detailed risk registers being produced by International officers and occasionally shared at some *informal* Cabinet briefings. I have seen no evidence to show that the Chief Internal Auditor had this on their annual audit plan of risks (until much later in the programme), thereby preventing any formal audit or scrutiny. The Council's Risk Appraisal Panel was in existence then, but I believe that the oversight of commercial trading activities and any associated risks were not part of their TOR at that time. There is evidence that International work was included as a corporate risk, in the Risk Management Framework taken to audit committee in late 2020, approximately 2 years after trading was underway.

3.2.17 On the 13th March 2018, a Cabinet report approved a 2-year extension to the general Council/Trust partnership agreement for social care and health integration, which commenced in 2011. This seemed to be a relationship with the Trust that was seen as important enough to take a report to formal Cabinet.

3.2.18 The Monitoring Officer at the time was structurally operating at 3rd tier level, which meant that they were 'perceived' by others to have little influence over some key decisions that came later on. The relatively high number of joint posts, where staff had a strong NHS background, were also operating at various senior officer levels within the Council. The lack of understanding of the important role the Monitoring Officer had, was not well understood, due to this lack of awareness. There was an obvious lack of clarity and importance of such a role. This role later became 'shared' between a number of officers during the sick leave absence of the Monitoring Officer, which did not help the consistency of the ongoing 'control environment' within the Council.

3.2.19 A number of *informal* Cabinet meetings took place during 2018 regarding potential work with an organisation in China to provide consultancy services. Individual officers from the International team then undertook a range of due diligence checks, including the commissioning of a Hong Kong based Law firm who then undertook the work of reviewing, amending and negotiating where appropriate, any impending contract with this Chinese company, on the behalf of the Council. This work commissioned in early April 2018, was to seek waiver of any finance or contract rules and was signed by a number of statutory officers. A contract was then signed by the Chief Executive in April 2018, with a Chinese organisation for a contractual cost of £646,680. It was also at this time where a s151 officer was internally 'acting up' and waiting for the arrival of the new s151 who commenced in June 2018.

3.2.20 I was advised that the various statutory officers (whilst in post), were generally regular attendees of *informal* Cabinet briefings when International work was discussed. Again, due to the minutes of some *informal* Cabinet briefings being quite minimalistic and at times not produced, there is little evidence I have seen, to show what if any questions were asked by the statutory officers in these meetings, or any written formal advice given, if at all.

3.2.21 As previously mentioned, a number of members informed me that in the *informal* Cabinet briefings, many questions were being asked to different officers. It is unclear from any written evidence how much this was probed or followed up. From

the written evidence I have seen or been presented with, the first written requests from members regarding this issue did not start to take place until September 2019. I have not managed to see any written evidence until after this date, that members were 'formally insisting' that as the scale of activity was obviously increasing, that this should now be put on a more formal footing much earlier. This *informal* nature of engagement between officers and Members continued, until poor relationships escalated. The evidence indicates that the governance arrangements were overshadowed by the Council's determination that this initiative should be a success.

3.2.22 There is no written evidence that I have seen of any 'regular' strategic meetings with the Trust between Councillors and Trust Board members during any part of this relationship. I have been advised by senior Trust officers that historically there were regular partnership meetings, but this arrangement ceased when there was a change in administration. I have been informed that after the change in administration some meetings took place, but they were very sporadic and were regularly cancelled at the last minute. I have not sought to look for any evidence of this having taken place prior to 2017. This would have been another opportunity for councillors and senior Trust board members to share intelligence and concerns. I understand from senior Trust officers I spoke to that the failure to establish such a mechanism, was a major concern for the Northumbria Trust Board and a key driver for changing the arrangements.

3.2.23 In the first couple of years, the Trust were receiving International updates from the officer team via their Finance and Investment committee (FIP) and audit committees and the Council were receiving some via *informal* Cabinet. One of the governance framework examples stated in (3.2.3), was one presented in an *informal* Cabinet briefing in November 2018. The evidence and triangulated strength and weight of opinion, suggests that *informal* Cabinet were being advised that the Trust were receiving and/or endorsing much of this work, but this should never be a reason for the Council not to have to undertake their own internal/organisational governance and proper oversight.

3.2.24 The frequent changing of statutory officers and s151 officers in particular, meant they became involved in an inconsistent way, with little to no handover. One s151 officer went abroad to one of the fact-finding trips right at the beginning of their employment with the Council, as a way to get to understand the work involved and the potential financial opportunities available. Also, the Monitoring Officer at the time had signed various documentation regarding this work, as well as attending a number of *informal* Cabinet meetings when International work was discussed. As Monitoring Officer, it was their statutory duty to ensure that the law and statutory guidance were followed, although it is appreciated that the culture of the organisation during this time was a significant challenge and importantly, they were only operating at 3rd tier level. The status and important role of the Monitoring Officer was not understood or respected across the Council. The staff in the joint International team were helping with financial and legal matters, but for a variety of reasons, the various statutory officers were not as close to this as they should have been.

3.2.25 The evidence of the various presentations that I have seen were very detailed. Due to the nature of the work, they were quite aspirational and were largely based on anticipated projections of anticipated contractual income, which had been set out in the initial International plan. The payments were attempted to be structured to ensure that the Council was never in a position where it was not recovering its

costs and the incremental approach to future contracts being won. Some of the comments I received from some individuals I interviewed was that there was a lot of information they were receiving, but they found it hard to gain a simple response to some of the issues they were being presented with. Hindsight is an exact science, but perhaps some initial questions that needed to be formally asked by members at a much earlier stage and formally answered by officers include: -

- What is this about and what are we selling to whom?
- How have we done so far, eg. have any previous plans been delivered?
- Have we been paid for work done, as this could potentially be a big risk?
- What are the anticipated costs that are needed to support this venture?
- Have these costs and the operation of this work been agreed by the appropriate statutory officers?
- Is there evidence of commercial and financial drivers for this?
- Do we have legal powers to undertake this work?
- Do we currently have a loss or profit and, if a loss, when will it be recovered?
- Can we be confident that, over the medium term, we can deliver the plan and financial projections?
- Have we enough expertise/capacity to deliver future contracts?

3.2.26 Also importantly, “is this a business that we should be in and would it help to support our strategic priorities and corporate ambition as a Council, or would it be a distraction?”. I have been advised that many questions were being verbally asked at an earlier stage, including the portfolio holder for finance and the Leader at that time, but I have only seen evidence of the first written questions commencing from September 2019. However, neither is there evidence of this fundamental information being offered up to members in any ‘formal’ forum, by the senior professional officers responsible for the project

3.2.27 The new s151 officer who started in mid 2018 immediately became involved in the work of Advance Northumberland and the transfer of circa £300m of assets and liabilities from its predecessor. From the perspective of the s151, this was seen as more of a financial risk to the Council. At that time International was jointly supported by the Trust and generating much lower levels of revenue. The International quantum at that time was less significant, as the amounts would not have had an excessive impact upon the Council’s revenue budget at that time.

3.2.28 In summary, a number of cost centres were created that covered a range of International work. However, these were in fact no more than outline budgets. There were no SLA’s produced or agreement for services, or set out as full cost absorption, so didn’t take into account all associated costs therefore wasn’t able to accurately track overall trading profit. Any cost allocations were always looking back retrospectively and were not contemporaneous. This issue is set out in more detail in the response to question 7. There was however, evidence of good range of due diligence undertaken by a number of officers.

3. How, when, and why did the arrangement change and who authorised this?

3.3.1 There is evidence of a number of emails during May 2018, between the senior officers of the Trust and the Council which was increasing in intensity. The Trust

were seeking more reassurance around financial viability. The Trust were concerned about the underlying financial risks, as this type of venture being primarily based on potential income projections and estimations. This was further evidenced by a number of presentations given to *informal* Cabinet regarding financial projections of up to £100m in 5 years for example.

3.3.2 One particular email from the Trust highlighted their concerns that they were concerned about the robustness of the financial projections and the potential risk of operating *ultra vires* eg. not breaking even or gaining a profit over a 2-year period. This then led to a presentation to FIP and the Trusts audit committee in September 2018 where further assurances were sought.

3.3.3 The evidence suggests that following the Trust's FIP and audit committee meetings in September 2018, there was growing uncertainty regarding the financial risk to the Trust. A meeting on the 7th September to the Trust's audit committee took place and the committee was seeking assurance that '*the development of International work was not a risk to the resilience of the Trust's core local services*'. The report also minuted that '*the committee were informed that final contracts are jointly signed by the Trust and the Council*'. Discussion then followed in relation to the financial position of this work and that it was noted that FIP received quarterly financial updates with the next one scheduled for the 24th September 2018. It was then asked if internal audit (in the Trust), have reviewed the International work and it was eventually agreed that Audit One (the Trust's Auditor), would work with the Council's internal auditors to carry out a joint review of the work prior to the year end. Sadly, there is no evidence to confirm that this request was then followed through.

3.3.4 I have been advised by various senior Trust individuals that I spoke to that it was at this point in time that partnership working between the Council and the Trust started to deteriorate. The Trust felt that they couldn't risk the project operating at a loss on an ongoing basis and they were not getting the financial reassurances that they were seeking.

3.3.5 A report was then presented to the September 2018 Trust Board, which eventually led to the development of the overarching Co-operation Agreement. The report stated that the Trust will still benefit from International work but will no longer be required to invest operationally. The report further stated that the Trust and NCC have agreed that the current commercial arrangements between the Trust and NCC (currently 50:50 split of costs and any profit) will cease. Going forward, the Trust will not be required to invest in the overarching International strategy and plan implementation formally from the 1st April 2019. In addition, the Trust will benefit from fees for services delivered on commercial projects.

3.3.6 This report also mentioned that the Council was planning to set up a special purpose vehicle (SPV) for all North of Tyne International work on the back of the devolution arrangements. However, for some reason this arrangement didn't take place. The Trust saw this as 'de-risking' themselves from any future financial volatilities, although I am not sure if the Council realised that they were now in effect taking on all the risk? The recommendation from the Trust Board was that an overarching co-operation agreement would be seen as an alternative partnership arrangement. I have found no formal written notification between the Trust and the Council regarding this decision at this time, until this led into the formal

establishment of the co-operation agreement in April 2019, which was signed by the two CEOs from the Council and the Trust on the 17th December 2018, with the Council's CEO presumably undertaking this under delegated authority. During my discussions with some members that I interviewed, there was an awareness that the Trust was withdrawing from the initial NIA arrangement, but this change and update was given to them verbally in the *informal* Cabinet briefings.

3.3.7 In my discussion with senior Trust officers, they understandably '*assumed*' that the intention to change partnership arrangements would have been formalised through the appropriate governance channels within the Council. Also, as any strategic meetings between the Trust Board and the political executive was now rarely being held, these points further highlight the situation that all communication seemed to be officer to officer, which was *informally* passed on for any member awareness.

3.3.8 The Co-operation agreement became cancelled several years later. The Trust sent a letter on the 18th October 2021 to a Council officer in the joint International team, stating that they no longer wished to be involved in the co-operation agreement and of any International work going forwards. This also included the Council not being able to use the brand and/or the Northumbria Healthcare International Alliance logo, or even the mention any joint partnership including the use of any promotional material.

3.3.9 In summary, the arrangement changed when the Trust were not getting the financial reassurances they were seeking. This eventually led to the development of a co-operation agreement that commenced in April 2019. There was no evidence of any formal authorisation of this change, other than via verbal updates at *informal* Cabinet meetings.

4. How was advice regarding the legal basis for these commercial trading activities commissioned and what involvement did the NCC legal team have in this?

3.4.1 There is evidence of the earliest document being a draft discussion report that was prepared by an officer of the Trust in conjunction with a member of the International team in June 2017. This report set out a potential corporate structure which included setting up a trading company as an option to consider. I have been told that this report was *informally* discussed in the joint International officer team meeting, but I have not seen any evidence to confirm this, nor indeed what then happened to it.

3.4.2 There is evidence of emails as early as July 2017 between officers on the joint International team, stating that an external legal firm, Ward Hadaway, advised that the most efficient way to enter into the contract would be to set up a separate legal entity or a special purpose vehicle (SPV), to enter into the contract with a Chinese organisation. The company would be owned 50/50 between NCC and the Trust and would set out the 50% terms of operating between the parties. The email then set out the various advantages of establishing a company structure.

3.4.3 Although the email exchange didn't specifically refer to the 2011 Localism Act, it was setting out the view that there was a need to establish a SPV or separate legal entity.

3.4.4 A letter dated the 4th September 2017 from an officer in the joint International team was sent from the Council to Ward Hadaway, asking them to provide support and assistance in drafting a contract for the proposed provision of services to an organisation in China, and to act on the Council's behalf in relation to this matter. *Informal* Cabinet were also receiving regular updates of potential opportunities in China and other countries from officers. In my interview with a representative from Ward Hadaway, there is evidence of email exchanges in August 2017 between some International team officers and Ward Hadaway where the need to set up a SPV in order to operate commercially, was 'commented' in the side bar of the review notes within the documentation that was being exchanged and debated.

3.4.5 The published version of the Council's Constitution was updated in February 2021, so I have not been able to check what the Council's Constitution was at the time of this contract being agreed. We know that the Constitution forms the rules by which the Council undertakes its business and creates clarity on how things are done and where the authority lies or is delegated and the limits of power, responsibility and authority are. I have been informed that at that time, there was no reference to this in any financial or contractual procedural rules or in the office scheme of delegation.

3.4.6 There are written statements from several of the officers involved, stating that a discussion took place in circa September 2018 between the then Chief Executive, s151 officer and the Monitoring Officer to discuss the need to set up a company. It was stated that there needed to be some external legal advice gained on the back of this meeting, which resulted in a meeting with Ward Hadaway later in September 2018, leading to them producing a briefing note in November 2018. I have seen written evidence from Ward Hadaway to several officers, in the joint International team responding to them, '*thanking them for their instructions*'. In my conversation with a representative of Ward Hadaway, 'instructions' were normally given verbally and/or via various forms of email communication by different International team officers. I have not been able to evidence the Monitoring Officer's involvement in the issuing of any formal (or even informal), instructions for this work. The only evidence of an email involving the Monitoring Officer and International that Ward Hadaway had discovered following a quick internal search, was from one of the International team officers and the Monitoring Officer in August 2019, related to questions regarding the liability in commercial contracts. Ward Hadaway believed that the input that they were giving to these discussions in September 2018, was related to the sort of company vehicles to be established in relation to other structures and companies operating elsewhere within the organisation.

3.4.7 The advice note eventually prepared by Ward Hadaway in November 2018, set out a range of options to establish a trading vehicle, but there was no mention of the 2011 Localism Act, which would have required a commercial vehicle to be in place at this stage. The note gave a range of options, including the option of considering the utilisation of a Limited Liability Partnership (LLP), which would not have been a valid option due to the legal requirements of the 2011 Localism Act requiring commercial activities to be conducted through a company. In any event, the advice was not actioned. In my discussion with a representative from Ward Hadaway it was felt that they were now being brought in at this time to help the Council to operate

commercially. They felt that it was about '*what*' is the best commercial vehicle to use, rather than '*should we be using one*'. It was believed by them that through a range of discussions with officers via various means of communication, the need to formulate a company vehicle had already been previously accepted and understood. Also, their initial involvement was specific to contract formulation advice and not the general requirements of having to set a company structure up. However, the concern at this point in time, was that the Council was already engaged in a number of operational contracts already. In my conversation with a representative from Ward Hadaway, they stated that they only dealt directly with officers during this period.

3.4.8 In November 2018 the Council entered into another contract with a company incorporated and trading in the Republic of Ireland, at a contractual value of £2,954,803. This contract was jointly signed by the then Leader of Council and the CEO. I have not seen any evidence to formally establish why this contract didn't actually commence and was then cancelled, with the deposit of £50,000 being returned to the client. Arguably, entering into a contract for this value should probably have been a 'key decision' and put on the agenda for Cabinet to take a formal decision in public and therefore made available for scrutiny, but none of that appeared to have happened.

3.4.9 In November 2018 an email was sent by Ward Hadaway to the CEO, followed by an *informal* Cabinet briefing where this information from Ward Hadaway was discussed and members considered the options presented, by officers. It was clear that a new company needed to have been formed if NCC needed to contract directly and they were now discussing what sort of company the Council wanted to formulate going forwards.

3.4.10 A number of key staff were leaving the Council and/or their roles, around November/December 2018, including the s151 officer who had only been employed for about 6 months, as well as a number of appointed International team staff who were supporting this initiative. It then transpired that for the majority of 2019, the Council either had an interim s151 officer, or internal finance staff were asked to 'act up', to cover this statutory function.

3.4.11 As previously outlined, this whole development became further delayed at this point in time, as the Trust then withdrew from the initial partnership arrangements, commencing in April 2019. A number of officers I spoke to also believed that some of the delays at this time was due to members delaying things for various reasons. In my conversation with some members, their view was that they wanted to be sure about what sort of company should be formulated and the need to get adequate responses to questions from officers they had been asking for some time. There were ongoing internal challenges with the establishment of Advance. Some members commented to me that this caused concerns, so they needed to be sure that in setting up a company for International, wouldn't create similar challenges to what was being faced here. This therefore created further delays in this critical piece of work to be fulfilled.

3.4.12 There are emails between some senior officers in the joint International team in November 2018, where consideration was given to exploring utilising existing companies that the Council was already operating. A further request was made by an email in March 2019 to Ward Hadaway by an officer in the joint International

team, (not the Monitoring Officer), to advise on the establishment of a new wholly owned subsidiary or as an operating company operating under another owned subsidiary for commercial activity including International work.

3.4.13 This eventually led to a further formal advice note produced by Ward Hadaway in June 2019. This is the first written piece of evidence I have seen of the 2011 Localism Act being mentioned.

3.4.14 Looking back, there was a significant delay from the time when initial advice was emerging from Ward Hadaway, to when Northumbria Integrated Consultancy Ltd (NICL), was finally incorporated in March 2021. This may be partly explained by the uncertainty of what particular company vehicle should be selected. For example, I have seen evidence of an email in November 2019 between Ward Hadaway and the CEO saying "*following our meeting, I attach my advice note on setting up the companies as we discussed*". This briefing note explored the possibility of novating existing contracts to a new corporate entity. The evidence supports that this was discussed at various times within a number of '*informal*' Cabinet briefings over a number of months, to gauge the best way forwards. However, due to the issues highlighted earlier, I cannot evidence through any written minutes what was recorded as the way forward. I have also not been able to find any written evidence that this was followed up with the Monitoring Officer or s151 officer to check or action the legal advice.

3.4.15 Further *informal* Cabinet briefings took place which also discussed the advice given by Ward Hadaway concerning the need to establish a subsidiary group holding for NCC. I have been advised that in the *informal* Cabinet briefing in November 2018, where both the Monitoring Officer and s151 officers were invited to attend. There was a presentation regarding International activity and a discussion regarding what type of company structures should be set up. There is evidence of that agenda and of the invited attendees, but as no minutes were recorded, I cannot substantiate who attended and what was specifically discussed or agreed.

3.4.16 It seemed that members were becoming more concerned about the operation of International. The first written email I have seen from a Cabinet member regarding this issue, was sent in September 2019 to the Chief Executive asking for more reassurance '*around governance, risk liability and insurance*'. This was responded by '*governance would fall out of the company structure and there is a risk register already and we can discuss it tomorrow*'. Again, this centres on the main challenge throughout these whole set of events in that these discussions were always held *informally* and away from a formal governance, audit and scrutiny process.

3.4.17 Another *informal* Cabinet briefing took place in September 2019, where the Chief Executive set out the progress to date of all the contracts. This included the fact that the first Chinese contract had a value of £646,680 was in delivery with a forecast profit of £236,644. It also said that negotiations were underway for phase 2, with a prospective value of circa £16m over 10 years. This briefing also set out that there was the current negotiation with an organisation in the UAE which was due for signature in January 2020. The estimated stage 1 and stage 2 profits over the next 15 years was estimated at £21,679,772. I have seen no evidence that the s151 had any involvement or formal endorsement of these figures, and the s151 at this time

was internally 'acting up', as the Council were still waiting for their new permanent s151 officer to commence in January 2020. In December 2019, the newly appointed s151 officer immediately went to the UAE in order to gain greater insight into the work of International.

3.4.18 Importantly, this briefing report asked (*informal*) Cabinet to consider the information in this report and for i) (*informal*) Cabinet to discuss and agree a strategic direction in relation to the growth of this commercial opportunity; ii) should the (*informal*) Cabinet decide not to pursue any further opportunities, then the executive team will set out a managed process for exiting the work and iii) should (*informal*) Cabinet decide to proceed with the opportunities the CEO will be asked to provide a formal commercial in confidence Cabinet report detailing progress to date including the arrangements for the subsidiary company. This again highlighted the work of International being formulated via *informal* governance processes, but it seemed that there was an opportunity to exit this work at that stage. There is then further evidence of a flurry of emails between the CEO and a number of Cabinet members just after this meeting in late September 2019. These emails were requesting detailed financial forecasts and a finalised governance structure, which eventually resulted in members giving qualified support for it to go ahead.

3.4.19 In summary, different International team officers commissioned the legal advice and formal instructions were never issued by the Monitoring Officer. However, there was sporadic involvement and input at certain times by some NCC legal contract and procurement support officers for certain issues.

5. What advice was given, or concerns raised by the statutory officers, NCC legal team and others regarding the lawfulness of the activity and what evidence is there that these were acted upon

3.5.1 In November 2019 the audit committee received a critical report by the then external auditors, Ernst & Young, about the Council. Many issues were covered in this report. It is probably fair to point out that a number of the issues that was highlighted in this report, later became played back in the more recent 'Caller Report' regarding poor governance. Part of this was the fact that the Chief Internal Auditor formally reported directly to the Chief Executive and was a member of the Council's executive management team. This would have created a challenging conflict of interest as they would have been aware of the rationale for key operating decisions which could impair objectivity. This may have been a factor in why the work of International was not seen as a high enough risk to be included on the Chief Internal Auditor's annual audit plan, although I have seen no written evidence that this was the case.

3.5.2 This audit report commented upon the rapid turnover of s151 officers and was also in the process of recruiting for a permanent appointment. This issue may indicate why some of the financial underlying assumptions for International activity had not been formally signed off by various s151 officers. The evidence suggests that the various appointed officers involved in the International team felt the need to draft much of this themselves, but were not the s151 or Monitoring Officer. They did not have the internal knowledge or financial rigour or authority to fully ensure that all

appropriate costs were allocated proportionately or contemporaneously. The audit report also highlighted a number of potential conflicts of interest, including an example where there had been instances of the s151 officer's name being added to public reports without their specific sign off. The report also comments on the fact that they received a number of allegations across the organisation. Regardless of whether these allegations were upheld or not, this whole report clearly demonstrated an environment where both officers and members were finding it extremely challenging to work in a positive way. The fact that a number of key staff were continually leaving, indicates that they were unhappy with the environment they were working within. I understand that the process of 'how' individuals left was highlighted in more detail in the 'Caller Report' and is not part of the remit of this report.

3.5.3 As previously mentioned, another permanent s151 officer started in mid 2018 immediately became involved in the work of Arch, to help wind it down and transfer circa £300m in liabilities and assets to the new company Advance. From the perspective of the s151, Arch was seen as more of a financial risk to the Council as at that time International was jointly supported by the Trust and generating much lower levels of revenue. In accountancy terms, the S151 understandably focussed on Advance as the International quantum was 'immaterial', as the amounts would not have had an excessive impact upon the Council's revenue budget at that time.

3.5.4 Another permanent s151 officer started in December 2019 and inherited an organisation where the International work was already up and running. In my conversation with him, he also felt that in those early stages, the International work was an insignificant element of his workload, when compared to the wider financial challenges across the Council and trying to balance a circa £800m net budget.

3.5.5 The first formal Cabinet meeting that eventually became related to any International work took place on the 11th February 2020. Although this wasn't specific to International, this report gained approval for the establishment of a group holding company which had 10 limited companies which would support general commercial trading activities, as well as care trading activities to be operational as and when the objectives of a company are determined. Both the new s151 and the existing Monitoring Officer were in attendance. This company was called Northumberland Enterprise Holdings Ltd (NEHL). This evidence, was the first *formal* decision that appears to have been taken, albeit approximately 2 years after the first contractual work was signed (December 2017) and expenditure was being utilised to support International activities. It took a further 7 months for this company to be incorporated at Companies House (17th September 2020) and a further 6 months for the company regarding International activities, Northumbria Integrated Consultancy Ltd (NICL), to be registered and incorporated at Companies House (29th March 2021).

3.5.6 It is easy to look back now and question this continual delay, but it is clear that the onset of the international pandemic (COVID 19), which then took hold in England in March 2020 was a clear factor to be considered as part of this. The s151 officer who had only just started working at the Council about 2 months earlier, was now focused on other many other more urgent issues. The Council was then having to deal with all the community pressures this enacted, such as grant support for individuals and businesses. Councils across the country were then having to very quickly adapt to working virtually, with huge IT system changes having to be enacted whilst demands for support were increasing on a daily basis. The International work

therefore initially seemed like a small element of business and priority bearing in mind the Council's general budgetary pressures.

3.5.7 The evidence suggests that officers wanted to progress the formation of what later became Northumbria Integrated Consultancy Ltd (NICL), but it was at this time, (circa late 2019), that there was an increasing number of Cabinet members who were understandably formally asking a number of questions regarding the whole operation of International. Ideally, these questions should have been more formally asked from the very beginning of this journey, several years prior to this. In my conversations, a number of members realised that they had too readily accepted the verbal assurances that officers were initially giving.

3.5.8 The challenges that the COVID pandemic presented cannot be underestimated and immediately in March 2020 the Council, along with businesses across the whole world had to adapt to 'working virtually' very quickly. This completely ceased any foreign trips abroad and meant that the International team had to look to consolidate work already underway.

3.5.9 The new external auditors (Mazars), who became the Council's new external auditor in February 2020, fairly quickly began to ask a number of questions regarding the legitimacy of the International operation.

3.5.10 The evidence available supports that another *informal* Cabinet briefing took place in April 2020, which gave an update on the progress of contracts, a detailed risk register and was asking for approval to sign workstream 1 of stage 2 of the Chinese agreement at a contractual cost of £2m. This led to the then Chief Executive signing the stage 2 contract with China for a contractual value of £2m on the 19th June 2020, with a view to novate it to NEHL at the earliest possible date.

3.5.11 At the same time, there was a lot of national concern being raised about the different commercial enterprises that Councils were getting themselves involved in, such as out of area major regeneration projects and setting up Council owned energy companies. This led to the publication of further national reports about this issue and the 'level of risk' that Councils should be taking with tax payers' money. A particular high-level casualty at this time was regarding the challenges that Nottingham City was having with their energy company Robin Hood Energy. This led to a public interest report being produced by Grant Thornton in the summer of 2020. The report highlighted a number of missed opportunities and in particular focused upon the poor governance arrangements that were in place at the time.

3.5.12 The issuing of this public report led the Council to take a further step back and think about whether this was the right business to be in and what sort of company needed to be developed if this should be undertaken correctly, bearing in mind the issues that other local authorities had faced. This also coincided at the same time as the CEO was suspended which appeared to create a further delay in establishing the NICL company to undertake International business.

3.5.13 The increasing challenging internal environment continued, where various email evidence shows that a number of senior members and officers were at a point in time where it felt unworkable. In a number of my discussions, both officers and members I spoke to talked about the "*increasing toxic environment*" that it felt like to

be working in. The 'Caller Report' again picked this up in more detail, but the frequent accusations of bullying and other such issues just helped to fuel an already challenging environment. During 2020, there were an increasing number of emails between some members and officers that seem to remain unanswered. This is obviously a very unsatisfactory situation to be in and clearly demonstrates that trust was completely broken across the executive leadership level of the Council.

3.5.14 Another *informal* Cabinet briefing took place on the 4th August 2020, where senior officers undertook a detailed presentation of International work. This presentation was quickly followed up by an email from one of the Cabinet members to a senior International officer asking a range of clarification questions in particular concerning the financial underpinning of this work. Areas such as the summary of historical costs and income each year since the International work began; the forecasts for the existing projects; the criteria for assessment of potential projects; any longer-term forecasts; any details of risk assessment and insurance; staffing structure and any Trust audit outcome. There is evidence of some written responses to some of these general queries, but other responses tended to be embedded within a range of different presentations given to members at different *informal* Cabinet briefings.

3.5.15 In late August 2020, when the then Leader raised a number of significant concerns regarding the legitimacy of the International work in relation to the 2011 Localism Act, with the Monitoring Officer. I have not seen any evidence of any response or action to this email from the Monitoring Officer at this time. The Monitoring Officer then went on sick leave in October 2020 and formally left the Council a year later in September 2021.

3.5.16 The Leader stood down in September 2020 and it was soon after this change that *informal* Cabinet received a report about the potential opportunities of the North of Tyne devolution deal which International were hoping to utilise. The evidence shows that this eventually didn't turn out to be followed through in the manner that it was hoped.

3.5.17 In November 2020, the CEO who had by then returned to work, presented a report at another *informal* Cabinet briefing regarding an update on progress on all the projects. It was stated that the Chinese project had been successfully delivered and that they have asked the International team to carry out a larger piece of work. A range of financial data was discussed including that there was a total contract value signed of £5.9m and actual project income of £2.8m once the current project has been delivered successfully. The report also commented upon the company format being discussed and progressing. This led to several members asking for more information, with the Cabinet member for finance saying "*he had asked for this for some time now*". The s151 officer was present at this *informal* Cabinet briefing, but there is no record of any response that he or any other officer may have given that I have seen. This is also occurring at the time when the Council's Monitoring Officer was now on sick leave.

3.5.18 It is also a point to note, that three different officers covered the function of the absent Monitoring Officer for approximately 12 months from October 2020 which clearly was not helpful in terms of ensuring ongoing clarity of advice and role.

3.5.19 In several of my conversations, some previous statutory officers believed that they were not being listened to and did attempt to raise a number of concerns, with the CEO but felt that he was ignored. I have not however, seen any written evidence by any statutory officers at this time, formally raising concerns to either the Chief Executive or members. There is no written evidence I have seen from the various statutory officers in post in the first 3 years or so, regarding the lawfulness of International activities. The Council were entering into contracts worth nearly a million pounds and a promise of much more to come.

3.5.20 There was a high turnover of statutory officers, resulting in a loss of any corporate memory or 'hand-over'. This resulted in a lack of underpinning legal and financial rigour and formal statutory officer support, to any ongoing governance. This was further complicated by their lack of formal involvement in the International officer group. This resulted in any formal 'sign off' by the statutory officers on a number of International initiatives. This included for example, the formulation of written instructions for external legal advice and the establishment of any proper management or trading accounts. This was further exacerbated with the Monitoring Officer at the time, structurally operating at 3rd tier level.

3.5.21 Nevertheless, it would be expected several years into this venture, that the various statutory officers, some other senior officers and several Cabinet members, should have been aware of the requirements of the 2011 Localism Act and only eventually received formal legal advice from Ward Hadaway regarding this in June 2019, approximately 9 months or so after trading had apparently begun. However, due to the circumstances set out in this report, for various reasons this was not formally highlighted or made aware until much later in proceedings.

3.5.22 In summary, a number of individuals tried to raise concerns, but these were always undertaken informally. From the evidence and triangulated strength and weight of opinion, the culture of the organisation was not receptive to taking these on board. This became more urgent when the new external auditor at Mazars started asking questions about International activities soon after they commenced their work with the Council, from circa February 2020 onwards.

6. What management controls over commercial trading activities were in place over this period and how were they overridden, and the 3 lines of defence circumvented? What steps need to be taken to ensure that this cannot happen again?

3.6.1 I have covered many of the points that need to be made to respond to this question up until the end of 2020, in the answers to the previous questions. The 3 lines of defence are set out in a number of published professional articles. For example, the Institute of Internal Auditors (IIA) published this in a global position paper in 2013, titled '*The three lines of defence in effective risk management and control*'. I have set out a simple model that demonstrates this below: -

GOVERNING BODY/AUDIT COMMITTEE

SENIOR MANAGEMENT

1 st Line of Defence	2 nd Line of Defence	3 rd Line of Defence
<p>Operational Management</p> <ul style="list-style-type: none"> > Management controls > Internal control measures 	<p>Oversight & Support</p> <ul style="list-style-type: none"> > Strategy & Policy > Direction setting and assurance oversight 	<p>Independent Assurance</p> <ul style="list-style-type: none"> > Independent challenge and audit - internal/external > Regulator
<ul style="list-style-type: none"> > Identifying risks improving actions and controls > Regular progress reporting > Staff/Training > Managing performance and good data quality > Delivery of service plans 	<ul style="list-style-type: none"> > Financial controls > Security > Risk management > Quality > Inspection > Compliance 	<ul style="list-style-type: none"> > Internal audit > External audit > External inspectorates > Peer Review agencies > Regulators > Oflog

To be clear, the 3 lines of defence being referred to are: -

3.6.2 i) the '*first line*', management controls and internal controls. They are the various functions that own and manage risks. This is formed by managers and staff who are responsible for identifying and managing risk as part of their accountability for achieving objectives. Collectively, they should have the necessary knowledge, skills, information, and authority to operate the relevant policies and procedures of risk control. This requires an understanding of the company, its objectives, the environment in which it operates, and the risks it faces.

3.6.3 I have previously outlined that the joint International team did some very good work to develop contracts and undertake appropriate checks and balances, including good due diligence checks, as well as meetings with Trust colleagues. As previously mentioned, this also included the support of a Hong Kong based law firm to help them undertake reviewing an impending contract with a Chinese company, on the behalf of the Council.

3.6.4 The management controls and oversight were mainly undertaken via the joint International executive officer group that was overseen by the Chief Executive. However, it is not unusual for officers to delegate their attendance to their senior team members. In my conversation with some International team members, they claimed that verbal advice was requested from the Monitoring Officer and the various s151 officers who may have been in post at that time. However, as previously mentioned, they were not standing members of any operational group and in conversation with several of them, stated that they felt this work was operating

'around them'. Although I have not seen any written evidence to support this accusation, I have not seen any emails to or from these statutory officers asking for or giving specific advice either.

3.6.5 The recent 'Caller Report' highlighted the characteristic that the NCC executive management team had a very high proportion of joint posts and/or individuals with an NHS Trust background. Whilst this is very helpful to drive the integration agenda, these two organisations have a different legal and regulatory framework to operate within. In particular, understanding the critical role of the Council member.

3.6.6 The evidence suggests that in the first two or three years of the operation of International, linkage with the Trust's FIP, audit committee and Trust Board was well supported. In fact, it could be argued that because of that good governance, in the autumn of 2018 the Trust felt they were not getting the assurances they required, this triggered the decision to change the operational arrangement to a new co-operation agreement. This view was supported by the senior officers of the Trust that I spoke to as part of this investigation. This new arrangement increased the risk to the Council which wasn't formally picked up internally within NCC.

3.6.7 It was clear from my conversations with some officers and members, they felt they were operating under the guise of some form of audit and scrutiny, it was just that this was predominantly the Trust's governance side of things, not the Council's.

3.6.8 I have not been able to check this with any written evidence, but upon conversations with a number of individuals, the training that was given to staff within the Council was very basic and a 'one size fits all' approach, regardless of the level of position you were working at within the Council, or the working experience you came from. The high number of joint posts with officers who had an NHS background, meant that this was a gap in knowledge and operated within a different legal and regulatory framework. Key issues like the importance of the member, Cabinet and scrutiny and Full Council committee arrangements and decision making, were just touched upon. In particular the difference between *informal* Cabinet and *formal* Cabinet regarding decision making was a clear issue throughout this whole saga. Issues such as the importance of the Council's Constitution, which is the framework which forms the rules by which the Council should undertake its' business and creates the clarity upon how things should be done. In particular, where the authority lies or delegates any authority and powers, responsibility and authority.

3.6.9 The remit of this report was not to look into any detail into the Council's Constitution and again the 'Caller Report' covers this point in more detail. It is clear that some individual officers whom I spoke to were unaware of the importance and more importantly any details within the Council Constitution. Several members and officers even mentioned to me that "*they thought that there were enough checks and balances and processes in place, but it's just that they didn't follow it*".

3.6.10 I mentioned at the beginning of this report that there were several individuals who could have been very helpful to this investigation, but felt unable to relive some of their past experiences and were not involved in the various discussions that I held. This being the case, I have not been provided with some key evidence to support

some of the concerns and conclusions I have posed, hence some conclusions are based on a lack of formal evidence, rather than the evidence available.

3.6.11 ii) the '*second line*' is concerning quality, inspection, compliance, risk management and financial control. They are the functions that oversee or who specialise in compliance or the management of risk. Many of these issues have already been addressed in my previous responses. This provides the policies, frameworks, tools, techniques and support to enable risk and compliance to be managed in the first line, conducts monitoring to judge how effectively they are doing it, and helps ensure consistency of definitions and measurement of risk. Furthermore, oversight is also a function of Cabinet, scrutiny and audit committees and alongside this, the role of the s151 and Monitoring Officer in exercising their statutory roles and powers.

3.6.12 The '*revolving door of s151 officers*' in particular, with a number of them employed on an interim or internally 'acting up' basis, did not help in this regard. There were gaps in employment of a number of different statutory officers and any corporate memory was lost. The business of International in its formative years was seemingly quite busy, with potential opportunities continually being followed up. Some of the staff appointed to the joint International team were taking on roles they were not formally qualified to undertake. For example, the regular legal direct input to this team was not the Monitoring Officer, but from various conversations that I had, there was an assumption by other officers in the International team, that they were endorsing this work going forwards. I have stated previously that I have seen no evidence that the s151 or the Monitoring Officer were either formal members, or regularly received any minutes of the International officer group. This issue, coupled with the absence of the s151 at frequent times meant that expenditure costs had to be estimated and projected without little or no evidence of formal endorsement from the s151, resulting in the underlying financial assumptions not being particularly robust. A comment I received from several previous s151 officers I interviewed said "*they couldn't be confident that any forecast was robust as they didn't have a closed down year end to build it from, as it always seemed to be based on the forecasting methodology?*"

3.6.13 Across NCC, there were other companies who had been operating other services for a number of years, yet it didn't seem to be on the radar of executive officers and members that this was required for International work until much later on.

3.6.14 iii) the '*third line*' are the functions that provide independent assurance. This is provided largely by internal and external audit. Sitting outside the risk management processes of the first two lines of defence, the main roles of internal audit are to ensure that the first two lines are operating effectively and advise how they could be improved. Tasked by, and reporting to the board/audit committee, it provides an evaluation, through a risk-based approach, on the effectiveness of governance, risk management, and internal control to the organisation's governing body and senior management. It can also give assurance to sector regulators and external auditors that appropriate controls and processes are in place and are operating effectively.

3.6.15 A question I have wondered is “*why this initiative was not on the annual plan of the Chief Internal Auditor?*” I have received a number of observations to this question, but many of these cannot be substantiated. The input of internal audit only started taking place after several years after the International business began trading. The Chief Internal Auditor at that time, formally reported to the CEO and was also on the executive management team, thereby creating a challenge of a conflict of interest, as they would have been aware of any operational rationale, which could have impaired objectivity. It also questions the independence of internal audit, as the Chief Internal Auditor would have been conflicted. Secondly, I have not been able to see any evidence as to ‘*where*’ the numerous risk assessments that were produced during the development of International activities were challenged or formally scrutinised. I am aware that they were occasionally presented at *informal* Cabinet briefings, but I have not seen any evidence as to where they then were further scrutinised. I have been advised that senior officers in the International team regular met with the Head of Risk Management, to go through and assess what risks should be highlighted as part of the risk process in the Council, but again, I have not seen any evidence to substantiate this.

3.6.16 I have followed this particular point up with the existing Council internal Chief Auditor and he has confirmed that they were not aware of any risk assessments being presented to them in the first few years of International. International was never raised as a corporate level risk so did not form part of any strategic risk register. There is also no record of the central risk management team having any involvement with the International programme. Even when looking back for a log through the Risk Appraisal Panel (which goes back to meetings held in 2012), nothing appears to have been taken there either. However, as previously stated, I have been informed that the remit of the Risk appraisal Panel was not regarding an oversight of commercial trading activities, but just to advise on the risks associated with major projects.

3.6.17 This report previously mentioned that in the Trust’s September 2018 FIP Committee, it was stated that ‘Audit One’ was tasked to look at International, but it later transpired that this was not followed through. Again, the lack of connectivity between the governance operations of the Trust and the Council, was a further missed opportunity to share and align information and concerns. The work of International was not on the Chief Internal Auditor’s audit’s annual plan, and in February 2020 Mazars took over from E&Y and apparently initially began asking searching questions about the operation of International.

3.6.18 There is evidence email correspondence to a number of different members outside of the Cabinet, particularly around the summer of 2020, raising different concerns regarding governance issues. One email I have seen indicated that there was a request to hold an extraordinary audit committee meeting and a governance working group, to help look at risks and governance issues, which was stated to me that this was refused. I have seen no written evidence that this was formally refused however.

3.6.19 February 2020 then saw the first Cabinet meeting which approved the establishment of the group holding company (NEHL). This report has previously commented on the reasons for some of the delays from this date, until the eventual

incorporation of (NICL) approved at Cabinet in February 2021, finally incorporated at Companies House in March 2021.

3.6.20 A report to audit committee in July 2020, received a report which provided members with the annual opinion from the Chief Internal Auditor on the overall adequacy and effectiveness of the organisation's framework of governance, risk management and control, taking into account the expectations of the Council's leadership team, audit committee and other key stakeholders. There was no evidence of any International being included in any of these audit oversights.

3.6.21 At the audit committee of the 25th September 2020, a summary Governance Framework was presented in relation to providing some assurance as to how the Council was managing an unprecedented set of governance issues which it was experiencing. The purpose of that framework was to establish and reassure audit committee that there were lines of accountability and also potential future learning from the number and nature of the unprecedented set of governance issues which were taking a significant amount of officer time to review, categorise and ensure that robust governance was being applied to the processes which the organisation was needing to facilitate.

3.6.22 On the 25th November 2020, the audit committee received an update on progress with the development, implementation and embedding of risk management within NCC, and to inform audit committee of the latest position of the corporate risks as agreed by the executive team on 19 October 2020. There were 18 corporate risks identified in this report, with NEHL added as a 'new risk' in April 2020. This still didn't specifically mention the work of International.

3.6.23 In January 2021 the Council's audit committee received a comprehensive report from the Chief Executive regarding a summary update of all commercial arrangements. This was the first formal meeting where the details of the contracts were presented. This not only covered the work of International but a range of other services as well. The s151 officer in post at that time, was present at that meeting, and was quoted in the implications section of the report, but this was his last meeting before leaving the organisation. The current interim Executive Finance and s151 officer commenced their employment with the council in February 2021.

3.6.24 There is evidence of a report regarding NEHL eventually being received by the corporate services and economic growth overview and scrutiny committee in August 2021, some 3 or 4 years after the operation of International first began.

3.6.25 During February and early March 2021, internal audit undertook the annual consultation with the Council's executive team members as part of preparing the 2021/22 Internal audit plan. During these discussions an internal audit review of the governance arrangements in place in relation to International work was requested. A review was included in the 2021/22 internal audit plan presented to the County Council's audit committee on 24 March 2021.

3.6.26 One of the first items agreed to be included in the 2021/22 audit work programme, was looking at the annual report from the Chief Internal Auditor and an

opinion on the framework of governance, risk management and control. This also was followed by a further update upon risk management.

3.6.27 In summary, the management controls and what I have previously called the 'control environment, that was in place for much of the time of International's work was *informal* and completely inadequate. The International Executive Group was officer only with the member interaction for update and 'approval' given at regular intervals via *informal* Cabinet briefings until circa 2020. This only became more urgent when relationships across the Council at the leadership level deteriorated. There was an absence of the s151 and Monitoring Officers giving any formal advice and International did not appear on the corporate risk register. There was no formal reporting to Cabinet and proper management accounts were not established or maintained. There was also no reference to commercial trading in the finance and contract procedural rules. There was also, no guidance on the form of any trading accounts was ever issued and there was a lack of clarity who had delegated authority to enter into these contracts.

3.6.28 The second part of this question really centres at the heart of what this investigation should be about - what steps need to be taken to ensure that this can never happen again? As this is a '**lessons learnt**' report, this needed to be given full consideration going forwards. I have set these out earlier in this report, within the Summary of Recommendations, see (2.25-2.50)

7. Did the international business make a profit and if so, how was this shared between NCC and NHCFT?

3.7.1 I have seen evidence of a vast number of spreadsheets, costs, expenditure items across a significant range of International initiatives. Some of these were from the Trust, but as they ceased from a profit-sharing arrangement from April 2019, I have had to look at other sources of information in order to get a more informed position for the Council. The responses given to previous questions have mentioned financial projections that would have been given at various *informal* briefings within the Council. The majority of the detailed presentations that were prepared and in part presented to *informal* Cabinet, covered a range of financial figures. Unfortunately, I have not been able to see any formally approved documentary financial reports or spreadsheets that had been 'signed off' by the s151 officer in post at that time, until much later in this International journey. Once again, there is therefore more of a conclusion based on a lack of evidence rather than of any tangible formal evidence.

3.7.2 Upon analysis of when did income come into the Council's bank account? The evidence indicates that monies had already been received for the MBF work (£200k) during 2018. The majority of the income for the Chinese contract signed back in April 2018, started to come into the Council's bank account from August 2019 onwards, although significant amounts of expenditure were being utilised to support this initiative.

3.7.3 The reports and updates that were given to both the Trusts FIP, audit committee and board and the Council's *informal* Cabinet were very detailed. The main challenge was that due to the nature of the business being opportunistic and

bid led, the figures were predominantly based on estimates and potential contract projections and were not receiving proper trading accounts. This point is further evidenced when you consider the email exchanges with the Trust in May 2018 where this has been pointed out, (see 3.3.1 and 3.3.2).

3.7.4 In the initial stages of the work, the finance officer assigned to this team was employed by the Trust. I have found no evidence to prove that they formally liaised with the relevant s151 officer in the Council in order to validate any financial figures being formulated and presented.

3.7.5 A number of cost centres were initially created that covered a range of the work of International. The first one was created in March 2017, which covered a range of staffing costs and contained a range of admin support costs, such as telephone, printing and stationery. Further cost centres were created later on for some specific contracts/projects. No SLA's were created, and the cost centres were not set out as full cost absorption, (which should include all associated costs to support this work), so wasn't able to accurately track overall trading profit. Any cost allocations were always looking back retrospectively and were not contemporaneous. This created a lack of transparency and agreement regarding what charges and costs should be apportioned to International work.

3.7.6 I have seen internal finance officer emails back in May 2018, stating that the International allowance budget, (which is not the same thing as a management account), for 2018-19 including on-costs is £44,310, with a total expenditure by NCC for the service development costs centre from March 2017 to date being £609,652. In addition, the income to date from International contracts was £208,505.

3.7.7 Nevertheless, these cost centres were set up by finance officers and you would have anticipated would have been undertaken under the auspices of the s151 in post at the time. Although, I appreciate these cost centres were really no more than budget allocations and not proper management accounts. I have no evidence to prove that this was the case, but the continual turnover of the s151 officers didn't help in this regard. When Cabinet members were asking for detailed figures and underlying assumptions to be sent to them, they stated to me that they believed that they were not forthcoming possibly due to the fact that any figures would probably not be robust enough. In discussion with senior Trust officers, this was the main reason that the Trust amended its' partnership arrangement to take effect from April 2019.

3.7.8 In the first 2 years of International work, the Trust was contributing more and received half of the £200k contract from the UAE and got half of this to reduce their loss. In the years up to and including 2018 and beginning of 2019, it was a 50/50 share with the Trust. From April 2019 onwards the Trust had withdrawn from the partnership and had agreed the Co-operation Agreement as highlighted earlier in this report. Information received from senior officers in the Trust confirmed that income during this period for the NHS totalled £363k of net income reflecting the total net Trust contribution. Costs and income after April 19' were all allocated totally to the Council.

3.7.9 This report mentioned earlier that in January 2021 the Council's audit committee received a detailed report regarding a summary update of all commercial

arrangements. This not only covered the work of International but a range of other services as well. As previously mentioned, the s151 who left the Council a month after this meeting, was present and it would be fair to assume that the figures presented were endorsed by him as it was mentioned in the implications section of the report. There were further *informal* Cabinet briefing updates during 2021 which gave further updated figures.

3.7.10 I have also seen a range of different International reconciliation figures produced over a number of years which tried to give an overview of International work. For example, the s151 officer who actually started employment with NCC in December 2019, stated to me that he undertook some work to look back at about 4 years of past accounts. The outcome of this analysis was that it was thought that by the end of 19/20' NCC had made a loss of £339k, but if you include overheads then this would have been a £500k charge against it. However, the following year 20/21' the forecast of the Chinese contract was to generate £800k surplus, so at the end of that financial year it would have been a circa £300k surplus. It is not clear however, what assumptions about overhead allocations and apportionment of business development costs the s151 Officer had made in arriving at this view.

3.7.11 The range of different figures available are impossible to review or audit. Clarity around details such as who was being paid for what and the accuracy of any associated costs with International work, was spasmodic at best. The fact that this was operating outside of a formal company structure for far too long, meant that the formal nature of accounting, audit and scrutiny was missing. It should be said that all of the various s151 officers whilst in post, should have instigated proper management accounts and clarity about how costs were going to be allocated, as soon as they realised the operation of International was taking place.

3.7.12 An analysis of financial information from NCC's general ledger system, undertaken by corporate finance and was shared with internal audit by the Interim Executive Director of Finance (Section 151 Officer) in March 2021. Due to the reasons set out previously regarding the inadequate formal set-up of trading accounts, the current s151 who started her employment with NCC in early 2021, requested internal audit to undertake a comprehensive audit of financial activity for International.

3.7.13 The internal audit briefing note dated the 18th June 2021, stated that *'the interim Executive Director of Finance (Section S151 Officer) informed internal audit that in the autumn of 2020 the external auditor had indicated to the then Executive Director of Finance and S151 Officer, that they had received approaches from elected members in relation to 'International' work undertaken by the County Council. The external auditor wished to explore issues around the International work further and had requested financial information showing costs and income (management accounts) associated with the International work from the previous Executive Director of Finance'*.

3.7.14 Internal audit was requested to review the information provided, including assumptions and the evidence base on which the analysis had been prepared, in order to come to a view on whether the information compiled by finance presented a fair assessment of income and expenditure of the International work.

3.7.15 The briefing note provide by internal audit stated that *'it understood that in addition to International projects, the integrated consultancy team also deliver a number of other workstreams, including a number of internal business development / innovation projects, with the intention of reducing costs, or generating increased income, for the benefit of the County Council'*.

3.7.16 The review which was undertaken by corporate finance and evaluated by internal audit stated that it involved the review of *'financial information available'* in respect of the integrated consultancy team to identify and isolate only those costs and associated income that relate to International project activity, in order to present a fair understanding of 'International work'. The corporate finance analysis undertaken covered transactions from the 2016/17 financial year to period 9 of the 2020/21 financial year and was based on a number of cost centres within the Council's general ledger system.

3.7.17 Internal audit undertook a detailed review of the International reconciliation Excel workbook and further analysis of the non-pay expenditure allocated to it provided by corporate finance. The detailed transaction listing, 'consolidated data 2016-2020' was agreed to the summary, 'Pivot I&E', for each financial year to ensure the completeness of the data used to form the management accounts. From this analysis it was identified that transactions allocated to the 'other NCC' project were excluded from the 'Pivot I&E'.

3.7.18 Internal audit used this 'Pivot I&E' data to present the management account information in a different format and to incorporate the further analysis undertaken by corporate finance. This showed the income and expenditure allocated to each project heading (year on year and cumulative) and a summary of the income and expenditure across all project headings (for each financial year and cumulative). Items above not included in corporate finance's analysis of ledger transactions (eg. overheads, recharge of Executive Director of Transformation salary, and the CEO's International allowance), have been included in the internal audit's analysis, although a clear distinction was maintained between these amounts and those included in the general ledger transactions.

3.7.19 Internal audit selected a sample of eighteen invoices for further review to obtain assurance regarding the expenditure charged to the International projects. These invoices covered the full range of projects and financial years in which expenditure had been incurred and allocated. The eighteen invoices selected totalled £379,275.48, which equated to 36% of the total non-pay expenditure of £1,062,778. There were no matters arising from this review of expenditure.

3.7.20 Internal audit's summary of corporate finance's analysis of the general ledger activity and the additional items identified from the review of (overheads, recharge of various senior officers' and the Chief Executive's International allowance), demonstrated an overall deficit of £474,599 as at 31 March 2020 and an overall surplus of £466,848 at 31 December 2020.

3.7.21 Their overall conclusion was that *based upon the data and documentation reviewed and available*, internal audit was satisfied that the management accounts prepared by corporate finance provide a reasonable analysis of the income and expenditure transactions from which they have been prepared. In relation to salary

costs, there is no evidence available to them upon which the allocation of costs to specific projects can be based. Furthermore, a retrospective exercise had been undertaken jointly between corporate finance and the Executive Director of Transformation to allocate these costs across the various projects. It was again confirmed by internal audit to have been performed on a reasonable basis.

3.7.22 In addition to this, I have also seen a reconciliation summary of the 5 years between 2016/17 and 2020/21 undertaken in August 2021, where it was estimated that at the end of 2020/21, the programme made an overall budget surplus to the General Fund of £904,225.

3.7.23 In summary, in terms of evidencing whether International made a profit or loss, is impossible to quantify with any degree of certainty, due to the issues highlighted within this report. Although the expenditure involved was significant, it does not appear that the Council suffered any financial loss, and may in fact have made some net gain. However, this cannot be definitively proven as proper trading accounts and time-based records of time spent by NCC officers supporting the work of International were not kept. It is felt that due to the various issues highlighted above, it would be impossible for me to reach any different conclusion than the current Executive Finance Officer and s151 officer had previously made.

8. Was the financial position accurately reported to members?

3.8.1 The answer to this cannot be expanded upon anymore that the responses set out in the response to 7 above. However, it would be fair to assume that any figures presented by officers were *'as accurate as the information that they had available at that time,'* with all the limitations described in this report.

9. On what basis was the Chief Executive paid an international allowance from 2017? Did the Chief Executive receive any separate remuneration in relation to the international business from NCC, the NHCFT or the CCG prior to November 2017 and if so, on what basis and who authorised this?

3.9.1 In terms of evidence that is available, the Deputy Chief Executive pre-2017, was a jointly funded post with Northumbria Healthcare NHS Foundation Trust, each organisation paying 50%. From June 2017 to November 2017, the Chief Executive was then appointed interim Chief Executive, as the previous NCC Chief Executive left in May 2017 at the point of the new administration coming into power. The Chief Executive remained in a jointly funded post with Northumbria Healthcare NHS Foundation Trust, with each organisation paying 50%. These arrangements changed formally from April 2019, when the Trust withdrew from the arrangements and the Council paid 100% of the salary. I have not seen any evidence of any formal notification between the Trust and the Council of this change at the time. There is evidence of several emails where there is obvious confusion with internal payroll officers trying to establish any formally agreed arrangements between the Trust and NCC, and therefore what payment should be made. This lack of clarity has also contributed to the confusion around the payment of the International allowance.

3.9.2 The Council's 2017/18 accounts on the NCC web-site, referred to an allowance being paid between 1st April 2017 and 31st May 2017 to the Deputy Chief Executive and the interim Chief Executive between 1st June 2017 and 30th November 2017 and then the Chief Executive and Head of Paid Service, from the 1st December 2017 and

31st March 2018. This was stated in the accounts that this was a supported 50/50 arrangement with the Trust.

3.9.3 There is no evidence that I have seen, that there was a contractual transfer of employment between the Trust and the Council, which may well have set this issue out more clearly. There are payments that have been identified in the transfer of payroll accounts between the Trust and the Council that I have seen, but a number of these were trying to be clarified via various emails by payroll officers of both organisations.

3.9.4 For 2016-17 there are 2 payroll reports which were used in the officers' remuneration note. The first is the NCC report for the former Chief Executive and the second is the NHS report. From the NHS report there is evidence of an amount of £34,037.04 paid directly as salary by the NHS, however this is not clearly identified in the report as being an International allowance. In my communication with the Trust, they have confirmed that paying an allowance payment wouldn't be the sort of payment they would have supported and if they had, would have gone through their remuneration committee, made up of non-Executives. For 2017-18, the payroll evidence points to the allowance being paid through the Council's payroll system from December 2017, which related to the date of the CEO substantive appointment.

3.9.5 In conclusion, the Council's 2017/18 accounts stated that the Chief Executive was receiving payment for the International allowance from April 2017. The Trust stated that they would have not contributed to any allowance at all. Due to the absence of any formally agreed financial arrangements between NCC and the Trust, it is challenging for me to retrospectively clarify this situation any further.

10. Who approved travel expenses incurred in relation to the international business by the Chief Executive and other officers and members? Were these reasonable and proportionate and did they comply with the NCC business travel policy in force at the time?

3.10.1 Looking back at the beginning of this initiative in the Council in the spring of 2017, it was felt that the NCC policy that was in place was too limited and didn't cover International trips, as this was normally beyond most local authorities' travel arrangements. The evidence supports several staff in the joint International team started to review and amend the policy and it was even discussed at various officer executive team meetings.

3.10.2 As this was an issue that many other local authorities didn't face, it was hard to get any 'good practice' guidance from elsewhere. The first document I have seen was a draft policy for consideration was taken to the officer's joint International executive group in September 2017. The policy was mainly covering risk management policies and procedures such as the risk assessment of each trip (including due diligence on company and risk rating of the country); the preparation by staff/team who are travelling for the purpose of work; the personal staff risk assessment; occupational health requirements; working hours; travel expenses and sustenance payments; the trip brief and debrief and what to do in an emergency.

3.10.3 The policy also set out a comprehensive guide on what to consider before a trip can be approved. This set out that a request form needed to be completed with the Director of International having to sign this form off. Also, that any countries that

do not have any British Embassies will not be authorised. A full risk assessment must be signed off by a senior manager to ascertain if the prospective business partner is suitable and the destination is safe. The risk assessment should cover issues such as information from the Foreign and Commonwealth Office; previous knowledge from previous trips to area/region; information from approved travel agents; local customs/culture; individual factors eg. health considerations and the presence of a British Embassy within the country. It went on to say that all employees will be given a copy of this risk assessment as part of their travel pack.

3.10.4 The policy also tried to cover subsistence costs and how to deal with gifts and hospitality. The team looked at the national bodies policy for government employees for International travel and HMRC 'per diem' rates, or some sort of guidance for costs related to International travel. The minutes of that (21st September 2017), executive team meeting stated: -

'All travel should be business class including in country due to amount of collateral we would end up paying a premium for weight of bags - this needs to be written into the travel policy. When the agenda is gruelling it is not appropriate to travel standard class - recommendation going forward is whole trip is business class. Also need to explore the use of trains for travel options. Need to look at flight patterns, always compare with different airlines to ensure we are getting value for money and the best schedule available. Final comments for all policies and procedures to be with an officer by the end of September. There may be more policies and procedures required going forward. Final policies to be presented for approval at next international exec meeting. Action – to be included in travel policy for approval'.

3.10.5 The minutes further stated, that it was agreed *'to test and monitor the use of the travel policy going forwards, which will require final sign off. Final comments for all policies and procedures to be with an officer by the end of September. There may be more policies and procedures required going forward. Final policies to be presented for approval at next International executive meeting'.*

3.10.6 It was laudable that officers quickly saw that the travel policy that was in existence at the time was not fit for purpose, and that they tried to do something positively about it. I was advised that this work was verbally discussed at an *informal* Cabinet briefing, but again due the *informal* nature of such meetings and completed minutes, I haven't been able to substantiate this.

3.10.7 I have not seen any evidence of this having any 'formal' member oversight until you look at the different versions of the current travel policy. Version 1, which was stated that it was approved in April 2019 at the Council's joint consultative committee (JCC), with the next 1.1 version approved in October 2019 and then an updated version 1.2 updated in November 2020, which included the additional measures as a result of COVID-19 challenges, as well as the likely impact of Brexit on travel within the European union. There was a long time between the initial draft policy being considered by officers in September 2017 and the eventual first JCC member involvement of the policy in April 2019.

3.10.8 The question of 'reasonableness' and 'proportionality' comes into play here. When you look at the policies being considered at JCC with member involvement, in one section it says: - *'The standard and cost of accommodation for foreign visits should be kept to as reasonable a level as possible. Employees are not expected to stay in uncomfortable or otherwise unsuitable accommodation simply because it is*

*cheaper, but at the same time they should not expect the Council to bear the cost of the highest standard of accommodation where there is a reasonable and sensible alternative. First class flights will require prior written approval from the Chief Executive or Deputy Chief Executive. For European travel, economy class flights should be taken. Where executive and/or business class tickets (or their equivalent eg. club class) are requested by the employer/requester, for European travel, then the tickets must be approved by the relevant Head of Service or Service Director (if it is the Head of Service travelling). The approver will be provided with the additional cost of the ticket as part of the approval process by the employee/requester. For travel outside Europe, **any flights lasting five hours or more** which involve working on board and/or are immediately followed by attendance at a meeting, **will warrant business class bookings**. Any flights of eight hours or more will be business class'.*

3.10.9 In trying to look back at (a policy), which was not in existence at the time, I have tried to apply actions and expenses to what was later developed and approved as set out above. As the vast majority of the more expensive foreign travel was over the 5-hour travelling time, it could be argued that officers were trying to act reasonably and would be within the policy. I then looked at a random sample of 8 of the most expensive foreign trips in the documentation available to me, and they all would have passed the '*business class 5-hour travel test*' had it been in place at that time of travel.

3.10.10 Perhaps the 'reasonableness' and 'proportionality' question here is, that there were a number of occasions when several officers went abroad on the same trip and whether this was required. It is understood that this was related to particular clinicians or 'experts' that may be needed to attend. If the client was particularly keen to speak to and gain confidence on a range of specific issues which these individual experts were better equipped to answer, then this may have been necessary. The various officers I spoke to stated that the travel and accommodation costs of individuals who travelled abroad, were covered by clients. However, due to the issues outlined in questions 7 and 8, I have not been able to evidence that assumption. Any member engagement element of this work tended to be undertaken on receiving foreign delegations when they visited Northumberland which happened on a number of occasions in the first couple of years of this work.

3.10.11 In summary, the approval process in place for travel expenses from the evidence that I have seen, was all signed off or counter signed by senior officers as required in the policy in place at that time. The aspect of reasonableness and proportionality indicated through a random sample of expenses, would have also been in line with the policy at that time. The issue to note here is that it took several years before members became involved in any formal way regarding any new policy that was developed.

Terms of Reference for Independent Investigation Into Unlawful Trading International Consultancy

To undertake an independent investigation into the circumstances that gave rise to unlawful commercial trading between 2017 and 2021 as detailed in the S114 report issued by the Council's S151 Officer on 23 May 2022 with specific reference to the following:

1. What was the original basis of the agreement to participate with Northumbria Healthcare Foundation Trust in the Northumbria International Alliance in 2016? Who authorised this?
2. What arrangements were put in place at the outset of the venture in 2016 and prior to the commencement of trading to ensure that there was proper oversight and governance and that the Council's interests were protected including technical due diligence, money laundering checks and risk management?
3. How, when, and why did the arrangement change and who authorised this?
4. How was advice regarding the legal basis for these commercial trading activities commissioned and what involvement did the NCC legal team have in this?
5. What advice was given, or concerns raised by the statutory officers, NCC legal team and others regarding the lawfulness of the activity and what evidence is there that these were acted upon?
6. What management controls over commercial trading activities were in place over this period and how were they overridden, and the 3 lines of defence circumvented? What steps need to be taken to ensure that this cannot happen again?
7. Did the international business make a profit and if so, how was this shared between NCC and NHCFT?
8. Was the financial position accurately reported to members?
9. On what basis was the Chief Executive paid an international allowance from 2017? Did the Chief Executive receive any separate remuneration in relation to the international business from NCC, the NHCFT or the CCG prior to November 2017 and if so, on what basis and who authorised this?
10. Who approved travel expenses incurred in relation to the international business by the Chief Executive and other officers and members? Were these reasonable and proportionate and did they comply with the NCC business travel policy in force at the time?

The investigation will: -

- Draw out key lessons to be learned
- Identify where the council's processes for ensuring commercial trading activities are undertaken on a lawful basis and subject to appropriate oversight and reporting are fit for purpose fall short of both standard and best practice.
- Make recommendations for addressing any weaknesses identified.

APPENDIX 2

TIMELINE RELATED TO THIS REPORT

Date	Event
2011	NCC and NHCT Partnership working regarding Health & S Care
Early 2015	NHCT awarded 'Vanguard status' to form a Primary and Acute Care System
Oct 2015	Trust Board received a discussion report regarding an International commercial strategy
Sept 2016	NHCT invited by UKTI to export models of Healthcare
29 Sep 2016	Signing of MOU between NCC, Trust and IUHP (Indian organisation)

18 Oct 2016	Publicity signing of MOU between NCC, Trust and IUHP
Jan 2017	Signing of an MOU by NCC and Trust CEO's to provide integrated care support for a Hospital in China
Feb 2017	Formulation of NIA, (although not a legal entity)
22 Feb 2017	Creation of a Director of International Projects and System Transformation (shared post) - (DIPST)
May 2017	NCC Local elections - change in administration from Labour to Conservative
1 June 2017	* Change of S151 officer
1 June 2017	New interim CEO
June/July 2017	Formulation of a joint 'International team', made up only of officers
June 2017	Discussion report drafted regarding potential corporate structures that need to be considered going forwards, although no evidence to confirm that this was formally discussed at any International meeting
July 2017	Presentation by DIPST to informal Cabinet and Trust FIP Committee, setting out a 5-year strategy International strategy with an ambition of achieving £100m in 5 years. This strategy set out an intended governance reporting structure, to involve both Cabinet and the Trust Board
July 2017	Various officer emails discussing conversations they had with individuals from Ward Hadaway (WH), regarding setting up a separate legal entity or special purpose vehicle, although no mention of the 2011 Localism Act was outlined in these email exchanges
4 Sept 2017	Letter from an officer in the International team to WH asking them to provide support and assistance in drafting a contract for the proposed services to a Chinese company, and act on the Council's behalf
21 Sep 2017	Draft travel policy discussed at the officer International group
1 Dec 2017	Interim CEO appointed as permanent CEO
14 Dec 2017	Joint signature by the CEO and Monitoring Officer (M)), of a contract with a Hospital in the UAE at a value of £200k
2017/18	NCC and Trust contributed £300k to a shared fund to support

International work going forwards

- 13 March 2018 Formal Cabinet approved a 2-year extension to the partnership working with the Trust regarding Social Care and Health integration
- April 2018 Waiver of finance of contract rules signed by a number of statutory officers with a Hong Kong based law firm to support due diligence checks, review, amending and negotiating where possible with a Chinese company on behalf of NCC. Leading to a contact agreement of £646,680 with a Chinese company
- May 2018 Various email exchanges increasing in anxiety between the CEO's of NCC and the Trust questioning the financial viability of the project, including the Trust's concern of operating *ultra vires*
- 1 June 2018 * Change of S151 officer
- June 2018 House of Lords formal launch involving various officers as well as the then Leader of Council
- Sept 2018 Presentations to the Trust's FIB and Audit Committees helping to give assurances of the viability of this work going forwards. These meetings also stated that any contracts would be jointly signed by NCC and the Trust. Mention was also made of the potential for Audit One to Audit this work in conjunction with the Council's Auditors
- Sept 2018 Trust Board meeting which stated that following acceptance of the September FIP recommendation, the Trust and NCC have agreed that the current commercial arrangements between the Trust and NCC (currently 50:50 split of costs and any profit) will cease. This led to the formulation of the overarching Co-operation Agreement
- Sept 2018 Meetings held between NCC CEO, MO and S151 officers regarding the need to set up a company
- Nov 2018 Briefing note produced by WH regarding the options to establish a trading vehicle, but still no mention of the 2011 Localism Act
- 6 Nov 2018 Informal Cabinet received a progress report and an outline of the governance framework, as well as information regarding what type of company structures should be set up
- Nov 2018 The Leader and CEO of NCC jointly signed a contract with a

- company in the ROI, at a contract value of £2,954,803
- Nov 2018 Exchange of emails between International officers looking to explore utilising existing companies, the Council were already operating
- 17 Dec 2018 Signature by NCC and Trust CEOs of the co-operation agreement, but no evidence found of a formal written notification to NCC, or being received within any formal governance setting
- 8 Feb 2019 * Change of S151 officer
- Mar-June 2019 Email exchanges from different officers in the International team with input from procurement officers, to Ward Hadaway to advise on the establishment of a new wholly owned subsidiary or as an operating company operating under another owned subsidiary for commercial activity including International work.
- 1 April 2019 Commencement of the overarching Co-operation Agreement as the Trust felt that commercial International activity didn't fit within their future aspirations going forwards. This meant that they didn't have to invest in the International strategy, but could still benefit from fees for any future services they were involved with on any commercial projects going forwards
- 1 April 2019 * Change of S151 officer
- 1 April 2019 Joint Consultative Committee (JCC) approves version 1 of the travel policy
- 7 June 2019 Briefing note produced by WH regarding the options to establish a trading vehicle, where there was mention of the 2011 Localism Act
- 22 July 2019 * Change of S151 officer
- Sep 2019 E-mails from Cabinet Members to the CEO asking for more reassurance around governance, risk liability and insurance
- Sep 2019 Informal Cabinet briefing where CEO updated Members of progress of all the contracts, including negotiations for phase 2 with the Chinese contract work, as well as negotiations underway with an organisation in the UAE, due for signature in January 2020. The briefing note also set out an estimated stage 1 and 2 profits over the next 15 years was estimated to be over £21m. It was also discussed that should informal Cabinet decide to proceed with the opportunities

	the CEO will be asked to provide a formal commercial in confidence Cabinet report detailing progress to date including the arrangements for the subsidiary company.
Oct 2019	JCC approves version 1.1 of the travel policy
Nov 2019	Briefing note produced by WH regarding the options to novate existing contracts to a new corporate entity
27 Nov 2019	NCC Audit Committee received a very critical report from the then external Auditors Ernst & Young (EY), regarding poor governance and general practice. The External Auditors were soon replaced after this date by the current External Auditors, Mazars, who started in circa February 2020
16 Dec 2019	* Change of S151 officer
Jan 2020	Informal Cabinet briefing discussing risk register and potential group company structure
11 Feb 2020	First formal Cabinet meeting which approved the establishment of a group holding company which had 10 limited companies to support general trading activities, called the Northumberland Enterprise Holdings Ltd (NEHL). This helped to later establish a subsidiary to regularise the International work, which later became the Northumbria International Consultancy Ltd (NICL)
March 2020	COVID 19 pandemic restrictions commenced, leading to significantly more remote working
April 2020	Informal Cabinet briefing received contract updates, a detailed risk register and seeking approval to sign workstream 1 of stage 2 of the Chinese contractual agreement at a cost of £2m
19 June 2020	CEO signs above contract with a view to novate it to NEHL asap
June 2020	E-mail from Leader to CEO stating that he needed to put requests in writing as it was felt that any verbal requests were unanswered
Aug 2020	Leader suspended the CEO
30 Aug 2020	Leader sent an email to the MO regarding concerns of the legitimacy of International work in relation to the 2011 Localism Act
Sep 2020	Leader stood down internally
Sept 2020	National publication of a report by Grant Thornton setting out the poor

- governance arrangements in place concerning a Nottingham City based Council delivering energy, which drastically failed financially
- 17 Sept 2020 Incorporation of NEHL at Companies House
- Oct 2020 MO went on sick leave and didn't return to work, and formally left 12 months later, with 3 different officers 'sharing' this responsibility going forwards
- Nov 2020 CEO returned to work
- Nov 2020 JCC approves version 1.2 of the travel policy
- 25 Nov 2020 NCC Audit Committee considered the 18 corporate risks, where NEHL had been recently added as a 'new risk' in April 2020
- 1 Dec 2020 Informal Cabinet briefing where an update on projects and stated that there was a total contract value signed of £5.9m and an actual project income of £2.8m once the current Chinese work had been successfully delivered. Possible company format discussed
- 27 Jan 2021 NCC Audit Committee received a comprehensive report from the CEO regarding a summary update of all the commercial arrangements across the Council
- 23 Feb 2021 Formal Cabinet meeting setting out an update of NEHL and approval to establish Northumbria Integrated Consultancy Ltd (NICL), to undertake International business going forwards within a Ltd company structure
- 1 March 2021 * Change of S151 officer
- 29 March 2021 Incorporation of NICL at Companies House
- 18 June 2021 Internal Audit briefing note regarding a request from the S151 officer to review in detail the underpinning financial situation of International. This concluded that due to the inadequate and any formal establishment of set-up of this programme of work, the figures available at the time, the Council probably didn't suffer any financial loss, and may in fact have made some net gain.
- Sep 2021 National publication by Local Partnerships regarding good practice in the establishment and operation of local authority company structures going forwards

- 18 Oct 2021 Letter sent by the Trust to NCC regarding the cessation of the overarching co-operation agreement
- 8 June 2022 Council approval of Section 114 report due to unlawful expenditure

* **Note** - I have **not included** every event regarding International activities, but rather a general overview. I have only included several of the *informal* Cabinet briefings where there has been some evidence of International activities being discussed. It is fair to assume that there were many more that did, but the lack of formal minutes prevents this from being supported with any evidence.