

Report of:	Director of Legal and Governance Services and Director of Finance (Section 151 officer)
Submitted to:	Corporate Affairs and Audit Committee
Date:	22 July 2022
Title:	Lessons learned – Best value and external assurance within other councils
Report for:	Decision
Status:	Public
Strategic priority:	All
Key decision:	Not applicable
Why:	Not applicable
Urgent:	Not applicable
Why:	Report is not for an Executive committee of the Council.

Executive summary

This report sets out the outcome of an exercise to ensure the Council takes the opportunity to learn lessons from corporate governance issues that have occurred in other local authorities.

It identifies actions to strengthen Middlesbrough Council's corporate governance arrangements and sets them out within the body of the report. The findings in the report are reflective of the governance concerns identified within the draft Annual Governance Statement 2020/21 and the External Auditor's Value for Money judgement for the same period.

Purpose

1. In 2021 a range of reports were published on the governance arrangements of Slough, Sandwell, Wirral and Northumberland councils. This report analyses the findings of those reports, outlining where lessons can be learned in relation to corporate governance weaknesses identified in those reports. Learning lessons from other local authorities is best practice and provides an opportunity for the Council to assess its potential vulnerabilities and to take action to mitigate them.
2. The report also provides an update on actions previously agreed for this Council following consideration of the report on government intervention at Liverpool City Council in August 2021.

Background and relevant information

3. During the pandemic a number of councils sought to capitalise expenditure in order to manage the financial pressures they were facing. Central government determined that a condition of adoption that process was that councils underwent external assurance reviews focussed on their financial and wider governance controls. Two of the councils examined within this report - Slough and Wirral - were in that position. The third council, Sandwell, had a value for money review completed on it by its External Auditors, following governance concerns. The last Council, Northumberland County Council, decided to commission an independent review following the principles of a Best Value Government Inspection in response to a range of serious corporate governance concerns.

Slough Borough Council

4. In September 2021, as a result of the decision to exercise council's capitalisation direction, an [external assurance report](#) was published that stated it was apparent that Slough Council had been failing its Best Value Duty under the Local Government Act 1999. The report stated that an improvement journey was required with external validation.
5. The report examined the Council's approach to governance, culture and leadership, financial governance, service delivery, and capacity / capability to improve. The report found that the council displayed all the characteristics of an authority struggling to comply with its best value duty, including:
 - an overreliance on interim officers
 - a lack of corporate capacity
 - many inadequate internal processes
 - signs of distrust among and between councillors and senior officers
 - the absence of effective scrutiny, transparency, and public consultation
 - insufficient capacity to achieve the change required
 - instances of poor-quality advice to members
 - a lack of understanding of how some meetings should be conducted
 - in some cases, members not understanding their role
 - significant unknown past liabilities yet to be determined'
6. As a result, external intervention was recommended with areas of focus being on:

- Service reform; particularly transformation, revenues and benefits and corporate functions such as finance, IT and HR.
- Governance (democratic services and scrutiny)
- Financial decisions and processes
- Corporate governance (including commercial activity).

Sandwell Borough Council

7. Sandwell's External Auditors undertook a [value for money review](#) on the 2020/21 accounts that resulted in statutory and key recommendations to address governance concerns. Statutory recommendations are those issued under Section 24 (schedule 7) of the Local Audit and Accountability Act. Any recommendation issued that is considered to be statutory is required to be discussed by the receiving body and responded to publicly. Key recommendations are this which identify significant weaknesses in arrangements to secure value for money.
8. The External Auditors had concerns around member - officer relationships in particular.
9. The report setting out their findings stated that there was 'an increasing perception of poor progress in resolving service and governance issues, a lack of trust between key individuals charged with governance, of a significant amount of time being spent responding to allegations and complaints, and of reviews being reopened, such as the reopening of previous standards reviews.' External auditors felt that until these significant issues were resolved the Council was at risk of not having adequate governance arrangements in place to ensure that it could effectively discharge its statutory responsibilities and maintain its financial sustainability. The report found weaknesses with:
 - Corporate grip on performance
 - Procurement and commercial decision-making
 - Contract management
 - Lack of long-term planning
 - Officer empowerment and decision making
 - Capacity, experience and skills of senior officers
 - Significant changes to the senior officer and member composition.

Wirral Borough Council

10. An [external assurance review](#) was commissioned as a consequence of the council's capitalisation direction for 2021/22. The findings of that review identified several key weaknesses including:
 - A poor political and managerial environment
 - Failure to ensure a sustainable financial model
 - Inability of politicians to build political consensus on medium term financial strategies
 - Weaknesses in corporate culture and capacity.

Northumberland County Council

11. The Leader of Northumberland County Council commissioned an independent review following ongoing corporate governance concerns, some of which had been reported in local and national press, to assess:

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

12. The review found serious discrepancies around the governance of the organisation including:

- Failure to comply with pay transparency legislation
- Failure to learn lessons from errors in corporate governance processes
- Significant breakdown in relationships between the Chief Executive and the Cabinet and between the cabinet and a significant minority of elected members
- The capacity of the organisation was significantly impaired by the resources needed to deal with grievances, complaints, information requests, standards and conduct issues between officers and Members
- Frequent circumvention of the Monitoring Officer by officers and members to commission external legal advice
- Sensitive council papers leaked numerous times which has required papers to be watermarked which is indicative of a failure in trust between officers and members
- Silo working that is exacerbated by frequent turnover in senior staffing and frequent changes to areas of responsibility
- Many senior officers did not have a career background in local government and failed to understand the role of members
- Poor approach to strategic planning, performance management and measuring success
- Failure to adhere to the constitution and lack of clarity around officer and member roles and responsibilities
- Poor approach to the establishment of wholly owned council companies and joint ventures
- Poor governance around transparency of decision making and reporting to Members
- Poor governance in relation to companies established by the Council, lack of clarity about the different roles within a company structure, board composition, concerns around conflicts of interest and a requirement for clarity around why the council needs to operate through a company.

Consequences

13. As a result of the weaknesses identified within reports that were issued there were a range of consequences.
14. In Slough, Government commissioners were appointed for three years. Three commissioners will exercise all functions associated with the governance and scrutiny of strategic decision making, budget control powers including the power to amend budgets, all functions related to oversight of Council Tax and Business rates and appointment, dismissal and designation of statutory officers.
15. The commissioners, rather than officers and members, will develop an improvement plan to address governance weaknesses, and as part of this will put in place a programme of cultural change to address weaknesses in the officer member arrangements.
16. In Sandwell commissioners were appointed for two years and tasked with appointing a new Chief Executive and take on the same functions as those outlined for Slough Council above.
17. Wirral Council was tasked with producing a planned response, rather than having commissioners appointed. It was directed to ensure that planned response acknowledged the scale of the challenges it faced, committed to moving to a changed election model (all out elections) and reduced the number of member committees in place.
18. Although no external intervention has been required at this stage, an extensive improvement plan has been recommended to Northumberland Council, to be implemented at pace.

Relevance of findings to Middlesbrough Council

19. In line with best practice, the Council has taken the opportunity to analyse the detailed finding of each of the above reports. The Council will also keep a watching brief on progress made in other local authorities to identify further options to learn and improve systems, processes and culture within the Council.
20. These reports, by their nature, are detailed investigations and some of the issues raised within them have been considered previously by the Committee and determined not to be a significant risk factor for Middlesbrough Council, therefore those topics have not been revisited. Where detailed findings from elsewhere are potentially relevant, they are set out below, along with planned responses.

Relevant detailed findings from reports	Proposed response(s)
Senior leadership, both officers and members, could not work together effectively, that they operate in line with the Council's values, codes, policies and procedures	<p>The 2020/21 Annual Governance Statement (AGS) highlights that relationships between officers and Members and relationships between Members have been strained on occasion and there are signs of distrust that must be addressed. The EY VfM judgement for the same period cites that the culture and governance arrangements at the Council are not operating as expected and are undermining the effectiveness of the Council's governance framework.</p> <p>There are a range of actions proposed within the draft Annual Governance statement for delivery in 2022/23 designed to improve understanding of the officer – member protocol and</p>

	<p>compliance with it and supporting corporate governance policies and procedures. Further actions will be developed following completion of the work diagnostic work to be delivered by CIPFA.</p>
<p>Failed to have in place a robust Strategic Plan that set out the medium to long term plans of the Council, supported by an agreed set of key performance indicators to ensure Members and senior officers had robust intelligence to understand the performance of the organisation.</p>	<p>The draft Annual Governance Statement 2020/21 identifies a weakness with the current governance arrangements for the Council's Strategic Plan and contains an action to strengthen the approach to include key performance indicators to be agreed by full Council when it is next refreshed.</p>
<p>A lack of awareness and acceptance of the need for improvement; and insufficient capacity to achieve the change required.</p>	<p>There are a range of governance issues that across the organisation that require increased capacity and focus to ensure they are effectively addressed. The draft Annual Governance Statement 2020/21 includes an action to create a Corporate Governance Improvement Plan (CGIP) in recognition of the range of governance challenges that the Council is facing.</p> <p>There is a separate report on this agenda in which the Chief Executive (Head of Paid Service) and Section 151 Officer have set out that the AGS requires further work to ensure it fully articulates the size and scale of cultural change required to improve the culture within the organisation.</p> <p>Another report on this agenda outlined the planned appointment of CIPFA to complete a diagnostic piece of work. Part of this work will be to engage all stakeholders to provide assurance that there is a broad acceptance of the required governance improvements that need to be made.</p>
<p>Poorly developed officer scheme of delegation with key delegations missing around a range of governance functions including elections, scrutiny, virtual schools, data protection, registrars and audit.</p>	<p>Actions to deliver expanded officer schemes of delegations have been significantly delayed and roll over again into 2022/23. LMT have been asked to prioritise compliance with this action but it must be acknowledged that this action has been delayed multiple times.</p>
<p>Officer engagement needs to be more assertive on the actions required, provision of advice on the implications of decision and the need to prioritise activity. No evidence of formal officer advice on formal decisions and initiatives that detracted from the Council's capacity to deliver its strategic priorities being given.</p>	<p>The draft Annual Governance Statement 2020/21 identifies that action is required to improve the consistency of effective advice and challenge on governance matters to members and other officers. Actions to refresh corporate governance training for senior officers and provision of training to support delivery of effective advice and challenge are included as actions within the Annual Governance statement for delivery in 2022/23.</p>
<p>Openness about areas of improvement and a wiliness to engage external support from the LGA and CIPFA was praised alongside plans to develop leadership and capacity</p>	<p>The Council has engaged with the Local Government Association (LGA) over the last year for support. It has been five years since the Council engaged in the LGA Corporate Peer Challenge process. The draft Annual Governance Statement 2020/21 contains a planned action to engage in this process again within the next two years.</p> <p>There is a separate report on this agenda to outline plans to engage CIPFA to assist the Council in commencing its corporate governance improvement journey</p>
<p>Corporate training needs to include key topics including report writing, effective business cases, decision making governance including internal sign off processes and the importance of internal audit.</p>	<p>There is a planned action within the Annual Governance Statement in 2022/23 to refresh training to ensure senior officers training encompasses the full suite of corporate governance training.</p>

There are weaknesses in the arrangements for the decisions to create companies, the operation of the companies, councillor and officer understanding of roles in relation to company roles they were asked to undertake, management of potential conflicts of interest and transparency of decision-making.	The first assurance report of partnership governance arrangements will be brought forward to the next meeting of this committee. Work to date on that has identified an action to establish a working group to ensure there is an appropriate governance framework in place to oversee companies that are wholly or partly owned by the Council. This has been incorporated as an action in the Annual Governance Statement planned actions for 2022/23.
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Update on actions planned in response to the lessons learned from the Liverpool City Council Best Value Inspection

21. When a report on the outcome of the Best Value inspection of Liverpool City Council was considered by the Committee it contained a self-assessment. That self-assessment set out how relevant issues experienced in LCC may be to Middlesbrough Council. As a result, a range of actions were identified within the report. The table below sets out the status of those actions.

Planned action	Status
Appoint an independent technical advisor to the Corporate Affairs and Audit Committee	Delayed. This action was included in the 2021/22 Annual Governance Statement however has not been able to be delivered. It will be delivered during 2022/23 and tracked as part of the Annual Government Statement Action Plan
Review the Asset Disposal Policy process during 2021/22 to provide assurance that asset acquisitions and disposal processes by the Middlesbrough Development Company align with the Council's internal policies on this area.	An internal audit has been commissioned which is now underway and will include this within its scope.
Roll out of an officer scheme of sub-delegations	Delayed. There is an action contained within the 2022/23 action plan for the Annual Governance Statement.
Development of a protocol for members on licencing matters	Completed. This was complete in July 2022.
Mandatory training on the officer member protocol for senior officers	Proposed action within the Annual Governance Statement to deliver this in July 2022
Refresher training to members and officers on the Code of Conduct	Training was delivered to Members in 2021. Officer training will be addressed as part of a planned suite of corporate governance training during 2022/23.
Complete an audit of Middlesbrough Development Company decision making.	In progress.
Develop a five year capital investment strategy around highways infrastructure	Drafted. A report is due to be considered by Executive in May 2022.

What decision(s) are being recommended?

That the Corporate Affairs and Audit Committee notes the:

- outcome of lessons to be learned from other organisations and the planned responses;
- progress made in relation to planned actions that were identified in response to the previous lessons learned report on government intervention at Liverpool City Council;

and

- crossover between issues identified in this report and the draft Annual Governance Statement 2020/21, the External Auditors Value for Money judgement 2020/21 and report to commence the Corporate Governance improvement journey.

Rationale for the recommended decision(s)

22. The report highlights where the Council needs to take appropriate actions to address potential corporate governance weaknesses within its own arrangements.

Other potential decision(s) and why these have not been recommended

23. The Council could choose not to take the opportunity to learn lessons from other local authorities and reflect them within its Annual Governance Statement. This is not recommended because it would be contrary to the principles of openness and transparency. By identifying and accepting that there are areas that can be strengthened, the Council is demonstrating awareness of its corporate governance strengths and weaknesses.

Impact(s) of the recommended decision(s)

Legal

24. There are no direct legal implications as a result of this report. The actions within it are intended to ensure the Council continues to operate lawfully and in line with the Local Code of Corporate Governance.

Strategic priorities and risks

25. The issues identified within the report and actions within the draft Annual Governance Statement 2020/21 to address issues relate to the following risk, which is now considered to be an issue:

- O8- 054 'Failure to adhere to the Local Code of Corporate Governance and deliver governance improvements outlined in the Annual Governance Statement'.

Human Rights, Equality and Data Protection

26. Not applicable.

Financial

27. Not applicable.

Actions to be taken to implement the recommended decision(s)

Actions, where required are embedded within the draft Annual Governance Statement 2020/21.

Background papers

Body	Report title	Date
Corporate Affairs and Audit Committee	Lessons Learnt – Best Value Inspection of Liverpool City Council	5 August 2021

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