

<b>Report of:</b>	Director of Legal and Governance Services and Director of Finance (Section 151 officer)
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<b>Submitted to:</b>	Corporate Affairs and Audit Committee, 5 August 2021
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<b>Subject:</b>	Lessons learnt – Best Value Inspection of Liverpool City Council
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**Summary**

**Proposed decision(s)**

That the Committee notes the contents of the report and the planned actions to ensure lessons are learnt from events at Liverpool City Council (LCC).  
 That the Committee further notes an update on previously agreed actions that were considered by it previously to ensure lessons were learnt from the issues experienced by London Borough of Croydon Council (LBCC) and Northamptonshire County Council (NCC).

<b>Report for:</b>	<b>Key decision:</b>	<b>Confidential:</b>	<b>Is the report urgent?</b>
Information	Not applicable	No	Not applicable

**Contribution to delivery of the 2021-24 Strategic Plan**

<b>People</b>	<b>Place</b>	<b>Business</b>
The report outlines the steps that will be taken to learn the lessons learnt from LCC and will impact positively on the Council’s governance arrangements and provide an update on actions agreed in response to the LBCC report in February 2021 and the NCC report from 2018.		

**Ward(s) affected**

Not applicable.

## **What is the purpose of this report?**

1. In December 2020 HM Government commissioned a statutory inspection of Liverpool City Council (LCC) following investigations by Merseyside Police which resulted in a number of arrests on suspicion of fraud, bribery, corruption and misconduct in public office with significant connections to LCC. The findings of the inspection commissioned by the Government were subsequently published within a [Best Value report](#).
2. The police investigations and the Government's intervention ultimately led to the elected Mayor of Liverpool, Joe Anderson, stepping down from his role. It is important to note that Mr Anderson disputes the findings of the inspection and is currently seeking to challenge them through the courts.
3. This report to committee sets out the governance issues identified in the LCC report and assesses whether there are any lessons to be learnt for corporate governance within this Council.
4. Middlesbrough Council has the same model of governance as LCC, therefore a number of the points in the report will be particularly relevant. This report focuses purely on corporate governance arrangements within the Council and considers them in the context of the LCC inspection report.
5. The report also provides an update on actions previously agreed for this Council following consideration of the Best Value inspection of Northamptonshire County Council and the public interest report issued by the external auditor of London Borough of Croydon Council.

## **Why does this report require a Member decision?**

6. The report is necessary to ensure that the Committee is provided with sufficient information to ensure it is able to keep the Council's arrangements for corporate governance under review, in line with its terms of reference.
7. Learning lessons from other local authorities is best practice and provides an opportunity for the Council to assess its potential vulnerabilities.

## **Report Background**

8. In March 2021, a [Best Value report](#) by government inspectors into governance arrangements in LCC following a policy inquiry into alleged fraud, bribery, corruption and misconduct in public office and the Council response to government in relation to the matters being investigated by the Police. The inspection focussed on:
  - planning
  - highways
  - regeneration;
  - property management; and
  - associated corporate governance arrangements.
9. The inspection team also considered whether LCC had effective arrangements in place to secure best value in those functions. LCC has a directly elected Mayor and cabinet model of governance.

## **Officer structures, roles and responsibilities**

10. There had been multiple changes over a relatively short period of time within LCC to both the structure and the officers occupying posts within it. The Monitoring Officer was not part of the Senior Management team. There was also no post explicitly linked to the Internal Audit function. There were overlapping responsibilities with job titles not reflecting actual roles, resulting in confusion and unclear authority for decision making.
11. For a time the Mayor also chaired the officer team, further complicating the organisation's structure and the team found evidence that the Mayor did not adhere to the officer / member roles that would normally be expected.
12. For 10 years LCC had externalised and returned services to the Council and the inspectors found that these processes had not always been managed well and both physical and corporate knowledge and culture had been lost at each stage. The inspection team found there was a lack of strategic planning or forethought around this.
13. There was a lack of joint working on complex projects across teams, which resulted in delays to projects. Several examples were cited of silo working in Regeneration and Highways services and a lack of leadership within Highways services in particular.
14. The report highlighted concerns that despite the evidence of failure to comply with rules relating to key decisions, scrutiny, exempt reports and probity, no action was taken to address this either internally or via external audit, until the current Chief Executive took up his post.

## **Regeneration and planning**

15. The inspection team was particularly concerned about the culture within the Regeneration department. It found that pressure had been applied on officers to 'get the right outcome' in planning and enforcement. They found incidents of requests to undertake enforcement action being refused or ignored by senior officers. This resulted in potentially unlawful decisions being taken and poor practice was not addressed.

*'What was clear was that in Regeneration, the only way to survive was to do what was requested without asking too many questions or applying normal professional standards.'*

16. The team highlighted concern that suggestions to take decisions to Cabinet for delegated authority were viewed as unnecessary red tape by Regeneration senior officers. The report cited several examples of active non-compliance with corporate governance requirements, which impacted negatively on the achievement of legal decisions that achieved best value for the organisation.

## **Elected members – roles and responsibilities understanding**

17. The report identified inappropriate pressure by the Mayor to achieve outcomes he felt were more desirable. This included:
  - pressuring services to review tender processes where tenders were not awarded as expected to ensure contract were awarded to local contractors through his personal

view that social value was best achieved by employing contractors with a Liverpool post code base;

- failure to declare hospitality from developers;
- exceeding the parameters of his role, as allowed for in the constitution when he sought to take a more active and direct role in the running of the authority;
- appointments to Mayoral paid support posts for individuals to oversee delivery of Mayoral priorities, in addition to Cabinet members, were not always transparent; and
- inappropriate presence and role in the work of the Audit Committee.

18. The report cited examples of other elected members inappropriately intervening in staffing matters. There was limited understanding of the declarations of interest and hospitality registers and challenging behaviour in meetings, linked to a lack of understanding of the Nolan principles and the requirements of the Members Code of Conduct.

19. Despite over 120 complaints having been received during the years looked at by the inspection team, the vast majority were not validated and only one resulted in a determination by the Council's Complaints Sub-Committee. Failure to ensure the Standards Committee met regularly was also highlighted as a concern.

20. Where members acted inappropriately in the award of decisions, officer responses were to make processes more difficult for members to take those decisions, rather than formally publishing reports highlighting concerns about this and the correct behaviours that were expected. The team found evidence that officers raising concerns were not supported and were exposed to aggressive challenge.

21. The inspection team found scrutiny to be ineffective in LCC, with members finding it difficult to push back, chairs prevented from accessing information they requested and late report circulation.

### **Corporate governance compliance**

22. Inspectors identified a reluctance to involve corporate governance resources appropriately and a culture of rule avoidance. They cited:

- failure to hold complete records of key processes in one secure location e.g. asset disposals;
- failure to appropriately engage with corporate procurement and non-compliance with Contract Standing Orders;
- very poor contract management skills in Highways leading to loss of value for LCC, including failure to have contracts in place at the point of TUPE transfer to a new provider. Two years into an outsourced service a contract is still not in place;
- poor partnership governance arrangements with key documents such as shareholder agreements not in place and failure to appropriately train members in the roles they were delivering and associated risks;
- repeated failure to market test to ensure best value was achieved in contract management and asset disposals;
- failure to involve legal services in asset disposal legal processes resulting in the City Solicitor not having oversight;
- failure to revisit the business case for asset disposals despite repeated examples of the nature of the deal changing significantly through the process to the point where it should have been reconsidered and new approvals sought;

- evidence of retrofitting proper approvals into final contracts for disposals because governance processes had not been followed;
- misuse of property assets, which were used by the Regeneration team as disposable assets to meet the goals of the Regeneration team without regard to strategic importance, capital or social value;
- lack of long term plans for asset management linked to the medium term planning cycle;
- poor procurement practice in relation to contract management of physical infrastructure meaning no control over expenditure and a significant risk of non-compliance of the estate with required standards; and
- legally non-compliant approach to social value within procurement processes.

### **Legal corporate governance**

23. The inspection team separately pulled out a number of serious concerns around compliance with legal corporate governance expectations, in particular failure to engage internal legal services appropriately, including consciously ignoring valid concerns raised by legal services in relation to the actions of other departments.
24. There was lack of engagement of legal services in the outsourcing of legal advice resulting in conflict of interest when work was outsourced to firms who were also representing developers in disposals. There were also examples of using outsourced legal advice to challenge internal legal advice. Legal services had no oversight of decisions to outsource legal work, often only becoming aware at the very end of a process.
25. It highlighted failure to use finances for outsourcing of legal work to secure sufficient resource to complete disposal processes in-house.
26. There was also a failure to ensure all required documentation was held by the Council when outsourcing was used, including copies of leases for completed transactions.
27. The report identified a concerning practice of seeking legal comments on committee reports at the last minute and with an emphasis on the political support for any proposal which introduced unacceptable pressures on the service and impacted negatively on the robustness of scrutiny that could be applied.
28. Limited delegations to the City Solicitor did not reflect the significance of the role and its responsibilities.

### **Use of Local Authority Trading Companies**

29. The team has highlighted concern around use of Local Authority Trading Companies (LATCOs). In LCC it found the principles of good company governance in a local authority were not understood and if issues uncovered had continued without redress, LCC would have been facing major financial problems.

### **Inspection Team recommendations**

30. The team made a number of specific recommendations to the Secretary of State for Housing, Communities and Local Government that have been set out below.

31. The recommendations can be split into two sections: the severe consequences of the inspection for LCC and actions that seek to address the corporate governance failures identified by the inspection team.

### ***Consequences of the inspection***

32. The following recommendations are a direct consequence of the inspection and have been agreed by the Government:

- Appoint Commissioners to oversee and approve or otherwise, the Council and its officers in preparing and delivering the Improvement journey of LCC, for an initial period of 3 years. This only to be extended if LCC fails to make satisfactory progress in implementing and embedding the changes necessary to deliver best value in its governance and operations.
- Remove the power of LCC to seek to change its electoral arrangements under the Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009 and, instead, delegate these powers to the Commissioners to consider and consult upon a proposal to change the LCC electoral cycle to an all-out elections once every 4 years, with a reduced number of Councillors elected on a single member ward basis to be implemented as part of the current boundary review being undertaken by the Local Government Boundary Commission for England.
- To consider and approve a suitable officer structure for LCC which provides sufficient resources to deliver LCC functions in an effective way, including the Improvement Plan and its monitoring and reporting within 6 months.
- Require the consent of Commissioners before LCC at either Member or Officer level agree Heads of Terms for any property transaction and subsequent consent before any legally binding commitment is entered into.
- For the direction period, to a. Obtain prior agreement of commissioners to any dismissal or suspension of a person who has been designated a Statutory Officer or the Assistant Director Governance, Audit and Assurance or equivalent. b. Ensure any appointments of a person to a position the holder of which is to be designated as a statutory officer or the head of internal audit are conducted under the direction of and to the satisfaction of any commissioners.

### ***Improvement actions***

33. The table below set out the corporate governance improvement actions for LCC alongside a self-assessment of this Council's arrangements using a simple RAG model:

- Red – highlights areas of local concern with Middlesbrough Council corporate governance process
- Amber – no current corporate governance documented weaknesses however highlights areas where action could be taken to strengthen controls
- Green – no current corporate governance weaknesses documented, no actions required to strengthen controls.

Recommendation	MBC self-assessment	RAG
<p>Direct LCC to prepare and implement an Improvement Plan, to the satisfaction of the Commissioners with, as a minimum, the following components: a. In the first 12 months review and implement changes to the Council's constitution which will</p> <p>i. Improve the ethical governance framework to best practice incorporating the LGA model code and a fully functioning Standards Committee.</p>	<p>The Council has a code of conduct for members in place, based on the LGA model code. A revised code is to be agreed in June along with supporting processes.</p>	<p>Green</p>
<p>ii. Constitute the Audit Committee as a stand-alone committee with a direct reporting line to Council and a right to have its recommendations considered by the Executive Mayor and Cabinet, with either an independent Chair or an Independent Technical Advisor.</p>	<p>Partially applicable. This recommendation was in response to the merger of scrutiny and audit functions into one committee and the failure to consider that audit should have the right to report direct to Council as a committee of the Council. The Council does not currently have an independent Chair of Audit or an Independent Technical Advisor. The Section 151 officer plans to recruit an independent Technical Advisor to support the committee during 2021/22 and this action will be captured in the Annual Governance Statement.</p>	<p>Amber</p>
<p>iii. To re-establish Scrutiny activity in line with Statutory Guidance ensuring that Councillor leadership of the activity is on a cross party basis and with appropriate officer support.</p>	<p>The Council's scrutiny function is established in line with statutory guidance. There are protocols in place to ensure members have access to information required in order to fulfil their roles.</p>	<p>Green</p>
<p>iv. Introduce best practice Standing Orders and Regulations for contracts and property disposals.</p>	<p>The Council has in place standing orders and regulations that are relevant to contract and property disposals. It also has in place an Asset Disposal Policy which sets out how the business case for asset disposals will be completed and approved and the process for agreeing sales of assets on the grounds of social value. There is a requirement that sales of assets on the grounds of social value are reported to this committee. Following analysis of the LCC report, the process will be reviewed 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.</p>	<p>Amber</p>
<p>v. Review the scope, content and reporting of all delegated powers.</p>	<p>The Council has a scheme of delegation in place however the sub-delegations to officers are limited and require further development – this was a planned action during 20/21 but has slipped to 21/22 due to COVID-19. The full scheme will also be published within the Constitution once agreed. Refresher officer training on officer delegated decisions processes for key officers should be delivered to strengthen understanding of the required governance process that must be followed to take an officer delegated decision. This will be included as an action within the next Annual Governance Statement.</p>	<p>Amber</p>
<p>vi. Establish a specific code of conduct for all Members in connection with dealing with Planning and Licencing matters.</p>	<p>There is a planning protocol in place already for Middlesbrough Council. During 2021, a protocol will be developed for licencing matters.</p>	<p>Amber</p>

Recommendation	MBC self-assessment	RAG
<p>vii. Require mandatory training of members in key activities, including behaviours, before participation in Council activities other than full Council.</p>	<p>The Council does include in its Constitution mandatory completion of induction and committee specific training prior to sitting on a range of committees. The consequences of failure to complete mandatory training are less clear currently. Options to strengthen wording of this section and including reporting of noncompliance to full council should be considered by the Constitution and Member Development Committee during 2021/22 as it would require an amendment to the constitution to enforce this.</p> <p>Given the proportion of members with limited local authority experience following the most recent elections and the turnover in senior staff, it would also be prudent to authorise mandatory refresher training on the officer and member protocol within Middlesbrough Council's constitution.</p>	Amber
<p>viii. Improve the content and updating of declarations of interests and gifts and hospitality, for both Members and Officers</p>	<p>Member refresher training on the code of conduct will include information on hospitality requirements and registers of interests and is already planned for July 2021. This will be delivered by an external solicitor who is a formal monitoring officer. It is planned to deliver refresher training for officers to remind them of their obligations under the Officer code of conduct during 2021/22. This will be included as an action in the Annual Governance Statement.</p>	Amber
<p>In the first 24 months, review the roles and case for continuing with each subsidiary company of LCC. For those companies that it is agreed to continue, ensuring that the Directors appointed by LCC are appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate</p>	<p>Given the Council has recently created a subsidiary company completing similar functions to those being delivered in LCC, it would be prudent to review decisions taken in the last financial year to assess whether they are operating in line with the remit and if there are any concerns that decisions could have been taken which would not have met the standards that would be applied if the decisions had been taken internally. Internal audit will be commissioned to review decisions taken during 2021/22 to review decisions as assess compliance with company documentation, the remit agreed by Executive and whether decisions would meet the expectations of internal policies if they had been taken internally.</p>	Amber
<p>To oversee a detailed structure and strategy for the Highways function in short and medium term as set out in the Highways section of this report</p>	<p>Middlesbrough Councils Highways Operations are managed through an in house team. Where external contractors are used this is through the use of either individual contracts or framework tenders and again the management of these is through an in house team. The service is in the process of developing a five year capital investment strategy around highways infrastructure that will inform the MTFP.</p>	Amber
<p>Establish a plan to deliver an effective file management system so that LCC can more easily comply with its statutory and managerial responsibilities</p>	<p>Middlesbrough Council has an Electronic Document and Records Management (EDRM) corporate solution in place and a clear retention schedule. Although not all services use the EDRM, there is a corporate product in place. The report was particularly concerned with the failure to maintain a full case file of all relevant decisions in relation to asset disposals. Currently it is estimated that 45% of council documents is held in an EDRMS. The rest are held in file shares.</p>	Amber



Recommendation	MBC self-assessment	RAG
Devise and implement a programme of cultural change which ensure both Members and Officers understand their respective roles and the way in which the Council and its activities are regulated and governed and the way in which this is monitored, and breaches rectified	The Council has already engaged with the Local Government Association to develop relationships between the senior management team and the Executive and directly elected Mayor which has had a positive impact. It also has an induction process for members and a Member's handbook. Actions to refresh key training for both officers and members are reflected in the previous self-assessment statements.	Amber

## Conclusion

34. LCC has the same democratic governance model as Middlesbrough Council. It is therefore not surprising that the inspector's recommendations that relate to governance and structure will be relevant to this Council.
35. The self-assessment identifies a range of planned actions that focus on member and officer relationships and awareness and understanding of roles and responsibilities. These recommendations align with a recent internal audit report on Member decision-making, which is currently at the draft report stage.
36. There is a risk that if roles and responsibilities are not fully understood and adhered to by both members and officers that Middlesbrough Council could experience the same issues as Liverpool City Council.

## Update on actions identified from previous reports

37. In February 2021, the following actions were agreed following a self-assessment against a public interest report by Grant Thornton on the London Borough of Croydon Council:
- to further strengthen visibility it is proposed that the reserves risk assessment is shared with scrutiny during the budget setting process going forward;
  - review investment plans to ensure the impact of COVID-19 is taken into consideration; and
  - expand the training programme for this committee to include Treasury Management.
38. Since that report, the risk assessment was shared with Scrutiny as part of the consultation for the 2020/21 budget setting process.
39. Training on treasury management has been planned into the work programme of this committee for 2021/22. The first session took place on the 24<sup>th</sup> June 2021 focusing on Treasury Management Principles with a second to follow on the Prudential Code.
40. Full Council on 16 February 2021 approved a revised Investment Strategy and a Capital Strategy including Treasury Management Policy, Borrowing Strategy, Minimum Revenue Provision Policy and Prudential Indicators. These had all been considered in the light of the COVID-19 situation.
41. In 2018, the following actions were agreed following a self-assessment against a Best Value inspection report on Northamptonshire County Council:

- continued improvement of demand forecasting within Adult Social Care and (in particular) Children's Care, now linked to Change Programme 3.1;
- conclusion of the review of current utilisation of Public Health Grant and forecasting of future needs to provide assurance and to identify future commissioning priorities;
- development of medium-term Directorate Plans to demonstrate line of sight from the Strategic Plan to team level performance and communicate objectives to all employees;
- continued development of the Council's approach to Programme and Project Management, in particular developing business cases in respect of projects with purely or majority social value;
- development of overarching partnership arrangements linked to the Mayor's Vision and Public Sector Reform, linked to the Social Regeneration Prospectus;
- a review of local scrutiny arrangements in line with the Government's response to the recommendations of the Communities and Local Government Committee on the Effectiveness of Local Authority Overview and Scrutiny Committees; and
- implementation of a new approach to complaints including quarterly management information and lessons learned reports.

42. All actions were completed with the exception of the overarching partnership governance action. Plans for this changed with the political administration, however a partnership governance policy is now in place which will ensure partnerships are developed and managed in alignment with the Council's strategic priorities.

43. Work is progressing to expand demand forecasting products in Children's safeguarding to incorporate financial forecasting. Further work is planned in relation to lessons learnt from complaints during 2021 to strengthen practice in this area.

#### **What decision(s) are being asked for?**

44. That the Committee notes the contents of the report and the planned actions to ensure lessons are learnt from events at Liverpool City Council (LCC).

45. That the Committee further notes an update on previously agreed actions that were considered by it previously to ensure lessons were learnt from the issues experienced by London Borough of Croydon Council (LBCC) and Northamptonshire County Council (NCC).

#### **Why is this being recommended?**

46. It is always prudent to take the opportunity to learn lessons from other local authorities and identify where practice can be improved to avoid issues experienced elsewhere.

#### **Other potential decisions and why these have not been recommended**

47. The Council could choose not to reflect on the issues experienced elsewhere, however that is not recommended.

#### **Impact(s) of recommended decision(s)**

#### ***Legal***

48. There are no legal implications from the recommendations.

### **Financial**

49. There are no direct financial implications from the planned actions.

### **Policy Framework**

50. Not applicable.

### **Equality and Diversity**

51. Not applicable.

### **Risk**

52. The issues set out within this report are relevant to the following identified risks within the Council's risk registers:

- Incorrect assumptions in the MTFP (08-059)
- Failure to adhere to the Local Code of Corporate Governance and deliver governance improvements outlined in the Annual Governance Statement (08-054)

53. The report identifies a range of prudent actions that officers will be taken which will impact positively on these known risks.

### **Actions to be taken to implement the decision(s)**

54. Following this report, officers will take the necessary steps to enact their planned actions to ensure lessons learnt are reflected in local practice. Where necessary actions will be embedded within the Annual Governance Statement planned actions for 2021/22.

### **Appendices**

Not applicable.

### **Background papers**

<b>Body</b>	<b>Report title</b>	<b>Date</b>
Corporate Affairs and Audit Committee	Lessons Learnt – Croydon London Borough Council Section 114 notice	4 February 2021
Corporate Affairs and Audit Committee	Lessons Learnt – Northamptonshire Council	29 May 2018

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