

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

07 October 2021

Joint Report of the Chief Executive, Director of Finance & Transformation and Director of Central Services & Monitoring Officer

Part 1- Public

Matters for Recommendation to Cabinet

1 NORTHAMPTONSHIRE COUNTY COUNCIL – INTERVENTIONS REPORT

A report summarising the key issues arising from the Commissioners' Interventions Report at the former Northamptonshire County Council. Members are asked to review the issues raised, and consider whether TMBC is adequately equipped to avoid these issues occurring. Members of this Committee are also asked to consider what role the Committee can play in supporting the 'financial agenda', and more generally whether Members feel that specific training might be needed.

1.1 Introduction

- 1.1.1 Members may be aware that in January 2018, the Secretary of State for Communities and Local Government announced an independent inspection of Northamptonshire County Council in the light of evidence including the external auditor's (KPMG) "adverse" value for money opinion in relation to the 2015-16 and 2016-17 accounts, publicly available budget documents, and the September 2017 Local Government Association peer review into the council's financial planning and management.
- 1.1.2 A report was published in March 2018 and this noted that the inspector had found that failures at the council were not due to a lack of funding, but instead were a result of **poor management, a lack of budgetary control as well as a culture which discouraged challenge**.
- 1.1.3 Subsequent to this, in May 2018 the Secretary of State announced that Commissioners were to be sent to the council. Regular reports have followed culminating in a "lessons learned" report published in June 2021.
- 1.1.4 For those interested, the entire history of this review can be found on the Gov.uk website at: <https://www.gov.uk/government/collections/inspection-into-the-governance-of-northamptonshire-county-council>

- 1.1.5 The last “lessons learned” report (June 2021) is appended at **[Annex 1]** for Members’ attention at this meeting.
- 1.1.6 It is not the purpose of this report to consider the detailed issues that occurred in another authority. The purpose is to reflect on the key issues raised and ensure that Tonbridge & Malling Borough Council is satisfactorily equipping itself to ensure that the issues raised in the interventions report are not able to be repeated here.
- 1.1.7 The report makes specific reference to the role of the Scrutiny Committee in this respect. It says:

“If financial circumstances deteriorate, the influence of the scrutiny committee should be boosted in respect of financial overview. For example, provide impartial and independent training and advice to Councillors through the Centre for Governance and Scrutiny, to enable the committee to scrutinise effectively key decisions on services, income and expenditure and learn how to question without aggression”.

In addition, it adds:

“Robust scrutiny arrangements reduces the potential for ill thought-through decisions and are an indication of strength and confidence in decision making. Conversely, weak and disempowered scrutiny easily admits the possibility of untested and over-optimistic decisions, and, ultimately, failure”.

- 1.1.8 It is clear that the Scrutiny arrangements within a local authority are fundamentally important in the delivery of adequate challenge.
- 1.1.9 The interventions report is broken down into 6 separate topics as follows, and each is discussed further below.
- 1) Leadership
 - 2) Strategic Direction
 - 3) Financial Management
 - 4) Service Failures/Service Transformation
 - 5) Challenge
 - 6) Culture
- 1.1.10 At the end of the interventions is a series of recommendations for the sector that Members (and officers) should review and consider.

1.2 Leadership

- 1.2.1 The report from the commissioners is blunt in its condemnation of the leadership demonstrated from both Members and senior management stating:

“There had been a complete failure of political and senior managerial leadership at the Council in the years preceding the Intervention. Rather than face up to its challenges, the leadership failed to tackle emerging issues, looked to lay blame elsewhere and chose instead to pursue fanciful solutions and remedies which were unlikely to succeed. It did not consider realistic or practical ‘bottom-up’ solutions.

From the outset of the intervention it was clear that Max Caller’s [head of the investigation] judgement was an accurate reflection of the lack of leadership and despite there being ‘many good, hard working dedicated staff’ the problems at the Council were a direct consequence of management failure. The wider failings of the Council flowed from this fault-line.”

- 1.2.2 Essentially, the stark conclusion is that ‘flawed’ leadership was the central catalyst for the wider failings.
- 1.2.3 The interventions report itself sets out the stance that the commissioners took in dealing with this ‘central’ failing. Ultimately, however, as Members may already be aware, a local government reorganisation was undertaken and Northamptonshire County Council ceased to exist from April 2021.

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- 1.2.4 Over the years, TMBC has prided itself on the solid working relationship between senior Members and the Management Team. As a key foundation block, this has helped this Council address critical issues in times of stress and challenge, and plan for the future.
- 1.2.5 Self appraisal is crucial to ensure that key foundations remain in place. This applies to both the Member dimension, and the senior management core.
- 1.2.6 Whilst it is obviously very important to recognise that key decisions are the responsibility of the democratically elected Members, as set out in the Constitution some level of decision making is delegated to officers. Striking the right balance for the operation, management and direction of the Council is essential. At the same time, a collaborative, respectful and professional working between Members and the officer core needs to be maintained.
- 1.2.7 The Protocol on Member-Officer relations contained within Part 5 of the Constitution seeks to encourage best practice and promote greater clarity and certainty between Members and Officers. It also sets out specific arrangements for the role of the Overview and Scrutiny Committee in ensuring that decisions of the Council are lawful and within the Budget & Policy Framework.

1.3 Strategic Direction

- 1.3.1 The commissioners reported that Northamptonshire council suffered from a lack of strategic direction. They stated:

“ At the outset it was clear that there wasn’t a realistic Council plan, county plan, workforce plan, IT plan, or a transformation plan and the approach to risk-management could best be described as under-developed.”

- 1.3.2 The commissioners worked with the council to agree a clear programme of work and define the benchmarks that would indicate success. Thereafter, performance was then measured against delivery.
- 1.3.3 One of the points made in the report is that getting the ‘basics’ right is essential. It would appear that the council in question had ‘lost its way’ in terms of some service delivery due to experimentation with shared services and the lack of governance which went with it. Whilst this might have saved money in the short term, it was not ‘best value’ for the council in terms of the outcomes.

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- 1.3.4 As Members are aware, TMBC has a number of high level plans and policies including: a Corporate Strategy, a Climate Change Strategy, an IT Strategy, a Digital Strategy (incorporating transformation) and of course a Medium Term Financial Strategy and Savings and Transformation Strategy. These strategies are reviewed by Members and are open to scrutiny by this Committee. Members need to ensure that these strategies are ‘fit for purpose’ and address the key issues affecting the borough.
- 1.3.5 During the first year of the pandemic, an addendum to the Corporate Strategy was developed in response to the pandemic and naturally steered the Council and its services in different ways. A second year addendum is being informed by the covid recovery process.
- 1.3.6 In recent years TMBC moved away from having a corporate set of performance indicators, but as Members are aware performance is reported to Advisory Boards. Members can, and should, seek as much performance information as they need in order to ensure that the Council is progressing in the right direction. Discussion is underway with the new cabinet regarding corporate performance indicators.
- 1.3.7 Management Team regularly review strategic indicators including income monitoring, salary monitoring, sickness rates, temporary accommodation rates, waste collection performance and complaints. These provide a context for organisational health and performance.

1.4 Financial Management

1.4.1 When the inspectors arrived, Northamptonshire council had exhausted its reserves, had an unfunded deficit and had issued a section 114 notice.

1.4.2 One of the key issues and potential 'fault lines' was that strategic financial management had been outsourced and there was little in-house expertise or capacity. In addition, basic housekeeping measures and good financial management were lacking.

1.4.3 In particular, the detailed points made, which could be relevant to any council, were:

- 1) an under-estimation of revenue budgets to a material level leading to overspending;
- 2) an imbalance between income and expenditure;
- 3) the use of one-off resources to fund ongoing revenue expenditure with no plans to replace them;
- 4) an adverse opinion from the external auditor on the authority's ability to deliver best value;
- 5) a lack of financial resilience when measured against CIPFA's financial resilience model;
- 6) a poor outcome from benchmarking financial services against CIPFA's financial management model;
- 7) a failure to close the accounts and publish the Statement of Accounts on time;
- 8) a failure to respond in a timely fashion to matters raised by the auditor in the ISA260 report;
- 9) a failure to disclose to the external auditor and / or to the Audit Committee weaknesses in the Council's financial systems, management or processes;
- 10) a poor outcome from independent inspections including an LGA Peer Review, and an Ofsted inspection that although rated as requires improvement has since proved to be a misplaced judgement;
- 11) a persistent failure to deliver savings targets in the short, medium and long term, and the lack of an appropriately skilled transformation team to support and monitor the progress of projects designed to deliver savings;
- 12) a high level of reliance on the use of reserves to fund ongoing revenue expenditure;

- 13) an inappropriate use of government grant funding;
- 14) an over-reliance on short-term funding sources such as the flexible use of capital receipts;
- 15) use of reserves for purposes for which they were not originally intended;
- 16) a weak system for financial monitoring and reporting and for informing members of cabinet, scrutiny and Council which is less than timely, complete, clear and relevant to decision making;
- 17) the likely issuing by the external auditor of a Report in the Public Interest; Later a decision was taken by auditors not to progress.
- 18) the issuing by the external auditor of an advisory notice under the Local Audit and Accountability Act 2014;
- 19) weak financial stewardship leading to routine financial processes (e.g. clearing suspense and control accounts and reconciliations) not operating effectively;
- 20) opaque, confused and jargon riddled reporting, written for the benefit of finance 'experts' rather than for the benefit of understanding by Councillors, residents and Council Tax payers;
- 21) weak governance associated with shared service arrangements and a lack of understanding of roles, remit and responsibilities.

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- 1.4.4 At TMBC, Members will be aware that rules pertaining to Financial Procedures are set out with the Council's Constitution. The Council's statutory (s151) finance officer is the Director of Finance & Transformation and is part of the Council's Management Team.
- 1.4.5 The Director of Finance and Transformation has two deputies for the statutory finance role – the Chief Financial Services Officer and the Financial Services Manager. The three officers work together to ensure that statutory financial requirements are maintained, and that appropriate advice is given to officers and Members. As Members are aware, all three officers are directly and exclusively employed by TMBC.
- 1.4.6 Regular financial monitoring reports ("Financial Planning and Control") are presented to the Finance, Innovation and Property Advisory Board. These are decision reports requiring Members to examine and note the financial position portrayed. In addition, information reports on council tax and business rates collection are reported routinely to the Advisory Board, giving Members assurance that key cashflow is being maintained. Investment performance is regularly reviewed by the Audit Committee.

- 1.4.7 During the budget cycle, the Advisory Board also receives detailed draft Estimates for Scrutiny – and the same information is similarly presented to this Committee under the Budget and Policy Framework. This is the opportunity for Members to scrutinise the draft estimates and consider whether or not the allocation of resources is meeting the Council’s objectives and vision. Recommendations made to Cabinet by both Board and Committee assist Cabinet in determining the budget for the forthcoming year.
- 1.4.8 More strategic financial matters are reported directly to the Council’s Cabinet. Members are aware that our financial planning takes the form of a 10 year Medium Term Financial Strategy. This is supported by a detailed 6 year capital plan and a Savings and Transformation Strategy.
- 1.4.9 Members are aware that the Council is facing the need to find significant financial savings in order to ensure there is a balanced budget by the end of the MTFS period, and that reserves are not depleted beyond the minimum thresholds Members have set.
- 1.4.10 Currently, the identification of new savings and the delivery of some other savings is at a difficult point and **Members should reflect on this within the context of some of the points set out in the list above (with particular reference to items 11 and 12)**. Members may want to refer to our joint report to Cabinet in July 2021 which set out the latest position and made a number of recommendations. The Director of Finance & Transformation will be reporting again to Cabinet on the MTFS at its meeting on 12 October.
- 1.4.11 Ultimately, Members working with senior officers have a duty to ensure the Council’s long term financial position is sustainable, and that ‘short term’ decisions do not jeopardise that longer term sustainability.

1.5 Service Failures/ Service Transformation

- 1.5.1 This section of the Intervention report referred very much to failings of ‘upper tier’ statutory services at Northamptonshire such as Children’s Services, Trading Standards and Emergency Planning.
- 1.5.2 The commissioners were keen to point out that the failures were **not** linked to a lack of funding (as in fact one of the service areas had received significant investment), but to poor management and decision making. Ultimately of course as we have already mentioned at paragraph 1.2.3, a local government reorganisation was undertaken and Northamptonshire County Council ceased to exist from April 2021.
- 1.5.3 The fact that the failings were NOT linked to lack of funding is a point of reflection because as we all know, this is often the reason cited for service failure.

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- 1.5.4 Whilst TMBC does not provide the same breath of services as Northamptonshire, the same principles apply nonetheless.
- 1.5.5 Members should reflect and consider whether they are receiving adequate performance information in order to assist them in determining whether strategic focus, management and decision making is resulting in satisfactory delivery of services and the best use of resources.
- 1.5.6 On reflection, if Members do not feel they are receiving sufficient information in order to make those judgements, formal requests should be made via Advisory Boards and Committees. In addition, where there are concerns, specific reports can also be commissioned via this Committee (fulfilling the scrutiny function) or the Audit Committee (particularly where there is a financial focus).

1.6 Challenge

- 1.6.1 The commissioners' report stated that there had been a 'mentality' at Northamptonshire whereby the challenges were not faced and the reality of the organisation's predicament was simply not acknowledged or accepted.
- 1.6.2 The adoption of this stance marginalised the Council's scrutiny function which should have provided effective checks and balances. It is reported that any dissenting voices were effectively ignored.
- 1.6.3 It was also noted that the council in question had a dismal track record in dealing with customer complaints, with the Local Government Ombudsman directly raising concerns.
- 1.6.4 Challenge was a **fundamental issue** in the interventions report. The commissioners said:

"A critical part of the intervention has been the establishment of meaningful challenge, scrutiny and transparency to the business of the Council.

We asked the Centre for Governance and Scrutiny to review how scrutiny functioned and propose an effective structure for the Council which we then adopted in full.

This included the scrutiny committee being chaired by an opposition Councillor and focusing exclusively on financial matters, as this was the most significant burden the Council was addressing."

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- 1.6.5 The importance of the scrutiny function cannot be underestimated. Positive challenge and transparency is 'healthy' and can tease out issues that may not

have come to the surface in the first instance. It also helps Members to ensure that best value for residents is being achieved.

- 1.6.6 As Members of this Committee are well aware, TMBC's Constitution provides for decisions taken by the Executive to be "called in" and reviewed once more before the decision is finally enacted. Members are reminded that the Constitution can be found at:

<https://www.tmbc.gov.uk/downloads/download/304/tmbc-constitution>

- 1.6.7 The specific responsibilities of this Committee, Overview and Scrutiny, are set out in the extract at **[Annex 2]**.
- 1.6.8 As mentioned earlier, this Committee reviews the Budget proposals under the Budget and Policy Framework each year and has also undertaken a programme of reviews to identify potential savings.
- 1.6.9 However, with the **significant** financial challenges facing the Council (Members are referred to the report to Cabinet in July 2021), it is perhaps timely for the scrutiny programme to be 'beefed up' in this regard.
- 1.6.10 Members of this Committee are asked to consider how they can contribute to the review of the Council's financial forecasts to assist in identifying options for consideration.
- 1.6.11 It may be that refresher training is required on the scrutiny role, and Members are asked to consider what might assist them in their roles.

1.7 Culture

- 1.7.1 The commissioners report a "weary" organisation at Northamptonshire where failure was expected and aspiration for improvement was weak.
- 1.7.2 It is clear from the commissioners' report that a clear management plan and good working culture for staff is key:

"The introduction of proper management practices has benefited staff and the new-found financial discipline has enabled an across the board pay increase for the first time since 2016.

The lack of pay increase in the intervening years was because of the decision to opt out of the local government pay structure. This, together with the removal of mandatory unpaid leave and the reinstatement of benefits that had been curtailed, such as appropriate sick pay, has been positively welcomed by staff and unions."

- 1.7.3 In their recommendations, the commissioners make the point that it is essential to energise the workforce by supporting what works and changing what doesn't, as they believe that nothing demoralises staff more than bad management. This of course links back to the theme about leadership and direction.

TMBC

- 1.7.4 It has long been recognised that our staff are the key foundation of this Council. Through the Joint Employee Consultative Committee, Members have a direct sounding board with staff where any issues can be heard.
- 1.7.5 We are however fortunate that generally speaking, we have a good working culture at TMBC where the roles of officers and Members are mutually respected.
- 1.7.6 Keeping staff informed of issues and changes is imperative in maintaining a health and positive culture, and this is something we always strive to achieve. This takes place in a number of ways e.g. through the JECC, regular all-staff emails from the Chief Executive, directorate-wide meetings on MS Teams etc. Feedback from staff is also encouraged through surveys and via the JECC.

1.8 General Observations

- 1.8.1 It is clear that the Scrutiny Committee in a local authority has a fundamental role, and that the challenge that should be provided by that Committee is essential in the overall decision-making framework. Challenge should not be seen as a negative act, but one which brings confidence.
- 1.8.2 It is of course appreciated that some more recent Members to the Committee may not have received specific training, and it may be that other Members may feel that they too could benefit from a greater training to enhance their input.
- 1.8.3 **Members are asked to consider their additional training would assist them in delivering their important roles within the Council's constitution.**
- 1.8.4 The Council has significant financial challenges ahead and much will be expected of the Cabinet in driving forward options for change. This Committee has the ability to support this role through challenge.

1.9 Legal Implications

- 1.9.1 Section 151 of the Local Government Act 1972 requires every local authority to make arrangements for the proper administration of their financial affairs and requires one officer to be nominated to take responsibility for the administration of those affairs.
- 1.9.2 Section 114 of the Local Government Finance Act 1988 requires a councils' chief finance officer to issue a s114 Notice reporting to all elected members an actual or impending seriously unbalanced budget.

1.10 Financial and Value for Money Considerations

- 1.10.1 None through this report.

1.11 Risk Assessment

- 1.11.1 The Scrutiny Committee has a unique role to play in the Council's operations. Failure to fulfil that role could lead to a lack of challenge and transparency which could have future repercussions.

1.12 Equality Impact Assessment

- 1.12.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.13 Policy Considerations

- 1.13.1 Budgetary and policy framework is relevant to all areas of the Council's business.

1.14 Recommendations

- 1.14.1 Members of the Committee are asked to:

- 1) Review the Northamptonshire Interventions Report and consider whether there are any issues or principles which need to be investigated further at TMBC;
- 2) Consider what role the Committee can play in supporting the 'financial agenda' and if appropriate design programmes of work accordingly; and
- 3) Consider whether Members of the Committee would wish to engage in training programmes in order to assist them in their roles.

Background papers:

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Nil

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