



Cheshire East Council

Report in the Public Interest on the impact
of the Council's culture and governance
arrangements during 2014 - 2018

17TH JANUARY 2023

1 PREFACE

- 1.1 Grant Thornton is the appointed external auditor to Cheshire East Council (the "Council") for the financial years of account, 2012/13 through to 2017/18 and this report represents the conclusion of its work on the audits for those years. The appointment was made under the Audit Commission Act 1998 and subsequently, the Local Audit and Accountability Act 2014 and, as part of the firm's audits, this Public Interest Report is made and published under section 24 and Schedule 7 of the latter Act.
- 1.2 The issues reported upon here concern the culture at the Council, the role and conduct of Michael Jones, the former Leader, and a particular set of events around a procurement involving a local company. This procurement is by way of an exemplar of that culture. The audit inquiries were delayed for a number of years by an investigation by Cheshire Police starting in late 2015. At that point, all internal and external audit work relating to this issue had to be suspended. Four years later, in mid-2020 the police announced it was not intending to bring any prosecutions. Grant Thornton shortly thereafter resumed its work on these matters to complete its formal audit duties for reporting on the years of account. It is this work which has led to the issuing of this Public Interest Report.

2 EXECUTIVE SUMMARY

- 2.1 The public has a right to expect their elected representatives in local government to exhibit high standards in public life. They also have a reasonable expectation that senior officers are able to ensure that the mechanics of governance are effective in preserving the regularity and probity of a council's business.
- 2.2 In Cheshire East Council, during the two year period, 2014 - 2015, these arrangements failed, and the Council entered into a number of transactions where concerns have since been raised. In our view, there was a pattern of bullying and inappropriate behaviour on the part of the former Leader, which whilst denied by him, led to distortions to good governance. This led moreover to increasing tensions between different officers, different members and the all important relationship between the two groups.
- 2.3 This then resulted in the former Leader's resignation and over a further period of three years of destabilisation (2016 -2018), many senior officers resigned as a result, either on their own volition, or in some cases, in the context of unconcluded disciplinary investigations. A lengthy police investigation started in late 2015. The police eventually decided in 2020 not to bring any prosecutions. In our view, there remains a public interest in these matters being aired publicly and analysed, both for accountability purposes for the local electorate and more widely to identify the underlying causes for the benefit of the local government sector as a whole.
- 2.4 This report explores the culture, behaviours and underlying governance weaknesses that were present at the time. It outlines the irregularities found in the Council's dealing with a particular company and how these arose from inappropriately controlled exceptions to the normal arrangements and governance controls.
- 2.5 We have concluded that the Council's former Leader, appointed in May 2012 behaved in a manner that sought to influence certain senior officers into taking steps and decisions that would achieve his own objectives in relation to this company, even if this meant bypassing or overriding the Council's established controls. In our view, some of his wider behaviours were bullying, intimidatory and aimed at seeking to get his own way in matters without recourse to the normal procedures.
- 2.6 Officers did push back and try to find solutions that would 'stay the right side of the line'. What is clear however, is that in the period leading up to when the former Leader announced his resignation, there were two senior officers, the former Chief Executive and the former Chief Operating Officer (and section 151 Officer), who needed to take the greatest responsibility. The former Chief Executive for failing to secure the necessary governance culture to address the former Leader's style of working and the former Chief Operating Officer for his part in this failing and in addition, for his inappropriately acting on the former Leader's wishes or apparent wishes, in relation to that company. The difficulties in pushing back and resisting the pressures were in part due to the relative inexperience of those senior officers. Taken together however, and in our view, these factors played a large part in creating the circumstances in which the former Leader believed that he was able to act as he wished.
- 2.7 Given the nature of the former Leader's conduct, the matters reported here were relevant to the Council's then Code of Conduct for members and also the Officer/Member Relations Protocol. It is of major concern to us that these standards' mechanisms played little part in addressing the issues. Certain officers and members perceived that the local standards framework would be ineffective against an individual in the former Leader's position of power. Furthermore, the lack of a national body (abolished by Government in 2012) overseeing standards for members and, as a result, a lack of an external body to get involved and also the lack of appropriate sanctions for

use locally, also contributed to a situation in which officers and members felt exposed. That said, the two senior officers mentioned above enjoyed statutory protection against disciplinary action and dismissal that most other officers did not. They could and should, in our view, have done more but we acknowledge it would likely have come at a high personal cost.

- 2.8 The report sets out in detail as an example of the dysfunctional environment, the issue that first shone a light on the problems within the Council. This arose from the piloting and then re-piloting after a failed procurement of physical exercise services for children which inappropriately favoured a company called Core Fit Limited ("Core Fit"). Its Director provided physiotherapy services, under a separate private arrangement to the former Leader of the Council and she was a *"trusted friend"* as he put it. There were numerous instances in the events investigated for this report, in which the former Leader directly and indirectly set out to give an advantage to this company through his communications with the Director of Core Fit, officers and others. The inappropriate nature of his help for the Director of Core Fit (who it should be clear did not herself set out to try to bend or break any rules) could be seen in the tone and nature of his communications with her in which, for instance, he called himself her *"business manager"*, made the suggestion *"you pay yourself loads"* and shared a document which he told her was confidential to the Council. He denies that he inappropriately set out to advantage her interests. On the basis of the evidence considered for the purposes of this report we have concluded otherwise.
- 2.9 It was the former Leader who introduced Core Fit to the Council. A Council funded pilot with Core Fit was first proposed in 2014 to provide exercise classes in a small number of schools. This was already unusual as this type of service was typically procured by the individual schools through their delegated budgets such that they could 'shop around' in what was an active market (there being a number of physical exercise providers in the area).
- 2.10 At the time, the pilot was with a view to a future procurement. During the first pilot period however, we have seen clear evidence of assistance afforded to the company and arrangements followed that would not normally be the case in relation to other companies working with the Council, including:
- a breach of the normal rules for competition including the pilot not being put out to market;
 - irregular use of the Council's waiver process to support the decisions being taken to commence the pilot without competition;
 - pressure put on officers to pay invoices quickly;
 - pressure to provide insurance cover for the Company;
 - providing unusual support to the company on tender submission through the Council's procurement portal.
- 2.11 When the work was put out to tender in February 2015, Core Fit, with the help mentioned above, put in a bid. The procurement was however abandoned after its evaluation/scoring in which Core Fit did not come highest. This notably involved a highly unusual number of very senior officers. The abandonment was justified because of pricing difficulties. However, these difficulties had largely been ironed out, such that the Procurement Manager had, in the event and despite the concerns raised, advised that the Council could make an award to the highest ranked bidder (which as noted was not Core Fit, which had only ranked 5th in the evaluation).
- 2.12 Whilst the unusual number of higher-grade officers involved in such a small value procurement were involving themselves in order to keep the former Leader away from operational matters and to protect junior staff and the integrity of the process, ultimately it was unclear why an award could not be made. As noted, Core Fit had ranked fifth out of the various bidders (when price and quality were taken into account in line with the tender rules). Rather than awarding to one of the four higher-ranking tenderers, the former Chief Operating Officer and former Director of Children's Services decided to abandon the procurement (with a stated intention of re-running it in autumn of 2015).
- 2.13 The decision was then taken by the former Head of Communities, under instruction from the former Chief Operating Officer, to continue to pilot the services with Core Fit alone. The justification for the extended pilot was unsound and left the Council vulnerable to the accusation that those officers were seeking to continue funding Core Fit's work, further to an actual or perceived view of the former Leader's wishes. The culture that had grown up around the former Leader was such that his influence distorted due process and left the Council vulnerable to the accusation of apparent bias.
- 2.14 During this second pilot, the scope of the work given to Core Fit, again without competition increased from the £85,000 pa, anticipated in the tender, to around £188,000 pa. There were further examples from our work quoted in this report of a closeness of friendship between the former Leader and the Director of this Company that would not have been expected without some sort of disclosure in order to avoid public law difficulties and propriety. There were also other procedural irregularities regarding the authorisation for increases to the scale and scope of work

awarded and the former Leader sharing strategic papers with Core Fit that would have given the company an advantage in any subsequent competitive tender exercise.

- 2.15 When the arrangements with the Company were terminated by officers in September 2015, due to the Company failing to have in place appropriate Disclosure and Barring Service ("DBS") checks for all its staff working with children, the Council abandoned its desire to put in place such exercise arrangements and no further thought was given to either continuing to pilot the concept with other companies from the initial procurement, or completing the planned re-procurement for the service.
- 2.16 In August 2015 there were anonymous whistleblowing communications. The Council's former Head of Internal Audit demonstrated high standards of professional behaviour and personal bravery in bringing these matters to our attention, in spite of the challenging organisational culture in place at the time. The Internal Audit team also then started its own investigations but, in December 2015, the police commenced its investigation that led to all ongoing internal and external audit work on the matters being suspended. Further to negative press coverage, initiated by both the Labour Group and a Conservative member (following disclosure from Freedom of Information Act (FOIA) requests) and then action taken by his then local Conservative Association, the former Leader gave notice to stand down from his role.
- 2.17 Some officers had resigned from the Council before this stage and others were to follow. Thus, the culture and fall out from the Core Fit matters led to the resignations of the former Head of Corporate Resources and Stewardship, the next Director of Legal Services who had joined in January 2016, the former Chief Executive and finally, the former Chief Operating Officer. In addition, the former Head of Internal Audit also resigned, which he and others felt was attributable to the aftermath of Core Fit but was also complicated by other factors. These departures led to a further period of instability, not resolved for several years.
- 2.18 Whilst we are aware of other matters that have since come to light that suggest similar weaknesses to those exhibited by the 'Core Fit issue', it was this initial matter that had triggered the investigations and contains all the elements we consider are important to report in the Public Interest.
- 2.19 All told, the various factors at play gave rise to a dysfunctional environment between senior officers and the member at the helm of the Council, as well as some of his political colleagues. There should have been effective and timely mechanisms to address this and whilst action to rein the former Leader in proved successful in late 2015, this was after some considerable period of instability. Given the shortcomings of the standards regime and a failure of statutory protections to give confidence to the two senior officers to feel able to take a strong stand, this has highlighted a systemic gap in the Council's and indeed the sector's ability to tackle this kind of member bullying. The power of the ballot box to remove a member is often years away and politicians can naturally be expected always to have one eye to the impact on their electoral position. In this respect, it is important to note that there was a vote of no confidence in the former Leader, instigated by the opposition party and there were elections in May 2015, which would have acted as a disincentive for the ruling party to call the former Leader out in a public way. Whilst some members within the former Leader's political party were highly concerned by his actions, others provided him with their political support and it took time for his behaviour to eventually be addressed by his own party. Furthermore, as the report discusses, officers, who remain politically neutral, have no power to remove a Councillor. The mechanisms open to members and officers in these circumstances should not need to rely on external pressures created by the media spotlight. It appears that unless there are centralised changes, away from a purely localism based approach and in support of both officers and members, there will continue to be these types of tensions and lack of support.
- 2.20 The public interest in the issuing of this report is to ensure that the electorate of Cheshire East is finally appraised of the events set out here, given that prior to this they have been reliant on partial media reporting. It is also of public interest to report upon the Council's successful track record in addressing the previous failings. The report looks out beyond to the wider local government sector to illustrate both what can go wrong and how an authority can do its best to turn this round (see section 4 below).
- 2.21 Under current arrangements the only direct intervention available for a Council with significant governance issues is for Government to commission a Best Value Inspection and/or appoint independent commissioners to the body. It is unlikely that this would have been triggered at this stage of Cheshire East's history. A key learning from this report for the sector is therefore that the inherent weaknesses identified here could create governance difficulties elsewhere in the future. Sector leaders, including Government should, in our opinion, now give this further consideration. We hope moreover that this report will encourage the ongoing debate around the effectiveness of the standards regime for local government and support mechanisms for both officers and members facing the same intractable difficulties.

3 METHODOLOGY AND ACKNOWLEDGEMENT

- 3.1 This report is based on extensive documentary review, a range of interviews with former and current officers and members and consultation on drafts. It only names politicians and not officers, given the public facing role of the former. The role of officers and contribution to these affairs is set out in detail and where the report refers more generally to “certain officers” or “senior officers”, the extent of any criticism should be limited to that set out in the sections specifically mentioning their role in Section 10.
- 3.2 This report sets out our opinion and assessment of relevant matters based on our review and analysis of the underlying facts.
- 3.3 We would like to thank all those that participated in the making of this report. In particular, we would like to acknowledge the role of the Council’s previous and current Internal Audit team for always seeking to perform their responsibilities in a professional and impartial manner. We would also like to thank those that gave their time to be interviewed (including former and current officers and members) and the Council’s current officers, who ensured we were provided with the support and information to complete our work. It is acknowledged that the passage of time has rendered this investigation more difficult, in terms of the work needed to ensure accuracy of findings and including on a personal front for those asked their recollection. The public interest however in the issues reported upon here being brought to the attention of the public has however necessitated the conclusion of this work to ensure the public scrutiny and lessons learned for the sector.

4 EXTERNAL AUDIT’S ROLE

- 4.1 Grant Thornton in its role as the appointed external auditor to Cheshire East Council for the financial years of account, 2012/13 through to 2017/18 is issuing this public interest report under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014 (under which an auditor is required to consider whether matters that have come to its attention should be reported in order to bring them to the public’s attention). Paragraph 60 of Auditor Guidance Note 07 issued by the National Audit Office sets out considerations when considering issuing a public interest report:
- **the significance of the matter or weakness in arrangements which has come to their attention or which they have identified during the audit;**
 - whether the body itself recognises the need to address a concern and is taking appropriate action in a timely way;
 - **what information is already in the public domain and whether there is merit in bringing the matter to the attention of the public in the interests of openness, transparency and accountability or to facilitate dissemination of learning to other public bodies;**
 - which form of reporting is likely to be most effective in helping the audited body to understand the significance of the matter and the need to take action; and
 - whether previous reporting has been acted upon and, if not, whether more prominent reporting – such as issuing a statutory recommendation or a report in the public interest – is now necessary. [emphasis added]
- 4.2 In terms of the second consideration, it is clear that the Council eventually recognised the serious concerns and has since taken extensive steps to look into and remedy the issues. Whilst there is ongoing internal audit work around wider concerns from the period under consideration (which we recommend are viewed in light of this report) it is primarily the emphasised considerations that have led to this public interest report. The significance of the matters and weaknesses in arrangements combined with the importance of accounting to the public and the lessons learned for the wider sector are the rationale for this being a public interest report. In order to consider and report on the weakness in arrangements, it was necessary for us to examine the underlying causes. The factors that we consider brought about or exacerbated the weaknesses in arrangements are therefore set out in this report so that the electorate in East Cheshire is fully appraised of matters that happened at the time.
- 4.3 Given the impact of the events reported upon here, on what should at the time and across the board have been a highly functioning local authority, it is of importance that the public and wider sector is aware of what happened for the purposes of lessons learned (the Council is obliged to publish the report further to Schedule 7 of the 2014 Act). There has not been, other than partially informed media reports, a public account of this turbulent period of the Council’s history. It is not calling into question current affairs at the Council and is not intended to criticise any incumbents. Its purpose is the accountability for the public and given the seriousness of the matters reported upon here, the learning for the wider sector.
- 4.4 This report comes at a time when there is a spotlight on the effective and appropriate governance relationships between officers and members, something Grant Thornton itself is aware of through its extensive audit relationships nationally. In issuing this report, we seek to enhance the understanding of the difficulties faced on both sides and

what factors would need to be addressed to provide appropriate and timely interventions should such circumstances present themselves again.

- 4.5 It stands as a cautionary example of the way in which a profoundly difficult range of factors can give rise to serious distortions as to proper governance at a local authority. Ultimately, this report is about the culture at the Council. Whilst there were a range of concerning matters unfolding over the period including around various land and property transactions, the events as to the Council's relationship with a private sector provider, Core Fit, set out below, stand as an exemplar of the prevailing culture.
- 4.6 The external auditor plays a critical assurance role as to the financial propriety and resilience of a local authority. Whilst Grant Thornton had been becoming aware of the growing concerns over the Leader's engagement in the Core Fit contracts during 2014/15, it explained when it signed off its opinion on the financial statements for 2014/15 that the Core Fit sums of money fell below the materiality threshold for the audit. In addition, it communicated that the Council would receive a clean conclusion over the adequacy of its arrangements for Value for Money (VfM) on the express basis of what was known then but also that it was alert to and welcomed the fact that internal audit was to continue its investigation into these matters. Grant Thornton would keep a watching brief, as matters unfolded. The external auditor wrote to the former Chief Executive on 21 October 2015 to indicate that it expected internal audit to fully report on the weaknesses identified with the procurement. It was also said that if new evidence came to light subsequently, that linked the leader to procurement irregularities and any inappropriate officer or member conduct, that Grant Thornton would examine the whole issue - this was on the basis that the Core Fit expenditure spanned not just 2014/15 but the following audit year (meaning the auditor was not stopped from picking this up in a few months' time). On this basis, and after some reassurance from the former Chief Executive that all matters had and would be looked into, the audit for 2014/2015 was certified closed. Grant Thornton as noted above, was not then able to pick these matters up as the police investigation had started. However, the firm qualified its VfM conclusions for 2016/17 and 2017/18, as other matters came to light and officer disciplinary actions progressed.
- 4.7 Four years after the police started its work, after many interviews and much document consideration, on 12 June 2020 the police announced, that although there were issues in relation to procurement, there was insufficient evidence to provide a realistic prospect of a conviction against any individual. Grant Thornton shortly thereafter resumed its work on these matters and commenced an investigation to complete its reporting on the years of account. Outside Grant Thornton's control it took the best part of a year to secure access to documents and then a further year and half to complete all interviews, analysis and consultation on the report.
- 4.8 In the absence of any formal independent investigation into the Core Fit matters commissioned by the Council (which the Council did not do on the express understanding that external audit would pick matters up again), and in the absence of any further police action, Grant Thornton considers it in the public interest to report upon this here. Many questions had been left unanswered in the public arena from this particularly turbulent period in the Council's history, the impact of which is still felt today by the individuals involved and the Council itself. The importance of these matters goes beyond Cheshire East Council to the sector as a whole.

5 CULTURE

Newly created Unitary Authority

- 5.1 Cheshire East Council is a relatively new Unitary Authority created in January 2009. It is a large complex local authority covering the former boroughs of Macclesfield, Congleton and Crewe, and Nantwich. Whilst this report is essentially concerned with events that took place during 2014 - 2018, and the Council has successfully moved on in addressing the issues set out here, at the time it faced a profound range of difficulties some referable to the fact that it was newly created. As the Local Government Association (LGA) report commissioned in 2018 stated, it faced:
- "two related but separate major challenges with regards to its organisational culture; the first was to bring together the existing cultures from the legacy councils, no small challenge in itself, and the second was to define and shape a new organisational culture for Cheshire East Council. Whilst some progress may have been made on the first challenge there was a shared view amongst many [spoken] to that an opportunity was missed at the inception of Cheshire East Council to define a new organisational culture".*
- 5.2 In the absence of a clearly defined organisational culture, with a lack of agreed ways of working and clarity as to behaviours expected, the ground was laid for what became a dysfunctional culture. As the report sets out, much of this comes down to the poor behaviours of one man at the political head of the organisation, the former Leader (who was Leader of the Council from May 2012 to February 2016). This was exacerbated by the lack of effective push back or challenge and even facilitation from certain officers (see section 10 of the report) particularly in 2015 which was a period of intense activity on account of all out Parliamentary, Council and Parish elections.

Inexperienced former Leader and certain former Senior Officers

- 5.3 The Council operated the 'strong leader and Cabinet' model of local government at the time. This gave executive authority to the elected leader and Cabinet, placing great emphasis on the role of the former Leader and the portfolio holder members around him. It also however called for a high level of expertise in its core senior management being able to work with and where appropriate restrain individual members with this concentrated influence and decision-making power.
- 5.4 The former Leader was new to local government after a career in the private sector - within a year of his election as a councillor in local government, he was a Portfolio Holder for Resources and then was selected to be Leader of the Council by the local Conservative party. Thus, he had little experience in local government or indeed public office. Whilst it may appear that this report is primarily about the former Leader's personal style and behaviour and his impact on the Council, the factors that gave rise to the predominant culture in that period were a combination of this, a relatively inexperienced former Chief Executive¹ and former Chief Operating Officer² and a culture of inappropriate compliance with the governance framework, as seen around the Core Fit procurement and the related VfM issues.
- 5.5 By 2014, the Council already had a mixed reputation as an authority that had various difficulties, including an issue relating to irregular planning issues at the Lyme Green waste transfer station, making it not the most attractive employment option across the sector. As a result, some of the senior officers who applied for vacancies at the Council were less experienced and were stepping up in aspects of their roles for the first time. This led to the two mentioned senior officers, who were individually and collectively, less likely to be robust in challenging and pushing back on members' behaviour than a more experienced cohort. Whilst the 'strong leader and Cabinet' model (which the Council has since moved on from) works well in many authorities, their relative inexperience was a major issue with this particularly strong former Leader and failed to restrain a 'toxic' culture from taking over, particularly in the turbulent time of the lead up to elections.
- 5.6 In short, a set of events akin to the Core Fit events set out below, were perhaps only a matter of time, and were illustrative of wider difficulties in the Council. There were a range of other matters which were being investigated internally (and externally), none of which are reported on in detail here as the Core Fit matter stands as an exemplar of what had gone wrong at the Council more broadly. There were issues around land transactions and property disposals which also involved the former Leader and have been negatively reported upon, some in confidence internally, by the Council's Internal Audit Service. Some were reported upon publicly and noted in the auditor's public facing opinion on the accounts. The police only decided against prosecution in the land transaction matters in late 2021.

The personal style of the former Leader

- 5.7 The former Acting Chief Executive³ stated: *"[the Leader] was high energy – very can-do (a bit too can-do in terms of rules) and he made things happen. This was the upside to [the Leader] – his ability to make things happen – and he was attractive to his political peers in this regard."* The former Leader was, for instance, known for developing a clear and effective focus on the economic advancement of the Council area, High Speed 2 and turning the authority into a 'Northern powerhouse'. He had achievements to his name which should not be overlooked including his raising the focus on opportunities for young people 'Not in Education, Employment or Training' (NEETs) within the Council.
- 5.8 The Head of Corporate Resources and Stewardship from January 2014 to September 2015 described the former Leader as follows:

"When I first met [the Leader] during 2011, he displayed a clear vision, energy, ambition and passion to secure high quality services for residents and visitors to Cheshire East. He was highly motivated to provide innovative services and to explore new ways of working across the Council. However, not long after I joined the Council, I began to realise that the combination of this ambition and passion, alongside the extremes of his behaviour, would seriously affect the balance between the Council's political and operational leadership. Together with his almost constant interference in operational matters and threats of sackings, this set an inappropriate tone across the organisation."

She further stated that: *"Combined with the repeated failures of [certain] senior officers to moderate both his behaviour and interference in operational matters, this created a very challenging – and at times toxic – working environment"*.

1. The former Chief Executive Officer was in post August 2013 to July 2018.
2. The former Chief Operating officer was in post October 2013 to April 2019.
3. The former Acting Chief Executive Officer was appointed early in spring 2017.

- 5.9 In many respects, the former Leader sought to run the Council in an autocratic style as if it was his own private entity. An officer said *"[he] wasn't just a leader – he almost ran the Council. There wasn't the officer/member split, it wasn't an officer-led authority. The Leader took all the decisions. People were keen not to upset him. His name was probably quoted when it shouldn't have been i.e., 'the Leader won't like this, the Leader won't like that'".* Councillor Janet Clowes, the current Leader of the Conservative Group who was a Cabinet member at the time said that: *"Sometimes you just felt that he was running a dictatorship rather than a democratic body".*
- 5.10 His lack of experience in local government led to an apparent lack of understanding as to public sector standards and appropriate behaviour in terms of the Nolan Principles⁴. There are numerous examples of this set out below in the Core Fit events.
- 5.11 The former Leader's poor behaviours, including shouting and foul language as a matter of course, set an inappropriate tone. Worse, there was a culture of fear created by the former Leader. One officer commented:
- "[Officers] would be in meetings with the senior executive officers of the Council and the Leader's [personal assistant] would come in and say, 'he wants to see you' and people would turn white. [I] could see the fear on the faces of senior officers – they were terrified of [the Leader] - directors and all the way down the line".*
- 5.12 The current Leader of the Conservative Group reported from her time in Cabinet with the former Leader:
- "I have been in Cabinet meetings where [he] has been absolutely appalling to Officers, shouting and screaming. When he was really on a roll, there would be spittle flying. It was really quite extraordinary. It was intimidating if you were in the room, as an Officer or Cabinet Member. It was intimidating, unpleasant and frightening. I never thought he would hit anyone but it would be wounding nonetheless, and mentally excoriating".*
- 5.13 The former Acting Chief Executive said that *"people were frightened of [the Leader] He liked to intimate that he had influence in a lot of places and could make life difficult for people".*
- 5.14 The office of the former Chief Operating Officer was at some point moved next to the former Leader's office. It was a regularly noted feature that he would knock on the walls of the former Chief Operating Officer's office to summon him. The former Chief Operating Officer said that: *"Every morning [the Leader] barged into his office and demanded things".* It appeared that this had been accepted as normalised behaviour. The current Leader of the Conservative Group and a Cabinet Member at the time told us that *"We were all just watching this behaviour and thinking it was normal and it really wasn't".*
- 5.15 The former Leader routinely interrupted meetings to which he was not invited (particularly in the former Chief Operating Officer's office) and, indeed, it was not appropriate for him to be at, and would often require senior officers to immediately break away from the meetings they were involved in and the work they were undertaking, to come and speak to him. A range of senior officers reported the former Leader calling them at all times of the day and night and demanding action.
- 5.16 The former Head of Communities stated that: *"once there was a local pub that [the Leader] was trying to save, and the locals were looking at community ownership. [he] rang [me] about it one evening when he was at the pub ([he] would often ring [me] at all hours) – the people in the pub said '[the Leader] said he was going to ring you as he knew you would pick the phone up' This is how [he] operated." This behaviour was not personal to this officer.*
- 5.17 Councillor Sam Corcoran, the current Leader of the Council, reported to us that: *"I do remember at public meetings there were times [the former Leader] would talk to officers in a way that did not seem to give the impression he was respecting their professional opinion".*
- 5.18 The former Acting Chief Executive said:
- "[the Leader] was sometimes underhand; he would do things like put people on speakerphone in meetings and not be honest about who was in the room. He would turn up to meetings accompanied by people who should not really be there. He used to do the same thing to Cabinet Members; they would find themselves in situations they weren't comfortable in but didn't know it was going to happen".*

4. <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>.

- 5.19 We have concluded that, whilst denied by the former Leader, some officers were regularly subjected to this nature of behaviour and sought to manage the situation on a day-to-day basis, in part to protect junior staff. This was ultimately, however, and in our view, a culture in which this form of bullying, intimidation and abuse of power was not successfully called out or dealt with. The responsibility for not taking effective action in relation to the former Leader largely fell on the former Chief Executive and former Chief Operating Officer. They enjoyed statutory protections in terms of disciplinary action and dismissal - although it is recognised that this would only have succeeded with the support of a significant number of the majority group and would nevertheless likely have come at a personal cost. As such whilst a greater stand could and should have been taken by both individuals, it should be acknowledged that neither had the confidence that the statutory protections would ultimately protect them.
- 5.20 In our assessment, the former Leader either disregarded (or lacked understanding of) the governance structures of local authorities and emanated a lack of respect or consideration for governance and due process. He did not appear to understand that sometimes a period of time was needed for legitimate checks and balances, due diligence, or the fulfilment of legal obligations before things could get done. He regularly cut across the proper roles of senior officers, for instance speaking to the Labour group about the budget when that was the responsibility of and was undertaken by the former Chief Operating Officer.
- 5.21 The former Chief Operating Officer said that the former Leader did not want officers speaking to opposition members at all. It was said by the Conservative Group in their response to this investigation that their Cabinet was also subject to a 'divide and rule' behaviour with Cabinet members sometimes being disallowed by him to attend meetings.
- 5.22 The former Leader was particularly opposed to FOIA and procurement requirements – he was reported to have called procurement projects “old fashioned, too slow, bureaucratic and so on”. Whilst he had asserted that this was appropriate challenge from a member, and indeed to some extent that could have been true, it was the degree of pressure this put on officers and the focus on Core Fit, that was unacceptable. It was not the view of officers that this was an appropriate level of challenge. The former Leader asserts that this level of challenge was required on account of the weakness and poor quality of the senior officers around him. Whether or not the case, this could not have been an acceptable rationale or an excuse for the egregious aspects of his behaviour – likely entailing a breach of the Code of Conduct for Members (see below under paragraph 6.3 of the Code – Respect for Others).
- 5.23 Of significant concern was that he made it clear that democratic processes, the normal checks and balances for accountability and good governance, frustrated him. As the former Chief Executive said:
- “[the Leader] brought pressure to bear in informal Cabinet meetings where he would always be saying “Why do we have to take this to Cabinet? Why do we have to take this to full Council? Why do we have to take this to Overview and Scrutiny? Why does this need to be signed off in advance (if there was an urgent item) by the Chair of Overview and Scrutiny? Why do we have to consult with another organisation around the local plan?”. [The former Leader] was always challenging governance, he was always crying foul over our requirements to do things. [He] was always told “no, you can’t do it that way, we must do it this way” but it was always an uphill push.”*
- 5.24 The former Acting Chief Executive echoed these sentiments: *“He wanted to operate as he did in his business life i.e., give contracts to his personal contacts and act autonomously. Officers had a constant battle with [the Leader] telling him that he couldn’t do things”.*
- 5.25 As the current Leader of the Council reported to us, in his opinion, there was a prevalence of “*management override of controls*” and a “*bullying culture*”. We agree that, for multiple layers of officer control to fail, as set out in this report, the culture of the Council must have been distorted and dysfunctional.

6 LACK OF USE OF LOCAL STANDARDS REGIME

- 6.1 Since 2011 with the abolition of the previous standards regime, which was run by an independent public authority (the Standards Board) and on a national basis, the maintenance of ethical conduct by local authority members has largely, other than the operation of the criminal law, depended on local arrangements. The Localism Act 2011, along with imposing a duty on local authorities to “*promote and maintain high standards of conduct by members*”, required them to introduce their own Code of Conduct. This regime however left authorities to take their own action against members, the aim being to stress both the local nature of these matters and the ultimate sanction being via the ballot box.
- 6.2 Whilst the Council had its own Code of Conduct for members (supported by an Officer/Member Relationships Protocol), it did not have a Standards Committee, as such, at the time. The Audit and Governance Committee had the role of maintaining “*high standards of ethical conduct*” by members, further to the duty imposed under section 27 of the Localism Act 2011 and any complaint against a member was to be dealt with by the Monitoring Officer

pursuant to a specific procedure, either on their own or with an Independent Person. A hearing sub-committee would then consider an allegation if there was deemed a case to answer, but had limited sanctions available if the complaint was upheld, other than censure and no power for suspension or expulsion, as there had been under the previous national regime.

- 6.3 The Council's Code of Conduct for members was clearly highly relevant and yet little action was taken under this process against the former Leader. Extracts include:

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members.

The code has been adopted under section 27 of the Localism Act 2011 and is based on the following core principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

General obligations

Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:

1. Selflessness

You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

2. Integrity

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

3. Objectivity

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

4. Openness

- (a) Except where the law or the wider public interest requires it, you must not disclose confidential information or information to which public access is restricted.

5. Honesty

- (a) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests.
- (b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only.

6. Respect for others

- (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government.
- (b) You must not compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.
- (c) You must not bully any person, including other councillors, officers of the authority or members of the public.

7. Leadership

- (a) You must promote and support high standards of conduct when serving as member or co-opted member of the authority, by leadership and example, championing the interests of the community.
- (b) You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you

- 6.4 Also of relevance, and clearly breached in these circumstances, were provisions of the Member/Officer Relations Protocol which broadly supported the provisions in the Code.
- 6.5 Notably at the time of the Core Fit events, only pecuniary interests needed to be formally registered under the Code⁵ - hence perhaps the former Leader's insistence that he did not need to make any disclosures and there was nothing untoward in his dealings with the Core Fit matters. Since the Core Fit events, the Council has revised its constitution and Code of Conduct for members to provide for the declaration of personal interests including those relating to close associates – see paragraph 12.12
- 6.6 Whilst we accept that the former Leader was not required to formally disclose his interest in the Core Fit matters under the Code at that time, it is nevertheless clear that the broader principles of the Code were engaged and likely broken - see in particular integrity, respect for others and leadership. As explained below, his conduct also played out in terms of the public law impact on the decisions taken.
- 6.7 The standards regime in place at the time and indeed at time of publication of this report, provides for no more than warnings and does not involve any independent body. The former Chief Executive explained:
- “Recently the Government has rejected recommendations from the Committee on Standards in Public Life about strengthening sanctions in relation to Member misconduct. The Government has rejected them and said that these matters are dealt with at the ballot box and not through any additional powers to local authorities. There are no real sanctions for local authorities or a Chief Executive to impose upon poorly behaving Members, never mind the Leader of the Council”.*
- 6.8 It is apparent that officers and councillors did not consider it appropriate to use the very mechanism in place locally to deal with the kinds of behaviours that the former Leader demonstrated. Steps were eventually being taken in mid-late 2015 to prepare a complaint under the Code of Conduct, but this was not actually brought forward, or indeed needed as the former Leader stood down. As noted the standards regime laid down in legislation limits the sanctions available – there being critically no power to suspend or expel a councillor. It is not unreasonable to think moreover that without the security of the involvement of an independent body, the personal price to be paid by any complainant could well have been too high.
- 6.9 It was in the midst of the culture and framework described above that the Core Fit events took place. They are set out below as a clear example of the culture operating at the Council at the time and, also, as a record of the way in which this culture resulted in actions by officers that we consider to be highly unusual and which led to inappropriate decisions and outcomes.

7 CORE FIT

The original pilot in schools

- 7.1 Core Fit had been providing physical exercise classes for Year 6 children, commissioned and paid for by Cheshire East primary schools for some time before it became a Council funded provider. The former Leader introduced the Council to Core Fit. It has been said by many officers and it is clear to us that the former Leader had a close friendship with Core Fit's Director. As noted, Core Fit's director was the former Leader's physiotherapist, under a private arrangement and in addition there is documentary evidence of them being friends and arranging social events. Both the former Leader and the Director have denied it was a relationship as such, but the former Leader himself called it a “*trusted friendship*”. The former Head of Corporate Resources and Stewardship and the former Monitoring Officer have both reported that they had separately and together asked the former Leader on numerous occasions about his relationship with Core Fit's Director and reminded him of his responsibility to make any appropriate declarations - each time he denied there was anything more to it.
- 7.2 In his responses to this investigation, the former Leader said that he used the Director as an informal adviser on the Council's functions in relation to physical well-being in schools and maintains that there was nothing untoward in asking her to do so. Whilst on its own this may have been acceptable, in the light of the preferential treatment he either directly or indirectly requested for his friend whose company was providing services for the Council, this was not appropriate. This cannot moreover excuse any breach of confidentiality.

5. The Constitution at the time made provision for the disclosure of non-pecuniary interests which the authority had defined as ones which should be in the register of Member interests. However, none had been so defined.

- 7.3 It has been suggested that the promotion of Core Fit fitted with the former Leader's interests as an individual politician. The former Head of Corporate Resources and Stewardship commented that the former Leader's passions included physical activity for primary school children as well as early intervention to address obesity, self-harm and other challenges including safeguarding young people and their mental health. It seems however unlikely given his friendship with Core Fit's director that this was the only driver. Indeed, that this was a priority for the Council is in stark contrast to the fact that, when the contracts with Core Fit were terminated, the whole concept was dropped (i.e. the Council did not look for another provider to carry on the pilot despite their availability and willingness).
- 7.4 The former Leader denied any personal relationship beyond a friendship with Core Fit's director and, as such, did not take any steps to disclose a relationship/potential conflict of interest when asked. In our view, adding together the numerous instances of the former Leader behaving in a very close manner seen through the mode of communication with the Director, the actions he took to help her and given the evidence of him inviting her to social events, this did constitute a close personal connection. This closeness led to inappropriate pressure being put on officers and in turn her company receiving preferential treatment.
- 7.5 Whilst there was no evidence that the former Leader and Core Fit's director had business interests in common whilst Core Fit was engaged by the Council, a search of Companies House shows that they did develop common business interests after the end of the Core Fit contracts with the Council – in part because the wellbeing of children through physical health remained an interest of the former Leader. In the next few years, the Director of Core Fit had directorships and/or shareholdings and/or other business interests in three companies in which the former Leader was involved. This included the redevelopment of Manchester Metropolitan Campus at Crewe into a health sciences educational institution – and whilst in that case she was not a director or a shareholder along with the former Leader, North West radio reported that they were "*business partners*" – and at the very least she appeared to have a senior management role at the campus. These developments were consistent with and supported a finding of a prior existing close friendship.
- 7.6 There is evidence moreover, during the Core Fit events, of the former Leader promoting Core Fit outside of the Council for instance, a letter to George Osborne, the then Chancellor of the Exchequer (see paragraph 7.80).
- 7.7 Core Fit was characterised by some as a unique innovative service given its physiotherapy element, "*aiming to promote knowledge and fitness to improve mobility and prevent injury in later life*". This aspect aside however, the Core Fit service was in essence a fitness provision, initially just for children, and the procurement and contractual arrangements for this ought not to have needed to be particularly sophisticated or complex. The procurement exercise that followed made little reference to the need for specialist well-being and physiotherapy provision.
- 7.8 There was a policy within the Council (advocated by the former Leader) to provide innovative services directly to schools, particularly in the context of children and young people. This ran contrary to the normal sector approach and indeed Cheshire East's policy of delegation in the first instance, to schools, such that they had autonomy from the Council in decision-making. Indeed, what happened with Core Fit cut right across that by being direct Council intervention and provision of services commissioned and paid for by the Council. This in itself was highly unusual.
- 7.9 The current Leader of the Conservative Group and a then Cabinet member has told us in interview that:
- "If it had been coming through by the 'normal channels' would Core Fit had even appeared on the scene at all? Only if we decided for all the reasons explained, strategically we wanted to commission that kind of activity for young people. Well, probably not as it was a cost to the Council and there were other ways we could strategically commission that kind of activity for young people without it being at a cost to the Council. You don't buy things you don't need, especially if someone else is already providing them."*
- 7.10 The suggestion was made in June 2014, in email correspondence between Council officers, that the former Leader wanted to "*scale up*" the Core Fit for Kids programme to "*all schools*".
- 7.11 In September 2014, the former Director of Children's Services, wrote to all primary schools in Cheshire East inviting them to take part in "*an extended pilot programme with Core Fit for Kids*", that the Council was offering schools the "*chance to run the programme completely free of charge*" as it would be fully funded by Cheshire East Council. It is notable and unusual however that there was no exercise to demonstrate the value of such a pilot, or to identify a range of potential providers other than Core Fit. There was moreover no planned evaluation of the pilot at that time.
- 7.12 In early October 2014, six invoices relating to the Core Fit for Kids pilot programme were passed to the Council's Procurement Team for payment. In interview, the former Chief Operating Officer said the former Leader physically "*chucked the invoices at him*." In an email dated 13 October, the former Corporate Manager for Professional and Commercial Services wrote:

"[The former Chief Operating Officer] has had half a dozen invoices through and has told me that we have to pay them and follow through on the procurement of a longer term arrangement. I've explained that is not how you deal with this type of activity now, it is delegated to schools. That isn't good enough for the Leader and if it really isn't possible then that will need to be explained to the Leader!"

I know we talked about schools doing the work and you reimbursing. That clearly hasn't happened and [the Chief Operating Officer] has told me we will just have to pay...I can help but it will need to come from your area. Can we urgently speak."

- 7.13 In another email he stated that: *"I know that [the Chief Operating Officer] has given a very clear instruction that has come down from the Leader"* and subsequently, after the former Chief Operating Officer chased again by email *"Once confirmed that all goods and services have been delivered we will need to ensure that the invoices are processed quickly, we have received clear direction from [the former Chief Operating Officer] to get these invoices paid quickly once we are clear they are ready for payment"*. Whilst it is clear that the invoices were payable (all due diligence having been carried out with one in fact being pushed back at the insistence of the former Chief Operating Officer), it is the speed of payment that was the issue - some of these invoices were not even at the 30 days unpaid point and the others were being pushed in terms of priority for payment. It is clear from the responses of other officers that the pressure from the former Chief Operating Officer was seen as being passed on from the Leader.
- 7.14 Following internal discussions, the procurement team set Core Fit up as a supplier and raised a requisition for £20,000 with the note *"the Leader has requested these services without competition"*. This should of course have been a red flag for officers given that, at the time, the Council's Standing Orders, which had not been waived in this instance, required that for contracts between £10,000 and £75,000, the correct procedure was to compare written quotations from at least three bidders on the Council's procurement platform.
- 7.15 The Waiver and Record of Non-Adherence (WARN) process (which the former Chief Operating Officer had introduced as a way of keeping track of such occurrences) had a dual purpose of either waiving Contract and Procedure requirements before decisions were taken (e.g. where no competition for a contract award was to be followed) or later, where there had been an actual breach of those requirements and no waiver, noting the non-adherence identified. At the time they were reviewed by the officer Procurement Board for trends and solutions for repeat WARNs in category areas (later they were to be put before the Audit and Governance Committee for review). This was an important part of the Council's corporate governance and it is recognised that there will often be legitimate reasons for such a waiver. During 2014/15 a total of 82 WARNs were approved which comprised 20 non-adherences and 62 waivers.
- 7.16 The breaches of the Contract Procedure Rules, in this case were that the pilot had been entered into without competition, had not been formally waived and then the resultant WARN (127) for non-adherence had not even been provided to the former Chief Operating Officer or former Monitoring Officer who were supposed to sign them.
- 7.17 In terms of VfM there was no evidence of negotiation with Core Fit on price, market comparison, a business case or contract for this initial pilot.

Liability insurance

- 7.18 It later came out that Core Fit was delivering Core Fit for Kids in Cheshire East primary schools from at least June 2014 until October 2015, without having adequate or any insurance cover in place. In fact, in early July 2014, the former Leader had asked a graduate trainee in the Executive Office of the Council, to find out *"the process for ensuring that Core Fit for kids is fully covered in terms of insurance"*. The answer came back from a more senior officer that, as the Council did not have an insurable interest in Core Fit, then the Council would not include insurance cover under the Council's portfolio. The former Leader then sought to intervene again and phoned the Corporate Insurance Manager asking that the Council extend its insurance arrangements to include Core Fit. Officers maintained their resistance to this.
- 7.19 The former Chief Operating Officer had a meeting in person with Core Fit's Director some six months later, on 30 January 2015 on which he gave some assistance with regard to getting bids on the Council's procurement portal. The matter of insurance was also discussed. On the same day, the former Chief Operating Officer asked the Corporate Insurance Manager to contact Core Fit's Director directly regarding Core Fit's insurance requirements to enable her to work in Cheshire East schools. The Corporate Insurance Manager replied again that insurance provision was not possible. The former Chief Operating Officer did not pursue this matter further – he said to us that *"I told the Leader that it was not possible and the issue was never raised again as far as I am aware"*.
- 7.20 The Officer whom the former Chief Operating Officer approached wrote to another officer in the finance department, to say:

"As discussed, I feel that I need to register my concerns over being asked to approach and advise a supplier directly with insurance advice. This request has put me in an uncomfortable position and whilst, I understand the pressure

that [the Chief Operating Officer] may be under to be seen to assist this Co. I shouldn't have been asked to contact [its director] directly as we wouldn't do this for any other external supplier...

As I understand, this Company is already operating in schools without a formal contract in place with CEC and that perhaps is why she is asking for advice from [the former Chief Operating Officer] or the Leader now".

- 7.21 The former Chief Operating Officer denies he knew anything about the Leader's previous involvement in this issue or that he was seeking to advantage Core Fit beyond any assistance he would have given any other Council supplier. This however is not wholly credible given that he was aware of the former Leader pressurising him to get the invoices paid quickly, which could be expected to have raised doubts in the officer's mind as to the appropriateness of the later request that he look into the insurance position.
- 7.22 In February 2015, officers agreed to a substantial increase in the Core Fit fees per child after having received another set of invoices from Core Fit, covering January 2015. An officer noted in an internal email that this was likely to do with the insurance situation. Soon after, the former Chief Operating Officer sent emails querying and chasing payment of these further invoices from Core Fit.
- 7.23 An Officer emailed to say that the Director of Core Fit told her *"that [the Leader] and [the Director of Children's Services] had agreed the revised figure"*. Of course, the Leader had no decision-making powers in this regard – however the price increase had clearly been discussed between the Director of Core Fit and the former Leader. The former Head of Corporate Resources and Stewardship queried this with the former Corporate Manager for Professional and Commercial Services who agreed it was not the Leader's decision and stated that the former Chief Operating Officer had said he would approve the invoice, noting again that this was *"not his call to be honest"*. There were further emails back and forth noting the supposed 'urgency' of paying these invoices indicating that there may have been pressure to get this done quickly. Again, it was the former Chief Operating Officer asking officers to get the invoice processed quickly.
- 7.24 Normal practice for a service such as this would have been, when initially considering or awarding the pilot contract, to ask for proof or at least confirmation of the insurance cover, as this is a critical aspect of the protection of the public. Indeed, when the original rate was set up it should have covered all aspects of the provision, including insurance. There was, in the event, a lack of due diligence which led to the insurance costs subsequently being subsidised by the Council via the price increase. This lack of due diligence, in our opinion, fitted the pattern of preferential treatment that Core Fit received.
- 7.25 A requisition was subsequently raised on the Council's procurement system to account for the price increase. The additional sum took the value of the work above the amount covered in the previous WARN. It is unclear what the urgency was or why the Council felt it had to accept the price increase to, in effect, pay for Core Fit's insurance. It was also notable that so many middle and senior officers were involved in such a low-level matter.

The Procurement

- 7.26 The initial pilot was only ever intended to be a temporary arrangement, as the Council had planned to go to a tendered procurement to establish a more formal service arrangement. The planned procurement kicked off in late January 2015 and was said by procurement officers to be understood to be *"very urgent"*.
- 7.27 As the former Chief Operating Officer said:
- "With hindsight, [the Leader] was expecting them to award Core Fit the [procurement] contract. [His] expectations would have been that following the [original] pilot, the contract was awarded to Core Fit" and "given [the Leader's] approach to everything, if he gave an indication that he was expecting a certain outcome about something and that wasn't going to happen, then this would have caused a ripple throughout the organisation".*
- 7.28 A meeting took place between the former Chief Operating Officer and the Director of Core Fit on 30 January 2015 where the mechanics for registration of Core Fit on the Chest (the Council's electronic tendering system) was discussed. In our view, this was in and of itself highly unusual and would not (although denied by the former Chief Operating Officer) have been accorded to other tenderers of such a low value contract award. In addition, as an illustration of the closeness of the former Leader to the Director, whilst this meeting took place the former Leader looked after her child.
- 7.29 On 3 February 2015, the former Chief Operating Officer emailed the former Corporate Manager for Professional and Commercial Services asking him to *"check the status of Core Fit registering on the Chest and give whatever support we can to make sure it happens etc."* Officers let him know this was happening by email and the former Chief Operating Officer then informed the former Leader that this was the case by email. Core Fit's Director emailed the former Leader to thank him for his support.

- 7.30 In the run up to the tender submission the former Chief Operating Officer's PA emailed the Procurement Team on his behalf to see if it had been uploaded.
- 7.31 It is true that there was a general push at this time, including from the former Leader, to help Small to Medium Enterprises (SMEs) do business with the Council, that procurement should not hold this back and that there were initiatives, such as business breakfasts etc., being run to facilitate this. However, the fact that the former Chief Operating Officer and the former Leader had met and were communicating with Core Fit's Director about getting her bid on the Chest during the period of time when the tender was live went beyond the support other tenderers were getting/could have expected, was clearly illustrating favouritism and preferential treatment for this Company.
- 7.32 The Corporate Manager for Professional and Commercial Services emailed *"to be honest, as long as [Core Fit's director] has her bid in we will sort everything else as clarifying points"*. Similarly, the former Chief Operating Officer stated *"I've agreed that if it is corrupted in any way then we will evaluate the submission sent through by email to procurement. Hope it will not be needed"*. This level of support was not offered to other tenderers and the failure to submit a bid via the Chest should strictly have disqualified any bidder.
- 7.33 On 19 February 2015 at 11:00, the Director of Core Fit forwarded an automated message from the Chest to the former Leader stating that she did not understand the messages that she was receiving. She also gave him her username and password and asked if he could *"check all is ok"*. His response when hearing from her that her tender submission was uploaded was *"well done. Superstar"*.
- 7.34 The procurement exercise ended on 20 February 2015, with a total of 13 bids received. In relation to this point in time, the former Head of Corporate Resources and Stewardship noted: *"I was concerned about what I felt was an emerging risk – of trying too hard to secure the outcome desired by the Leader" and "the pressure placed on senior officers in the weeks leading up to 11 March 2015, and on the day itself, was both intense and in my view completely inappropriate"*.
- 7.35 She further stated that:
- "In the run up to the deadline for awarding the contract the Leader became increasingly interested in the specific outcome and was asking lots of questions. It is, perhaps, for this reason that so many senior officers became involved in such a "small-scale" procurement. I believe that we all knew, at the time, that any outcome, apart from awarding the contract to Core Fit would be scrutinised and challenged by the Leader."*
- 7.36 The quality element of the bids was forwarded to two officers within the commissioning service for evaluation in accordance with normal procedures. When the pricing element of the bids was reviewed, it was clear further clarification was required as a consistent hourly rate on which bidders could be scored was not apparent. These clarifications were obtained in accordance with the Council's normal procurement practice.
- 7.37 In early March, matters came to a head and the events on those days illustrate the pressure around this particular procurement, despite its low value and seeming simplicity. The former Monitoring Officer met with the former Leader on 9 March and questioned him as to his relationship with Core Fit's Director (according to her contemporaneous notes of the meeting). Having been told there was no more than the physiotherapist connection, she nevertheless and quite appropriately said he should *"step back from procurement issues and leave it to the officers"*. She had involved herself at this stage, as having heard of concerns from other officers (she had not known about the former Leader's connection with the Director or indeed heard of Core Fit, until that date) she concluded she needed to question the former Leader directly. Whilst satisfied that this did not give rise to a legally required disclosable interest under the Code of Conduct, she still saw a danger in his over-involvement and to her credit, told him to *'step away'*.
- 7.38 As mentioned before, the then Code of Conduct did not require, as the current Code does, declaration of personal interests including those related to *'close associates'*. Strictly speaking and as a matter of the Code only, on the basis of the answer given by the former Leader to the former Monitoring Officer, the Code requirements as to disclosable interests would not have been engaged. However, looked at in the round and with the knowledge that this investigation has brought to light, it is clear that the relationship was a close friendship and more than just physiotherapist and client. This had implications for the public law basis for the decisions taken. At this stage however the former Monitoring Officer was unaware of the matters reported upon above, whereby the former Leader had been showing favouritism and influencing officers.
- 7.39 As noted, there had been pricing clarifications with the bidders. The former Head of Corporate Resources and Stewardship emailed officers asking for an update to the procurement exercise, stating that the Council needed *"to agree when to draw the line on any further [pricing] clarification – and as long as we are not breaking any rules I think that time has now come"*. The Procurement Manager told us in interview that they, as procurement officers, had never been told before by another officer to stop clarifications.

- 7.40 The next day, on 10 March, the former Leader called the former Head of Corporate Resources and Stewardship to say he was unhappy that the deadline for the children's activity procurement had expired, and the tender had not yet been awarded. She stated that: *"By then, I regarded my role in absorbing and deflecting such 'broad-sides' almost as routine"*.
- 7.41 On 11 March 2015, Procurement produced a set of evaluation scores based upon price and quality. Officers, including the Commissioning Manager, were concerned at the winner having such a low quality score and the wide variation in prices.
- 7.42 Unusually and without precedence at the Council for such a low value tender, senior officers came together that day to discuss. Thus, the former Head of Resources and Stewardship, the former Chief Operating Officer, the former Monitoring Officer, the former Director of Children's services, the Procurement Manager, and the Commissioning Manager met to discuss what had clearly become a problem procurement.
- 7.43 Somebody at this meeting suggested removing the pricing element and awarding the tender on the basis of quality alone (Core Fit was the highest scorer on quality but fifth overall when taking price and quality into account). The notes record that the Procurement Manager and the former Monitoring Officer rejected this suggestion. An issue with this procurement had been a lack of a minimum quality pass mark and a suggestion of inputting this now was also rejected on the basis this was not in the specification. The Procurement Manager felt however that the quality threshold set – that is, having DBS checks in place and evidence of existing service provision was sufficient to deal with this issue and considers that this made it possible to award this tender in the normal way.
- 7.44 The Procurement Manager told us in interview that the procurement had identified a preferred supplier. She said that *"the quality might have been slightly lower but the statutory stuff was there and they were delivering already in schools... so between the top scoring bids you could have awarded something."* She stood by the fact that the number one scorer could have been appointed as that had been *"how it came out fairly"*. She said however that, as she thought it could more appropriately have been a framework of several pre-approved suppliers that the schools could choose from, not a single provider, it was open to them not to award. She stated further therefore *"So as much as I stood by my decision that the number one rank supplier was right and followed process, we shouldn't be dictating to schools, it's up to them to choose from a number of providers based on their merits, they are the ones that know the children and know what they need within the school to motivate those children"*. In effect she was saying that there were two possible approaches – they could either appoint the highest ranked sole provider or abandon the procurement and put together a panel approach. In the event, neither option was followed.
- 7.45 A question came up during the meeting as to whether the contract could be awarded to Core Fit. It would seem from the notes of the meeting that the former Monitoring Officer, the Procurement Manager and the former Head of Corporate Resources and Stewardship were clear that the (procurement) rules could not be broken.
- 7.46 The former Leader then, uninvited, came into the meeting room commenting *"tick tock"* and was visibly angry when told by the former Chief Operating Officer that a decision had not yet been reached as to the outcome of the tender. The former Chief Operating Officer said, at interview, that one of the officers, which was the former Monitoring Officer, *"gave [the Leader] short shrift and told him to get out of the office"*. The former Leader stated that his *"tick tock"* comment was as a result of his observing so many senior officers time being taken up on a minor matter – which is rather ironic, given that they were present in part because of the former Leader's inappropriate engagement in the matter. After this interruption, the Procurement Manager noted that the former Leader gave the instruction *"my office"* and at this juncture the senior officers all left the room.
- 7.47 Shortly after, the former Monitoring Officer's daybook records she was called to a meeting with the former Leader, the former Head of Corporate Resources and Stewardship, and the former Chief Operating Officer. The former Head of Corporate Resources and Stewardship commented to us that in retrospect she suspected that he already knew that the *"Core Fit procurement"*, as she called it in interview, was not clearly identifying Core Fit as the winning bidder. The daybook notes a *"formal request"* from the former Leader to *"stop all procurement"* and undertake a *"full review of procurement"*. The former Monitoring Officer told us that she ignored these comments as he had no personal decision making role in these regards, but the fact that he made these requests illustrated again his view of his own powers within the Council.
- 7.48 The former Head of Corporate Resources and Stewardship stated that: *"While I was in no doubt that the Leader 'expected' the contract to be awarded to Core Fit, I do not recall any of the evaluation panel stating that they felt under undue pressure from him. We all recognised the need to do the job properly and professionally – there may have been some collective anxiety about communicating the results but no doubt about the decision itself"*.
- 7.49 This in part explains some of the distortions in the process and why there were so many senior officers involved in this minor tender exercise and low value contract.

- 7.50 Abandoning the particular procurement was not decided at the meeting of senior officers but appears to have been made by a combination of the former Chief Operating Officer and the former Director of Children's Services outside the minutes of any meeting.
- 7.51 The former Director of Children's Services and the former Chief Operating Officer agreed that the existing Core Fit pilot for all primary schools be extended with a WARN put in place for the direct award (this did not however happen for some time after the contract had been signed and the services been put in place). The intention was said to be that a new specification was to be prepared for a re-procurement in autumn 2015. The former Chief Operating Officer said that the advice he was given at the time was that they could extend the Core Fit pilot to seek more evaluation of whether it worked. Whilst we have no doubt this advice was given, this would not have been given in light of the full picture that has now come to light.
- 7.52 The next day, the Request for Quotation from the Chest was withdrawn and a notification was posted stating that the tender process had been withdrawn because it was not possible to evaluate the pricing of submissions received from bidders fairly. There was however no clarity over this, as this has to be set against the varying officers' views that the specification or the lack of a quality threshold was to blame as opposed to price, and also set against the fact that the Procurement Manager's view was that price difficulties had been ironed out and an award to the winning bidder (on the basis of price and quality scores) could have been made. Grant Thornton sought its own internal advice from its procurement specialist and its conclusion was that an award could have been made. Whatever the appropriate rationale and outcome, the confusion and irregularities called into question due process and left the Council in its decision to extend the pilot, vulnerable to accusations of apparent bias.
- 7.53 Officers were, to varying degrees, alert to the risk presented by the Leader's interest in the "*Core Fit procurement*" and were at best seeking to protect junior officers and to ensure that procurement rules were complied with and at worst seeking to avoid fall out from an outcome that the former Leader would be displeased with. Whatever the exact position, it was abundantly clear that the officers were uncomfortable with the situation they faced.
- 7.54 Strikingly however, within just two days of the tender being abandoned, a contract for a direct award to Core Fit was drawn up as an extended pilot. Standing back, the procurement process and then abandonment of the procurement was highly irregular. It is not surprising that the media construed this as suspicious. From the outside there was a real risk of the appearance of bias. Not least because of what the former Head of Corporate Resources and Stewardship said vis "*the use of the phrase 'Core Fit Contract' across the authority as shorthand for the pilot procurement exercise was misguided*".
- 7.55 It was already unusual that the matter had been procured as a single-supplier option that had been taken outside of the normal schools' delegated procurement arrangements. Furthermore, it was exceptional that the tender had not been awarded to the most preferential bidder. There had been price clarifications followed by scoring of all the bidders. If not possible to score, it could have at that point been sent back for more clarifications. The Procurement Manager had advised that the Council could award the contract to the highest scorer or could and indeed should, in her view, have instead procured a framework panel of several pre-approved suppliers that the schools would select from. It remains unclear why, and contrary to normal practice, if there were genuine concerns over the winning bidder, the contract was not then simply awarded, if not to the highest scoring bidder, to another bidder – there being one in particular that was competitive on price and second place for quality. Core Fit, as the fifth ranked tenderer was some way from success in this procurement. Furthermore, concerns over the more preferential bidders, say, understanding of the Council's requirements would, in normal circumstances, have been dealt with in post-tender discussion and subsequent contract management. This was not, after all, a complex procurement – the service provision was primarily a physical exercise provision on a smallish scale.
- 7.56 The evidence supports a conclusion that all officers knew the former Leader would be displeased and react badly if the procurement was not awarded to Core Fit. This report does not conclude that any officers involved in the procurement were seeking to advantage the Company. However, stepping back, even if there were issues with the specification and/or price, this was a simple low-value tender which could have been awarded. The confused rationales and roles played evidenced a distortion of due process on account of the former Leader's involvement.

The extended pilot and addition of services

- 7.57 Irregularities around Core Fit came to a head in the pilot extension. Following the abandoned procurement, the Council quickly entered into an extended pilot with Core Fit, which included increasing the scale and scope of the services the Company provided to the Council. The former Head of Communities had taken over as lead Commissioner and was the main decision-maker - the former Chief Operating Officer was however her line manager. Core Fit was awarded further contracts without competition and for which there was little by way of business case justification. In establishing the extended pilot, it is hard to discern the rationale for only Core Fit being selected to pilot the service and equally despite this being a pilot, no pre-established process for evaluating the impact and quality of the pilot was put in place. Whilst there was a plan to re-procure the service in the autumn

of 2015, to give officers time to conduct further market testing, design an evaluation and to refine the specification, this was not carried through.

- 7.58 The new extended pilot contract had the same specification as the tender bid (calling into question the suggestion that the procurement specification had been flawed). The contract had a value of £115,000 for a term of one year and included both a schools' element and a wellbeing pilot for older people in community hubs (the original tender for the pilot in schools had been for £85,000 pa and related solely to children's provision in schools). It also introduced a new mystery shopper element, whereby Core Fit would test out how well safeguarding, whistleblowing and health and safety policies and practices were operating in community settings.
- 7.59 The former Chief Operating Officer stated that *"now he thinks it was probably [the Leader] influencing the commissioners (but he didn't think this at the time). [The Head of Communities and the Director of Children's Services] were the commissioners of these services"*. He now thinks *"[the former Leader] must have been putting pressure on the commissioners to develop, establish or embed these things"*. Conversely, the former Head of Communities said that she was told to progress with a schools and community pilot. She told us she was told to *"get on with it"* and she said this was at the direction of the former Chief Operating Officer:
- "[the former Chief Operating Officer] was keen for payments to be made [to Core Fit] and making sure that the project was delivered. There was pressure from [the former Leader] to promote the project with schools"*.
- 7.60 As mentioned, it was wholly unclear why other providers – given there were 13 bids – were not invited to run the extended/new pilot on their own or alongside Core Fit, enabling a trial of different approaches. The former Head of Communities said that *"there wasn't an option to use another provider. This was a "get the agreement to Core Fit" not "let's find a way to do this differently" situation"*.
- 7.61 By now, the former Chief Operating Officer had a track record of being seen to secure preferential treatment for Core Fit (pursuing earlier payment of invoices, discussing insurance matters for Core Fit within the Council and being on hand to help with bid submission to the Council's procurement portal). Even if not directly asked to secure a particular outcome by the former Leader, he was seen to be acting in accordance with the widely perceived view of the former Leader's wishes. This left the Council open to the public law challenge of apparent bias in relation to the extension of the pilot.
- 7.62 The WARN (186) was originally prepared by a member of the Procurement Department as a waiver (but was presented and signed sometime after the contract had been entered into). It stated the rationale for the failure to put this opportunity out to market competitively was that there was a need for Core Fit to be the provider in order to allow a *"comprehensive evaluation"*. This however was illogical given that a sole provider was to be evaluated. Moreover, the Procurement Manager had recommended a multi provider framework.
- 7.63 The further reason given was the need to *"mobilise quickly"* and that no other provider would be in a position to do this. This was despite a copy of what is believed to be the initial WARN having been annotated by Procurement (although not presented for signature) to include a comment relating to the following sentence: *"We are not aware of another provider who is able to immediately meet all requirements and terms of the contract"*. The comment was: *"This is not true so will need to be re-worded"*. This issue further calls into question the original decision to extend the pilot. As noted above, other providers appeared to be available, including Everybody Health & Leisure who have subsequently explained to us that this was an important procurement to them, as allowing them to demonstrate their worth to the Council, and that they could have partnered up with a physiotherapy provider and mobilised quickly. Indeed, as noted, the Procurement Manager has told us that both at the time of the procurement and when the extended pilot was considered, she suggested it should be a multi-provider framework rather than a single provider – she also confirmed that in her view other suppliers, already providing similar services elsewhere, could have put provision in place speedily.
- 7.64 As set out above, this WARN was drafted for the purposes of a waiver, but was not presented and signed until some weeks after the contract was entered into. It was in effect (even though described as a waiver) a record of non-adherence and was itself signed in irregular circumstances. A relatively junior procurement officer was asked to attend the office where the former Monitoring Officer and the former Head of Communities were based, and to bring with her the WARN paperwork. When she arrived at the office she found with them the former Leader and the former Chief Operating Officer. The former Monitoring Officer states that the Leader was not involved in the discussion and was just passing by. The former Monitoring Officer also stated that as the WARN was in effect a non-adherence, it had to be signed by her. She had not moreover seen the annotated draft WARN.
- 7.65 Whatever the exact factual position, given the former Leader's apparent interest in Core Fit and his attendance in the room, combined with officers' knowledge of the existence of other available providers, this was a red flag for the officers signing the WARN (who could then have reasonably been expected to query/escalate these matters at this point and not have waited for the eventual review of all WARNs). Such a more urgent review would have been preferable to the eventual consideration by the Procurement Board (the mechanism for review in place at the time), as it would have brought these matters to a head sooner.

- 7.66 In April 2015 Core Fit's Director emailed the former Leader with a description of the Core Fit wellbeing offering for over 50's which seemed to be for promotional purposes. The former Leader replied:
- "Star. It is cool but needs a bit less words.....we can start campaign...Time for [Cheshire East Council] to back you. Core Fit Ltd rules".*
- 7.67 Events were underway to extend the Council's engagement with Core Fit even further to encompass a mental health/wellbeing element to the pilot in schools (referred to as "MIND"). The former Leader inappropriately sent a document "*Mental Wellbeing Plan...Commissioning strategy*" to Core Fit's Director with the message:
- "Chill. Your comments only. Confidential".*
- 7.68 Shortly after, the former Leader emailed Core Fit's Director with text for a draft letter offering an extension of the MIND Body and Core Strength pilot to primary schools and a contract for a "*Core Fit Mental Health and Wellbeing Pilot*" with a value of £21,000 was entered into between the Council and Core Fit as the supplier.
- 7.69 Around the end of June 2015, discussions were taking place between the service and procurement in relation to yet another contract with Core Fit for a '*Community Hub Special Advisor*' role. According to the former Head of Corporate Resources and Stewardship, at the same time that these discussions were taking place, she was raising concerns about the Council's contractual relationships with Core Fit and, specifically, about the former Leader's perceived conflict of interest concerning Core Fit's Director.
- 7.70 Despite misgivings, on 25 June, the former Head of Communities produced an amended version of the original contract with Core Fit to include an additional project brief for a Community Hubs Special Advisor. She indicated at interview that she had concerns about this.
- 7.71 The former Head of Corporate Resources and Stewardship was asked to a meeting with procurement and the former Head of Communities in late June. It was then that she said she pieced together the full extent of the contractual relationship with Core Fit. She said that this prompted her to speak to the former Chief Executive. She told us that she said she "*strongly advised him that no further work should be awarded to Core Fit without a full and proper procurement process taking place*". The former Chief Executive denies this meeting ever took place and we make no finding on this dispute, other than to note that even if the former Head of Corporate Resources and Stewardship had spoken to the former Chief Executive, she did not appear to take any further steps to seek to stop the addition to the contract being entered into.
- 7.72 As a result of these actions the increased scope of engagement with Core Fit moved ahead. A modification to the contract to incorporate the Special Advisor role was authorised on 27 July 2015 increasing the value of the contract with Core Fit by an additional £23,000. A letter was sent to Core Fit on 30 June 2015 advising of the modification, despite this not yet having been authorised.
- 7.73 By the end of the Core Fit engagement, which ran for over two years, the contract price had grown from the original pilot, which was for £20,000 pa, through the procurement, estimated as £85,000 pa, to the pilot extension after the procurement failed. The addition of services, had they all been provided, would have come to approximately £188,000 pa (in total £133,800 was paid to Core Fit by the Council). This was all without the discipline of procurement, proper business cases, or performance evaluation. This ended up being a considerable sum of money which, whilst not material in the audit sense and not a breach of EU requirements on procurement (so not unlawful on that basis), did entail multiple breaches of the Council's Contract Procedure Rules (indicating a lack of governance controls). The former Leader considered the sums to be "*immaterial*" and this to arise from a "*small and insignificant contract*". That is however to miss the point of what the public would think about these sums and also what the events point to in terms of wider governance. What is clear moreover is that for the reasons set out in this report, the Council was, through the Leader's behaviour and that of the former Chief Operating Officer in relation to Core Fit, left vulnerable to a public law challenge on the basis of apparent bias.

DBS/Safeguarding issues

- 7.74 Despite Core Fit providing services involving children since at least June 2014, no one had checked that the relevant DBS checks were in place. They were in fact not obtained for most staff until the end of July 2015, and Core Fit's Director still did not have hers in place until mid-August 2015. It also came to light there was a lack of parental consents. This represents a major safeguarding failing by the Council and should be seen also in the light of a lack of insurance commented upon previously.
- 7.75 In fact, the former Leader himself and in order to further help the Director of Core Fit, had involvement with the company Personnel Checks, which carried out DBS checks on behalf of the Council, which resulted in this Company speaking to Core Fit's director to explain the DBS process. This was a further example of the Leader's inappropriate involvement in operational matters regarding Core Fit.

- 7.76 Safeguarding concerns regarding Core Fit came to a head in July 2015 – it is not wholly clear what precipitated this. On 15 July 2015, the former Head of Communities however emailed the former Strategic Partnership Manager stating that the issue had been raised at the Management Group Board and the Early Intervention Meeting the previous day and had *“sparked some concerns around safeguarding and whether we should suspend the work and instigate an immediate investigation into whether we are supporting children effectively”*. At interview, the former Head of Communities said that she *“was pulled out of the [Management Group Board meeting] and was told that she had caused lots of issues and that she shouldn’t have raised it”*. She said she did not know why Core Fit’s safeguarding practice had not been checked by Children’s Services during the earlier Core Fit pilot in schools.
- 7.77 The lack of due diligence in relation to safeguarding, DBS checks, parental consents and, as discussed earlier, insurance are of particular concern. Marketing that went out from the Council in relation to the Core Fit programme in schools actually stated that all DBS checks were in place when they were not.
- 7.78 Given that the children in the programme were aged between 8 and 11, it can be appreciated that this raised significant concerns and risks for both the individuals involved and the Council. The protection of children, vulnerable adults and the public should have been paramount but appears to have been given less attention in the push for Core Fit to be engaged. The culture in which the former Leader’s wishes were anticipated even if not directly asked for to be met, is likely to have led to short cuts being taken in proper governance. Whilst this situation did not translate into any adverse incidents that have come to light, the implications could of course have been serious.
- 7.79 Despite officers starting to question the position in relation to safeguarding and other contract issues, the former Leader emailed Core Fit’s director on 30 July to encourage her to press ahead with Core Fit and so-called *“positive Mind Fit”*, describing himself as *“your business manager”*.
- 7.80 He also sent a letter around this time to George Osborne, MP for Tatton and the UK’s Chancellor of the Exchequer at the time, highlighting issues in Cheshire East in relation to children’s mental health and describing the Core Fit programme. He in fact consulted the Director of Core Fit on the terms of this letter in draft. This letter asserted that: *“this will all lead, procurement providing, to a council budget in February, with a ring-fenced five-year commitment to these programmes”*.
- 7.81 At the end of August, the former Leader sent an email to Core Fit’s Director setting out his vision for Core Fit and other ventures over the next five years. He spoke about the potential for a future market flotation. Extracts, again illustrating the former Leader’s inappropriate communications with and intention to secure preferential treatment by the Council, include:
- “As part of selling it to officers we do MMU dance”*
- [this is understood to be a reference to the independent valuation which was eventually conducted by Liverpool John Moores University – see below]
- “You pay yourself loads. Council gets products that deliver. Range could include [Core Fit], [Positive Mind Fit], Money Fit, Career Fit, Life Fit, Job Fit, health Fit, duet [sic] Fit, ageing fit.*
- Your business. Your world I am merely conduit for your success”.*
- 7.82 Councillor Clowes, the current Leader of the Conservative Group, told us that further to her becoming aware of the Core Fit provision, she raised the matter at an informal Cabinet meeting. She told us that the former leader had been aggressive and refused to give any details as to his evidence base for supporting Core Fit. He went on to explain there would be a third pilot for *“Mind Fit”*, which would be addressing the mental health of children aged 17 and above. This was despite the fact that the Council’s Public Health team had been developing a similar *‘Emotionally Healthy Schools’* offer for exactly that age group. She said *“no, he wanted Core Fit.”* She also said that *“this was a difficult time. At least I knew then that all Cabinet members knew about Core Fit. I was not convinced until then that they did.”*
- 7.83 In late August and early September, whistleblowing allegations were made.
- 7.84 Matters escalated by early September when Core Fit’s director provided the Council with the DBS documents that had been requested but the DBS check for one of her staff was still insufficient. A notice of termination was sent shortly after, bringing the contract to an end, with immediate effect, copied to the former Chief Executive.

- 7.85 It is notable that even though the former Leader and the Council were said to be highly committed to this type of service, the contracts were terminated rather than a different pilot being put in place, using another supplier from the aborted procurement (or, as Everybody Health & Leisure informed us, this would have been possible under a direct award). The planned rerun of the procurement was also abandoned.

8 THE POST CORE FIT IMPACT

The former Leader

- 8.1 Around that time, in early September 2015, emails indicate that the former Leader created a letter to the former Chief Executive. This followed a meeting at which the former Chief Executive had sought to raise with the former Leader adherence to the Nolan Principles. Whilst this was never actually sent, he has confirmed that he wrote this. It contains his denial of anything being untoward but also indicates the breakdown in relationship between him and the former Chief Executive and the extent to which he had strongly held views about certain officers, including the former Chief Executive. Excerpts of the draft letter are included below:

"You, as CEO, fail to address the culture and you do not respond to my complaints. FOI are ignored, you undertake no performance management and I believe that you actively enjoy undermining me and my Cabinet. As for bullying, any definition of bullying will show that I am not a bully, I spend hours persuading staff that what we need to do is right, often to no avail...."

"Across the board, the council has weak officers who do not perform as requested and as such I consider this anonymous letter [referring to the whistleblowing] in keeping with the low brow response that I expect from some officers of the Council. It should not go without doubt that this letter emanates from a lack of management by you and your senior officers".

"It was procured by [the former Director of Children's Services], who acknowledged that we need to be different to attain the corporate growth we need as an authority.....The procurement mentioned was actually stopped by me when comments, nay accusations of impropriety were made by a director off your sports trust that this money was being procured incorrectly."

"So Mr Chief Executive a sobering event. Core Fit was open and transparent, yet a witch hunt is suggested and in going to our external auditors tells you that you have some nasty people working in the Council. It tells you where we are...it tells you where you are",

- 8.2 On 6 October 2015, however, the former Leader did send a letter to the former Chief Executive in which he acknowledged recent discussions he had had with him and the former Monitoring Officer. He stated: *"Whilst I am disappointed that these allegations have been received, I can assure you that I have taken on board the advice I have been given. I will ensure that I conduct myself at all times in accordance with the expected standards of behaviour from an elected member in all my future dealings with the Council"*. By then, it was becoming clear within the Council that there were significant issues around Core Fit and the former Leader's behaviour. We were told moreover, consistent with the tone of this letter, that the former Leader would apologise when his conduct was called out but that it was noted that this did not deter him from a recurrence. Indeed, we have been told that his behaviours worsened in the autumn as presumably the pressure on him intensified.
- 8.3 During the autumn of 2015 members were becoming more vocal about their concerns over Core Fit. The current Labour Leader of the Council, Sam Corcoran and others had been raising concerns at the Audit and Governance Committee and the Labour opposition group had been issuing statements of concern to the press. In November 2015 decisive and brave steps were taken by the former Mayor, Conservative Member, Councillor Gaddum, who had approached Grant Thornton about a potential objection under the Local Audit and Accountability Act 2014 (although she did not pursue this avenue in the end). She did however speak to the BBC about the former Leader and the Core Fit matters. This led to requests under the FOIA in relation to Core Fit. These disclosures, signed off by the former Monitoring Officer and the former Chief Executive (after external legal advice taken by the former Monitoring Officer), created significant pressure on the former Leader. Simultaneously, through the efforts of a small number of Conservative Cabinet members, the former Leader's Conservative Association insisted that he stand down. In early December 2015, the former Leader gave notice of his intention to step down on 31 December 2015. In practice, due to the launch of the Police investigation on 17 December 2015, the former Deputy Leader oversaw the Leadership role until Councillor Rachel Bailey was elected as Group Leader in February 2016. She served in this role until the change in administration in 2019. The former Leader remained in the political group until September 2017 and as a councillor until December 2017 but was largely inactive.

Internal Audit

- 8.4 In fact in August 2015, three months before the BBC became involved, the former Head of Internal Audit contacted Grant Thornton to raise concerns with us that had been sent to him by a whistleblower. In doing this he demonstrated high standards of professional conduct and appreciation of the importance of his role. Given the organisational culture at that time, this was also a personally brave thing to do, and it was one of the few examples we have found of anyone being prepared formally to raise matters outside of the Council at this time. Internal Audit then commenced its own investigations into the matter and, until these were concluded, external audit agreed to keep a 'watching brief'. Our experience from that time was that Internal Audit had commenced its work in an impartial and objective manner, with various officers deployed to the work who had the necessary skills and experience in dealing with such investigations. However, the announcement of the police investigation in December 2015 meant that all internal and external audit work relating to Core Fit had to be suspended.
- 8.5 It is recognised best practice in the event, to let Internal Audit do its work first before external audit becomes involved. This was complicated by the involvement of the police. However, this report is testament to the importance of internal audit, sometimes an unsung resource given the role it played in uncovering and helping the Council move on from this turbulent period.

Officers: disciplinaries and resignations

- 8.6 The next appointed Director of Legal Services, the former Chief Executive and finally, the former Chief Operating Officer resigned in the context of unconcluded disciplinary processes relating to the Core Fit matters. In addition, the former Head of Internal Audit also resigned, which he and others felt was attributable to the aftermath of Core Fit but was said to be due to other factors. The former Head of Corporate Resources and Stewardship resigned as a direct result of her opposition to the culture and fall-out from the Core Fit matters.
- 8.7 The experience of working at the Council during the former Leader's reign, and subsequently, had taken its toll (emotionally and psychologically). The Core Fit issues, the former Leader's behaviour and the resulting internal audit and police investigations had negatively impacted both individuals and the corporate culture. This included the former Chief Executive saying that he was *"mentally and physically exhausted with having a Leader behaving in the way he was.... [his] name was in the press for 15 months, and this had a big impact on him"*. The former Chief Operating Officer said that it broke *"his confidence and his trust in other people, both officers and Members"*. Others stated:

"He interviewed people [as part of the audit investigation] who had since left the Council – they were broken people. It was a tough place to be at – you either stood up or you got out".

"[an officer] had a terrible time with [the Leader] and he wore her down in the end – that's why she left, she was fed up of the pressure to do things that weren't quite right".

- 8.8 The former Leader giving notice to stand down was followed by the hugely disruptive period in which certain senior officers mentioned above were subject to disciplinary processes and/or chose to leave the authority. Thus, the disruption lasted far beyond the date on which the former Leader stood down from the Council. The disciplinary processes impacted on the individuals themselves (i.e. affecting their reputations, career and, in some cases, this had serious financial impacts) and on the culture of the organisation. The former Director of Legal Services said:

"When he joined in January, he knew [the Leader] had resigned. There was a palpable relief among officers and Members that [his] era had come to an end but there was also the shock of the police investigation. He had had some challenging roles in the past but never worked at a council where the police had raided the headquarters, seized documents and computer records and required senior officers to sign undertakings not to disclose information".

The LGA report noted: *"The suspensions of senior staff have contributed to the sense of fear and uncertainty and are making it more difficult for the organisation to move on. There's a sense of 'will it ever end'. Nobody challenged the validity of the suspensions, but some did emphasise the destabilising effect that they are having"*.

- 8.9 There was also the impact on the Council's finances in having to pay substantial sums in back-fill and interim cover for the former Director of Legal Services, the former Chief Executive, and the former Chief Operating Officer. The former Acting Chief Executive said: *"There was therefore no end in sight as to the costs, instability, and destabilising effects of [the Chief Operating Officer's] suspension"*.

- 8.10 Finally, there was the destabilisation that held the Council back in progressing against its strategic vision (i.e. significant time of senior officers taken up with dealing with the fallout, disciplinary processes, the police investigation etc). The police investigation and Crown Prosecution Service consideration lasted four years and the Council felt unable to move on effectively in that period.
- 8.11 The former Acting Chief Executive said *"There was a real need to bring some stability to the organisation. The constant stream of interims was very unsettling and unsatisfactory for the organisation and was costing a fortune".*

9 THE ROLE OF MEMBERS AND OFFICERS

Role of Members

- 9.1 Quite apart from the nature of the former Leader's leadership style, the member/officer dynamic appears at the time to have been distorted and not to have struck the right balance (e.g. members being excessively involved in service delivery or close relationships between members and service managers). The former Chief Operating Officer noted this when he first arrived at the authority in October 2013: *"it was not necessarily a Member-led culture, it was 'we're Members and you will do as we tell you to do'. And that built with [the Leader's] lack of experience of local government".* This was reflected back in evidence from a number of interviewees. These behaviours were in part to be found in Cabinet which set a poor role model for other members.
- 9.2 As the LGA stated in its report: *"there were a number of comments about some Elected Members micromanaging staff or placing excessive demands on them. This leads to some managers 'jumping' to meet Elected Member demands and that transmitting itself to staff. Some felt that 'Member led' has been translated as 'you will do as I say' by some".*
- 9.3 The former Leader was not alone in the inappropriate treatment of officers; the former Chief Operating Officer said: *"it wasn't a big issue at first but, as it went on, it almost got to the point where Cabinet meetings were sometimes about how [Members] could batter officers. We had to queue up in the corridor to wait to be summoned into a private Cabinet meeting, and some of those sessions just got worse and worse; really difficult, challenging meetings where you saw a lot of officers getting quite a lot of criticism about lack of progress and not doing this and not doing that. It did start getting a little bit sour".*
- 9.4 The former Chief Executive said: *"Culturally, within Cheshire, from Parish to County level, there are Members who feel that it is ok to speak badly to officers – [the Leader] wasn't the only person who behaved like this."*
- 9.5 The response of Conservative Councillors to the former Leader was not uniform and may in some cases have been influenced by the natural desire to avoid negative electoral fall out.
- 9.6 The former Chief Executive was of the view that that he did not have the support of Cabinet or the wider ruling Group to take action in relation to the former Leader. He said that he spoke to Councillor Rachel Bailey and other members of the Cabinet as to what could be done about the former Leader. He said that *"he didn't get a lot of change"* out of these conversations.
- 9.7 This is denied by the Conservative group which says, from the recollection of the members then in Cabinet, there had been no such request. They say their impression was quite the opposite, it was recounted to us that they had asked the former Chief Executive for assistance but received a response of silence or *"we know what we are doing"*. What this shows, whatever the true position, is that there was some distance between them and a breakdown in communication.
- 9.8 It was reported by the Conservative Group that: *"The deliberate and frequent alterations to officer job descriptions and the unusual transfer of commissioning and procurement responsibilities between directorates, exacerbated the process of segregation. This left officers and cabinet members consumed, anxious and unable to identify clear lines of funding and budget allocations. This made it extremely difficult to produce coherent evidence upon which to challenge the former Leader..."*
- Following direct challenge to his leadership style and behaviours, some Cabinet Members were intermittently 'barred' from Informal Cabinet meetings and the former Leader ceased communication with them other than that required for Cabinet Agenda items. The former Leader continued to call for the resignation of senior officers who refused to comply with this requests...These were resolutely and successfully challenged by Cabinet Members familiar with these matters".*

- 9.9 Even allowing for these difficulties, it is clear that Cabinet members were aware of the former Leader's behaviours and it is notable that, whilst some of them are to be credited with ultimately involving the local Association in securing his standing down, Cabinet did not go wider earlier than that in order to seek to rein him in – for example by approaching the former Leader's local Association with concerns (and a request that he modify his behaviour) at an earlier stage.
- 9.10 It was said and appears to be the case that some members of the former Leader's wider group and Party structures were unaware of his behaviours given his public facing persona as opposed to his "*Second Floor persona' in the Executive Suite at Westfields or Macclesfield*". That said, as noted, Cabinet members and some wider Party members were clearly aware of the former Leader's conduct and behaviours and there was after all a no-confidence vote into the former Leader's Leadership tabled by Labour Group Councillors in February 2015.
- 9.11 At the time the Macclesfield Express reported Councillor David Newton, who was then the Leader of the Labour Group as saying: "*[The former Leader's] leadership style belittles other councillors. His careless, ill-considered and defamatory remarks meant that a live webcast had to be edited. We are not prepared to be bullied.*" Councillor David Newton is also reported as having said: "*He shouts and [sic] other Councillors are shouted down and berated. He even undermines his own colleagues. The [former] Leader of the Council needs to treat people with the respect they deserve*". There is evidence in support of certain Councillors also being subject to what might be characterised as bullying by the former Leader.
- 9.12 He won the no-confidence vote, with the support of his fellow Conservative members, and after this, according to the former Chief Executive "*he got bolder, and a lot of really good Members unfortunately stepped down. Two brilliant Members in [the Leader's] Cabinet stood down - they explicitly said they were fed up with [him], they would have stayed on, but they didn't want to work with [the Leader]*".
- 9.13 The Labour Group fed the media information about the former Leader's behaviours as early as March 2015 and from October 2015 in relation to Core Fit. We have seen 9 examples of Cheshire East Labour Group press releases over that period. In addition, the former Mayor, spoke to the BBC in November 2015. Thus, whilst ultimately it was the actions of the former Leader's local Conservative Association which directly secured the former Leader's standing down, this only came after extensive media coverage (prompted by the Labour Group and the Conservative Member), placing pressure on the former Leader. Prior to that, there were undoubtedly some individual councillors from across the political spectrum – Conservative and Labour – who did step forward to seek to challenge the former Leader, for example, Councillor Corcoran, the current Labour Leader of the Council repeatedly raised concerns at the Audit and Governance Committee and Councillor Clowes, Councillor Groves, the former Deputy Leader along with the former Mayor took increasing steps to push back against the former Leader's behaviours.
- 9.14 Whilst initially supportive of the former Leader (and indeed he publicly backed her standing as replacement Leader following his resignation), the group of Conservative members pushing back against the former Leader was later joined by Councillor Bailey, in taking the matters to the local Conservative Association. The delay in taking the matter to the local Association has been explained to us, as being due to the fact that some members of the Association had been initially sceptical, as the former Leader had reserved the majority of his poor behaviours to his time with officers and in Cabinet, such that those outside and only privy to his public face were unaware. These matters came to a head partially as a result of the FOIA disclosures mentioned above, leading ultimately to the Association requiring, in effect, the former Leader to step down.

Role of officers

- 9.15 Throughout the Core Fit issue, there was evidence of officers resisting pressure and '*doing the right thing*' both at senior and junior level. For instance, the Corporate Insurance Manager, who advised that Core Fit could not be included on the Council's insurance policy. Officers also challenged the price increases on the January 2015 Core Fit invoices and required authorisation before processing and the procurement team challenged why Core Fit was given higher scores in certain areas during the tender evaluation process. Both the former Head of Corporate Resources and Stewardship and the former Monitoring Officer actively sought to challenge the Leader. Eventually the termination of the contracts was the right thing, and as the former Head of Communities said "*it got to a point where [the Council] had to do the right thing, regardless of the consequences*".
- 9.16 Critically, it was not always clear in the Core Fit events, whether certain senior officers were seemingly doing the former Leader's actual bidding or whether they were anticipating what the former Leader wanted, without a direct instruction. This was either to curry favour or avoid what was called by one officer a potential "*barrage of criticism*". The former Leader's dominant behaviours were such that he did not need to spell out his desired outcomes.

- 9.17 What is clear is that the environment in which this took place allowed the various irregular issues set out in this report to occur. There were issues raised, but never fully looked into, about the Company's governance and the Director's business acumen and marshalling of resources. The deficiencies in Core Fit as a business, including its initial lack of insurance and difficulties in complying with the tender submission arrangements, were, however, repeatedly overlooked, giving rise to the suspicion that this was on account of the former Leader's drive for this organisation to thrive and grow its relationship with the Council. Whilst this could have been in part process failings, it left the Council vulnerable to the allegation of apparent bias.
- 9.18 The former Head of Internal Audit said in interview: *"He realised [the Head of Corporate Resources and Stewardship] had a difficult role – she was often in 121 meetings with the Leader and the Management Team, and she was forever trying to keep things the right side of the line. She would often say "I told [the Leader] he could go up to the line but never over it". This quote encapsulates an aspect of the dysfunctionality at the Council. Officers should not have to, other than exceptionally, undertake this role. Even then, the officer role should be to strive for best practice, and not routinely to be pulling a member back from what is clearly inappropriate or even unlawful. It is also likely that other authorities, not subject to the same pressures, would have drawn the 'line' in a different, more cautious place.*
- 9.19 Whilst there is evidence of the former Chief Executive and the former Chief Operating Officer, at the time trying to manage the former Leader through various means, saying no to his requests, taking steps to protect junior staff, and talking to other councillors, ultimately this was not successful. The former Deputy Monitoring Officer said that: *"There was very little evidence of the senior management team pushing back on that or insulating staff lower down in the organisation from that. It, inevitably, seeped down through senior managers to staff from time to time. There was a significant amount of mistrust between officers and a palpable sense that everyone's first priority was covering their own back".*
- 9.20 As the former Head of Corporate Resources and Stewardship stated, as matters progressed, this had a further negative impact on the officer culture:
- "relationships between senior officers.... changed over time as frustrations grew across the senior team with the Leader's behaviour and his interference in operational matters. At its worst, senior officers began to distrust each other particularly as the extent of the impact of the Leader's behaviour and interference became clear alongside reducing confidence in the Chief Executive and his Management Group Board's willingness and ability to challenge or contain it".*
- 9.21 Most importantly in terms of officer action, it remains extraordinary that the former Chief Executive and the former Chief Operating Officer, who both had statutory protection did not lodge a formal complaint. The former Chief Executive sought to "absorb" the impact of the former Leader. These tactics were ill-judged, and a clear line had needed to be drawn much earlier. The former Head of Corporate Resources and Stewardship stated that: *"I think that [the Chief Executive] and [the Chief Operating Officer] genuinely believed that their attempts to "absorb" the Leader's extreme behaviour in part, at least, protected other officers and allowed the organisation to operate as it should. However, both at the time and since, I believed they were mistaken".*
- 9.22 Overall, judging by the failure to restrain the former Leader, we conclude that the former Chief Executive and the former Chief Operating Officer were in both cases not assertive enough in this particular aspect of their jobs and were unable to deal with or stand up to the pressure from the former Leader. The former Chief Operating Officer said:
- "Was the senior leadership team strong enough and experienced enough to deal with [the Leader]? When I am a bit down I think we weren't good enough".*

10 DETAILED COMMENTARY ON OFFICERS

The former Chief Executive

- 10.1 The Chief Executive's role is of paramount importance to the functioning of an authority and its leadership culture. The former Chief Executive at the time, was in addition the Head of Paid Service, with the statutory duty of issue a report on the proper management of the authority's staff under section 4 of the Local Government and Housing Act 1989.

- 10.2 There is evidence that there had been some turbulence before the appointment of the former Chief Executive. He had helped to steady this. Moreover, during his tenure good things were achieved for instance the authority came out of Children's Intervention and HS2 was allocated to Crewe. In terms of the obvious challenges he faced from the former Leader, he argued that he was working in a subtle but effective way to control the former Leader and did repeatedly challenge him and explored different avenues in trying to get the former Leader mentoring and coaching support. He said that the former Leader's draft letter to him (see paragraph 8.1 that he and we believe was never sent) illustrates the former Leader's frustration as the former Chief Executive was not just doing his bidding. It was true that the former Chief Executive did make attempts to rein the former Leader in, including management cascade of suggestions of how to deal with the former Leader, direct meetings with the former Leader and indeed after the whistleblowing had been received, commissioning the internal audit investigation.
- 10.3 In his interview, the former Chief Executive drew attention to the letter that the former Leader actually sent him (see paragraph 8.2 above) where the former Leader said that he had taken on board the advice he had been given regarding his behaviour. He stated that he *"didn't do this in isolation, he tried to get the support of some of the trusted Cabinet Members....the incoming members of Majority Group, he had conversations with other Chief Executives and senior sector representatives. He sought advice from other more experienced people on the best way of handling the Leader"*.
- 10.4 Allowing, however, for the fact that there were teething difficulties with the new Unitary authority, that he bore the brunt of the former Leader's poor behaviours, and that he would have been relatively inexperienced in dealing with a Leader of this nature, ultimately, he did not successfully effect change in the former Leader's behaviours.
- 10.5 Prior to mid-2015, it appeared that his overall tactic was to contain the situation, whilst protecting other staff, and to wait for the former Leader to be gone. As a result, he did not consistently or effectively push back. This was, in our view, an inadequate approach to such a dysfunctional set of circumstances and one calling for earlier formal action. Even with the weaknesses in the standards regime, he should have made a formal complaint much earlier than when he started discussing this with the former Monitoring Officer in mid to late 2015 and, if necessary, have gone externally to, for instance external audit or the relevant Government Department – if not the Chief Executive, then who? This was particularly the case where the line of hierarchy made this role a potential single point of officer failure.

The former Chief Operating Officer/section 151 Officer

- 10.6 The former Chief Operating Officer was also the section 151 Officer. This role was therefore critical to the financial propriety and leadership culture at the Council. Under section 151 of the Local Government Act 1972, local authorities are required to make arrangements for the proper administration of their financial affairs and to appoint an officer to be responsible for these (often known as the Chief Financial Officer). There is then the reporting duty, further to section 114A of the Local Government Finance Act 1988, to the Council where the section 151 Officer considers there is a likelihood of unlawful expenditure or an unlawful course of action likely to lead to a loss or deficiency. This was not the former Chief Operating Officer's first section 151 post but was his first Executive Director role with responsibility for corporate resources.
- 10.7 Whilst the former Chief Operating Officer was not of course privy to the private communications between the former Leader and Core Fit's director, he was aware of the requests to intervene in the payment of the invoices and to provide support to Core Fit in the tender process – whether the former Leader directly or indirectly (both of which are denied) sought Core Fit's advancement does not detract from the distortion to corporate governance that followed.
- 10.8 The former Chief Operating Officer's role ended up in the provision of preferential treatment to Core Fit in the run up to the tender evaluation. His then ultimately allowing the work to go to Core Fit through extending the pilot, even though the Company had actually come fifth in the tender, and other providers could easily have mobilised quickly in order to continue the pilot but on a broader basis, left the Council vulnerable to challenge and open to the accusation of apparent bias. His presence at the post evaluation meeting and his part in the decision to abandon the procurement, in addition, left the Council open to question in terms of propriety of process and decision making.
- 10.9 We have concluded that there were weaknesses in the way in which he carried out his section 151 role including that, whilst getting credit for introducing the WARN system, he appeared inclined to rubber stamp the Core Fit WARNs rather than interrogate the underlying story and insist on procedural regularity and his role in terminating the procurement and facilitating the increased scope of the pilot that followed. Whilst he denied this latter aspect and said it was the role of commissioners, the evidence of other officers indicated his pivotal role in this regard, including being the relevant commissioner's line manager.

- 10.10 Finally, a significant reflection of his relationship with the former Leader was in his decision to go on holiday with him. At some point in late July/early August 2015, the former Chief Operating Officer and his wife stayed for a short time with the former Leader at his villa in Spain. The former Chief Executive said at interview that he signed off the former Chief Operating Officer's holiday request before he knew what his plans were.
- 10.11 On 15 September 2015, the former Chief Executive sent the former Chief Operating Officer a letter reprimanding him about his holiday with the former Leader but concluding there had been no breach of the officers' Code of Conduct so no further action would be taken. The former Chief Operating Officer pointed out that apart from the villa nothing else had been paid for by the former Leader and that he regretted this, characterising it as the '*worst mistake*' of his career.
- 10.12 This indicates the closeness of the relationship between the former Leader and the former Chief Operating Officer and the extent to which the normal propriety had been distorted between the two.

Former Monitoring Officers

- 10.13 The role of the Monitoring Officer is critical to the proper functioning of a local authority, support for other officers and legal compliance. This includes the duty to prepare a report under section 5A of the 1989 Act where they consider there to be a contravention of the law and responsibility for matters relating to the Code of Conduct.
- 10.14 The historical evidence shows that Cheshire East Council had difficulties in retaining Monitoring Officers over the period 2009-2017. There was a high turnover of Monitoring Officers at the Council since its creation and up to the date on which the last officer resigned in the period under investigation.

Dates of successive MOs
January 2009 – Dec 2010
Dec 2010 - January 2013
January 2013 – June 2013
June 2013 – February 2014
February 2014 – Dec 2015
January 2016 – Dec 2017

- 10.15 The former Monitoring Officer unquestionably had a difficult task in seeking to ensure legality around the Leader's dysfunctional behaviour. She was seen to take steps to tackle him on a good number of occasions and sought to prepare a Code of Conduct complaint against him in late 2015 (which in the event was not made, as the FOIA disclosure brought matters to a head). She oversaw a revision of the standards arrangements at the Council – working within what the law allowed at the time and sought to carry out her duties diligently. Thus, she is to be commended for efforts in the face of real difficulties, which have been recognised by other officers.
- 10.16 That said, she could likely have brought matters to a head sooner in 2015, as early as April, as was evidenced in the circumstances of her signing the WARN 186 on 24 April for the contract extension – see paragraphs 7.62 - 7.65.
- 10.17 At this point, she knew there were other physical education providers potentially available from her experience in the procurement process, she also knew that Core Fit's Director was the former Leader's physiotherapist and that she had had to tell him to step away from the procurement meetings as with many other unconnected matters. In light of this, she might have been expected to have done more in relation to Core Fit than just strictly note what should have been a non-adherence WARN. The former Monitoring Officer argues that she had followed proper process and therefore cannot be criticised for not doing more.

- 10.18 It is not suggested that there was, on her part, any deliberate avoidance of issues or that she called the junior procurement officer to the meeting where the WARN was presented for her signature. However, having seen the WARN she could for instance have been expected to have brought forward in time a formal review of this contract (further to her wider duties as Monitoring Officer) – particularly since she was required to sign another WARN (206), this time strictly a record of non-adherence in relation to Core Fit within a month.
- 10.19 The review of WARNs at that stage lay with the Procurement Board, an internal officer group which met every few months and the next meeting for which post WARNs 186 and 206 was in October 2015. The requirement for review by the member led Audit and Governance Committee was not introduced until December 2015, post the Core Fit events and was not retrospective. More urgent investigation was warranted.
- 10.20 Whilst unrelated to the matters reported upon here, the former Monitoring Officer resigned in summer 2015 and left the Council in December 2015 to join a private firm. The subsequent former Director of Legal Services and Monitoring Officer quickly became embroiled in some of the fallout from these affairs, ultimately leading to his resignation. What is clear is that the high turnover of Monitoring Officers will have weakened the Council when it was at most need of robust legal advice and challenge.

Other officers

- 10.21 Officers of different levels raised concerns to varying degrees both within the management structure and also with internal audit. In the former Head of Internal Audit's case, he raised matters directly with external audit. The Corporate Manager for Professional and Corporate Services did, whilst going along with some of the Core Fit events, raise concerns with internal audit and with whom he shared relevant documentation, as early as March 2015.
- 10.22 The former Head of Corporate Resources and Stewardship resigned from the organisation well before the police investigation started and as a result of the dysfunctional culture. She was involved in a number of the issues that arose including the abandoned procurement and sought to mitigate the impact of the former Leader on proper governance and protect junior officers. That said and whilst not sighted on the contract extensions until the June 2015 one, she did not effectively challenge that contract extension going ahead.
- 10.23 There are questions around the role of those commissioning the services from Core Fit that is, the former Director of Children's Services and then subsequently, the former Head of Communities. Between them, they led their respective service areas.
- 10.24 In particular, the former Director of Children's Services⁶, who did not want to input into this investigation despite many requests, may have at worst, been complicit in attempts to bypass usual processes to give work to Core Fit or, at the least serious, failed to push back, challenge or resist pressure to act inappropriately. This is suggested by, first, the early pilot which was not tested against any normal business or VfM criteria and against the principle of delegation to schools; the failings in his officers' securing the necessary DBS and checks and the position as to insurance; in abandoning the procurement despite there being other potential providers to whom it could have been awarded; and finally, for his part in the decision to extend the pilot to Core Fit. These were all decisions the responsibility for which properly belonged to commissioning officers despite the involvement of other officers.
- 10.25 The former Head of Corporate Resources and Stewardship explained:
- "At the time that the new pilot programme was set up in September 2014, Children's Services did not: seek procurement, legal or finance advice; comply with procedures for placing a direct award of contract for services – no WARN (waiver) was prepared. I do not know whether this was due to a lack of understanding of, or disregard for, the Council contract procedure rules"*
- "September 2014, [the Director of Children's Services] should have ensured that the new pilot programme was procured properly. He had been introduced to [Core Fit's director] by the Leader and should have been more alert to the risks. While it was for him to decide, at least initially, to propose a direct award of contract he should also have been aware of the risks and insisted on a full procurement process".*
- 10.26 Then after the former Head of Communities took over as commissioner, despite her misgivings and ultimately calling out the lack of DBS checks, she has to take some responsibility for the failure to take steps to rerun the procurement and for going along with simply extending the engagement with Core Fit rather than seeking to pilot with other providers. She oversaw significant 'scope creep' in the Council's relationship with Core Fit through the addition of ancillary services to the original contract, despite misgivings.

6. The former Director of Children's Services was in post April 2011 to May 2015.

11 VALUE FOR MONEY (VFM)

- 11.1 There was insufficient focus on Vfm at the Council around the Core Fit matters – the main concern seems to have been whether there were any procurement issues under the EU thresholds, rather than whether the contract answered a business need or was good Vfm. A clear example of this was the Council seeking to add into the Core Fit contract the Special Advisor role without a clear business case and on the face of it, because there was no legal reason why they could not.
- 11.2 In September 2015, a tender process was run for the evaluation of the Core Fit pilot, which resulted in Liverpool John Moores University being tasked by the Council to conduct a research study of Core Fit's work. The evaluation report was positive in its findings, especially in relation to Vfm.
- 11.3 The former Leader referred to this evaluation as the "*MMU dance*". Whilst making no criticism of the University, the evaluation was commissioned in such a way that it was not benchmarked against any other service or provider as the pilot only involved Core Fit. As such, the brief itself was narrow and the assurance therefore of limited value.
- 11.4 Internal Audit followed up with a Procurement Assurance Report in January 2021 looking at procurement processes and in particular the Core Fit events:
- *"The review concluded that whilst the control environment at the time could have been more robust and has been improved since these issues were raised, the situation which arose was not due to an absence of control, but rather as a result of a widespread failure to follow due process and the Council's Constitution."*
 - *The culture of the Council at that time indicates collective behaviour that anticipated desired outcomes. The desire to achieve an anticipated outcome resulted in the acceptance of behaviour which modified safeguards to achieve that which had been anticipated.*
 - *Where systematic management override of control at a senior level within an organisation takes place, this reflects poorly on the culture and often the only way for concerns to be raised is through a robust whistleblowing process. This is ultimately how this matter came to light."*

12 POST CORE FIT DEVELOPMENTS IN TERMS OF CULTURE/CORPORATE GOVERNANCE

- 12.1 The Council (officers and members) has made considerable efforts to address the difficulties created during the period of the Core Fit events and the direct aftermath. The appointment of the then Deputy Chief Executive as Acting Chief Executive, the appointment of which was recommended by the subsequent former Leader, Councillor Rachel Bailey, did much to steady the Council and she quickly became the Single Point of Contact for the police.
- 12.2 The Council set about reviewing its culture in member to member and member to officer relationships and recognised the need for significant improvement. The work commissioned by officers and members included significant activity on health and wellbeing, a review of the current grievance, bullying and harassment policies and procedures and a new constitution covering member and officer relationships.
- 12.3 To be open and to ensure sufficient challenge, reviews of culture were undertaken by independent organisations, and followed up so that impact was evidenced independently. In 2018 the Council commissioned the LGA report on culture (not specifically in relation to the Core Fit events) to assist with the turn around.
- 12.4 The 2018 LGA report stated that several staff had experienced or witnessed bullying, felt unsupported by line managers or were fearful of the impact of change. This had culminated in, it was said, an unhealthy workplace. It appears that this may have been restricted to the few members of staff working directly with and around the former Leader as the 2016 Staff Survey was largely positive with 81% reporting that bullying was not an issue, with 10% disagreeing. Indeed, the report noted that "*consequently, it is important to emphasise that the vast majority of staff working for Cheshire East Council have not experienced or witnessed bullying and they feel respected by the people they work with*".
- 12.5 However, this report records how the bullying of a few (which it says could be as many as 10% of the workforce) can have a much wider impact than might appear to be the case, when this role modelling emanates from the top.
- 12.6 The Council consulted staff as part of a "*Big Conversation*," appointed the whistleblowing charity Public Concern at Work to review policies, and put in place a Brighter Futures programme, borne out of a Review of Culture. Through this, it set out to reset its values and put the Council back on track in advance of the LGA Corporate Peer Challenge, commissioned in 2020 to test progress. The outcome of the LGA's Challenge was received by the Council in June 2020 noting, and whilst recommending the Council continues with its commitment to staff culture:

“The remarkable progress that has been made in improving workforce culture in a relatively short space of time. These improvements in culture have also supported the council to advance their internal assurance, with officers stating their comfort to ‘call out’ and ‘professionally challenge practice when appropriate.’”

- 12.7 Perhaps the most significant cultural reset for the Council in its relationship between officers and members is the move to a committee system and away from the Leader and Cabinet model - one that involves all members directly in the service committees and sub committees. As the Council commented *“a control and command or directive approach by a single member is no longer possible. Committee votes may be carried by Groups but that relies on group consensus not individual control”*. Despite its relative newness, there have already been two reviews of the committee system conducted in a spirit of learning to improve and evolve.
- 12.8 In addition, there have been Internal Audit reviews of procurement, including regular reports to the Council’s Audit and Governance Committee. Initially, prior to the police investigation being completed, audit reviews were undertaken to identify improvements required and this was reviewed recently upon completion of the Core Fit investigation to ensure that the appropriate assurances were in place and that no further instances of non-compliance with the governance framework and processes were occurring.
- 12.9 The Council conducts regular independent surveys of staff to ensure that it would have clear evidence of any regression.
- 12.10 Greater openness and transparency was sought by the Council in its role as community leader and through service commissioning and provision as is evident by publicly stating a commitment to openness in the Council’s current corporate plan (the three main aims being Open, Fair and Green). Regular public monitoring against these aims was provided to Cabinet and now to the Corporate Policy Committee.
- 12.11 The Council has been an active and willing participant in a number of opportunities for members and officers to learn from good practice, see practice in other authorities and participate in national and regional improvement programmes. This is a manifestation of openness to share, hear and learn from good practice.
- 12.12 Notably, the Council has reviewed its constitution including its arrangements for Standards. The Code of Conduct for members which now follows the LGA model, includes provision for disclosure of personal interests in relation to close associates:

“In addition to disclosable pecuniary interests referred to above, you must also declare personal interests.

You have a personal interest in any business of the authority where the business of the authority relates to or is likely to affect any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority.”

...

*“You will also have a personal interest in any business of the authority where a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position **or the wellbeing or financial position of a relevant person** to a greater extent than the majority of other Council tax payers, ratepayers, or inhabitants of the electoral division or ward, as the case may be, affected by the decision”. [emphasis added]*

...

For the purposes of this Code, a relevant person is:

*“a member of your family **or any person with whom you have a close association**, or any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors”. [emphasis added]*

- 12.13 Internal Audit’s Assurance Report into Procurement Controls, as noted above, gave a *“satisfactory”* assurance opinion in 2021. The review found that the control environment in 2015/16 *“could have been more robust”* but concluded that *“the situation that arose was not due to an absence of control, but rather as a result of a widespread failure to follow due process and the Council’s Constitution”*. This concurs with our findings that it was not that there was a lack of rules in place, but rather a lack of compliance with those rules. With regards to the current control environment, the report concluded that *“the controls in place to manage procurement are operating effectively and take account of the associated risks of the activity”*. The report also noted that a process whereby the Audit and Governance Committee review all WARNs was put in place in December 2015. This arrangement which provides independent overview and challenge to the process, commenced at the March 2016 meeting and remains in place.

- 12.14 Internal Audit was also tasked with investigating other matters that had come to light following the resignation of the former Leader. We have seen reports critical of the Council and individuals that were produced by Internal Audit at the time, that were also investigated by the police and, whilst, like Core Fit, these matters did not lead to any prosecutions of individuals, there are underlying issues within them that have the same characteristics of governance failure as Core Fit. We have not reported these matters in this document, as we consider the public interest has been served by us using Core Fit as our exemplar but, nevertheless, these other issues do need to be fully considered by the Council going forward.
- 12.15 Our last audit year at the Council was 2017/18 and we were succeeded by the current appointed external auditors, Mazars, who have reviewed and commented upon the adequacy of the Council's arrangements for VfM, including governance since that time. The current auditors have not identified any significant inadequacies or weaknesses in the Council's arrangements in recent years and will now consider whether there are any new matters reported in this document that they need to formally consider as part of their remit as the current external auditor to the Council.
- 12.16 Finally, it should be noted that this report is about culture, standards/ethics and corporate governance. During this turbulent time, the Council managed to keep service delivery to a good standard. Frontline staff continued with their roles and there were no adverse inspection findings. Service delivery could not have been guaranteed however, had decisive action not eventually been taken to address the issues reported upon here.

13 CONCLUSION

- 13.1 The issues set out in this report are about the prevailing culture at the Council in 2014-2015 and how this distorted normal corporate governance, the fallout from which lasted a long time. During the political leadership of the former Leader, Michael Jones, Cheshire East Council was not able to fulfil its governance responsibilities to the public. Whilst it did enjoy a number of successes, particularly regarding economic development, the way in which it was led and managed eventually resulted in a lengthy police investigation, resignation of the former Council Leader and various resignations and disciplinary investigations into other key officers, who also eventually resigned from the Council. Although the police investigation did not result in prosecution of any individuals and the disciplinary investigations into officers were not finalised, the aftermath of the Core Fit issue was to create significant instability and loss of public confidence in the Council.
- 13.2 The Core Fit events had happened because the former Leader had sought an outcome, that was not supported by the Council's procurement and payment procedures and because the culture of the Council was such that senior officers and others insofar as specifically mentioned above had tried to find a solution to deliver those outcomes to the former Leader, as a way of absorbing or deflecting the pressures he had created. In our view, the former Leader's leadership style involved a range of unacceptable behaviours including bullying and subversion of normal processes, thereby negatively affecting the overall culture of the authority.
- 13.3 As a result, and as one interviewee put it: *"It was not that the rules were wrong, it was that the rules were not followed. The attitude was that if the rules got into the way, they would be dropped, and you get on with the job you have been asked to do"*.
- 13.4 The outcomes referred to in this audit were in part due to two of the most senior officers referred to in this report, the former Chief Executive Officer and the former Chief Operating Officer, and as a result the way in which they had tried to deal with the former Leader's personal style and inappropriate behaviour in public office. The former Leader's political group ultimately, through the courage of a small number of councillors, brought about his giving notice to stand down. Their action however had come late in the day and the Cabinet and wider party should have taken action sooner. The standards arrangements in local government at that time had not been deployed to best use given the constraints of the system (i.e. lacking independence and the limited potential range of sanctions). These two former statutory officers in post prior to the Leader announcing his resignation could, despite their lack of confidence in their statutory employment protection, have been expected to have done more.
- 13.5 All told, the various factors at play gave rise to a dysfunctional environment between senior officers and the member at the helm of the Council, as well as some of his political colleagues. There should have been effective and timely mechanisms to address this and whilst action to rein the former Leader in proved successful in late 2015, this was after some considerable period of instability. Given the shortcomings of the standards regime and a failure of statutory protections to give confidence to the two senior officers to feel able to take a strong stand, this has highlighted a systemic gap in the Council's and indeed the sector's ability to tackle this kind of member bullying. The power of the ballot box to remove a member is often years away and politicians can naturally be expected always to have one eye to the impact on their electoral position. In this respect, it is important to note that there was a vote of no confidence in the former Leader, instigated by the opposition party and there were elections in May 2015, which would have acted as a disincentive for the ruling party to call the former Leader out in a public way. Whilst some members within the former Leader's political party were highly concerned by his actions, others provided him with their political support and it took time for his behaviour to eventually be addressed by his own party. Furthermore, as the report discusses, officers, who remain politically neutral, have no power to remove a Councillor. The

mechanisms open to members and officers in these circumstances should not need to rely on external pressures created by the media spotlight. It appears that unless there are centralised changes, away from a purely localism based approach and in support of both officers and members, there will continue to be these types of tensions and lack of support from external forces.

- 13.6 The experience for Cheshire East and for those closely involved has been damaging but it is clear that the Council has done a great deal to move on from this period in its relatively short lifetime. Whilst the majority of councils consistently strike an appropriate balance between strong political leadership and effective management control, auditors on occasion do find councils where that balance is lost. In those cases, decisions can be taken that are further to irregular processes and result in poor use of taxpayers' funds and a lack of VfM.
- 13.7 Under current arrangements the only direct intervention available for a Council with significant governance issues is for Government to commission a Best Value Inspection and/or appoint independent commissioners to the body. It is unlikely that this would have been triggered at this stage of Cheshire East's history. A key learning from this report for the sector is therefore that the inherent weaknesses identified here could create governance difficulties elsewhere in the future. Sector leaders, including Government should, in our opinion, now give this further consideration. We hope moreover that this report will encourage the ongoing debate around the effectiveness of the standards regime for local government and support mechanisms for both officers and members facing the same intractable difficulties.
- 13.8 This now concludes our audit work in relation to the relevant years of account and we will be issuing certificates of completion shortly.

14 RECOMMENDATIONS

- R1 The Council should carefully consider this report to ensure all members now understand the events and conditions that led to the issues set out in this report. This consideration could usefully reflect upon: what happened; the governance and cultural arrangements that allowed it to happen; the critical success factors that led to the successful resolution of matters; and the key elements of the Council's current arrangements that can reassure members of the Council's ability to protect itself from such threats to its future governance
- R2 The Council should, as planned, return to the other specific matters investigated by Internal Audit (see paragraphs 4.2 and 5.6), following the Core Fit issue, and determine if there are further actions to be taken particularly in light of this report.
- R3 The Council should discuss with its current external auditors whether there are any matters arising from this report that should be addressed by the current auditors' statutory external audit.