

Governance and Ethics Committee

Wednesday, 04 January 2023 at 10:30

County Hall, West Bridgford, Nottingham, NG2 7QP

AGENDA

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|---|--|---------|
| 1 | Minutes of last meeting held on 30 November 2022 | 3 - 6 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Update on Local Government and Social Care Ombudsman Decisions | 7 - 40 |
| 5 | Internal Audit Charter Refresh | 41 - 52 |
| 6 | Counter Fraud Progress Report | 53 - 60 |
| 7 | Regulation of Investigatory Powers Act 2000 - Annual Report | 61 - 64 |
| 8 | Work Programme | 65 - 68 |

Notes

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.

- (2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

- (3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

Councillors or Officers requiring clarification on whether to make a declaration of interest are invited to contact Kate Morris (Tel. 0115 804 4530) or a colleague in Democratic Services prior to the meeting.

- (4) Councillors are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.
- (5) This agenda and its associated reports are available to view online via an online calendar - <http://www.nottinghamshire.gov.uk/dms/Meetings.aspx>



Meeting **GOVERNANCE AND ETHICS COMMITTEE**

Date **Wednesday 30 November 2022 (commencing at 10.30am)**

membership

COUNCILLORS

Philip Owen (Chairman)
Johno Lee (Vice-Chairman)

Richard Butler
Errol Henry JP - Apologies
Andy Meakin
Michael Payne
Sue Saddington

Helen-Ann Smith – Apologies
Nigel Turner
Roger Upton
Daniel Williamson - Absent

SUBSTITUTE MEMBERS

Councillor Jim Creamer for Councillor Errol Henry
Councillor Francis Purdue-Horan for Councillor Helen-Ann Smith

OFFICERS IN ATTENDANCE

Sue Batty	Adult Social Care and Health
Ainsley McDonnell	
Glen Bicknell	Chief Executive's Department
Heather Dickinson	
Richard Elston	
Catherine Haywood	
Simon Lacey	
Nigel Stevenson	
Marjorie Toward	
Karen Hughman	Children and Families
Irene Kakoullis	
Peter McConnochie	

Andrew Smith	Grant Thornton, External Auditors
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1. MINUTES

The Minutes of the last meeting held on 28 September 2022, having been previously circulated, were confirmed and signed by the Chairman.

2. CHANGE TO MEMBERSHIP

The Committee noted the appointment of Councillor Nigel Turner in place of Councillor Bethan Eddy.

3. APOLOGIES FOR ABSENCE

Apologies for absence were received from:

- Councillor Henry (other reasons)
- Councillor Smith (other reasons)

4. DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

None.

5. UPDATE ON LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS (MAY 2022 TO JUNE 2022)

The report set out information about five complaints against the Council where fault was found by the Local Government and Social Care Ombudsman. Members were given the opportunity to ask questions of officers and seek assurance about actions put in place from the relevant departments regarding those complaints.

RESOLVED: 2022/043

That the findings of the Local Government and Social Care Ombudsman be noted and that lessons learned and actions taken in response to the findings be welcomed.

6. STATEMENT OF ACCOUNTS 2021/22

The report set out information around the Statement of Accounts 2021/22 and Members were given the opportunity to ask questions of the External Auditor around their progress.

RESOLVED: 2022/044

That the Committee delegates authority to the Section 151 Officer, in consultation with the Chair of Governance and Ethics Committee, to approve the Statement of Accounts 2021/22 on completion of all external audit work.

7. INTERNAL AUDIT PROGRESS TERM 1 2022-23 AND TERM 3 PLAN 2022-23

RESOLVED: 2022/045

That the outcome of the Internal Audit work carried out in Term 1 be noted and the planned coverage of Internal Audit's work in Term 3 of 2022/23 be progressed to help deliver assurance to the Committee in priority areas

8. FOLLOW-UP OF INTERNAL AUDIT RECOMMENDATIONS

RESOLVED: 2022/046

- 1) That the contents of the reports and the progress that has been made against the Internal Audit recommendation be noted

- 2) That a further progress report and an update on the actions outstanding be included in the next 6-monthly review

9. GOVERNANCE UPDATE

RESOLVED:2022/047

That actions taken to update the governance issues raised are noted

10. OFFICER CODE OF CONDUCT, INTERESTS, GIFTS AND HOSPITALITY REGISTER

RESOLVED 2022/048

- 1) That the amended Officer Code of Conduct and online form procedure to staff to declare interests, gifts and/or hospitality be noted
- 2) That the amended Officer Code of Conduct and the amendment of Section Eleven of the Constitution be recommended to Full Council.

11. WORK PROGRAMME

RESOLVED: 2022/49

That the work programme be agreed.

The meeting closed at 11:33am.

CHAIRMAN

4 January 2023**Agenda Item: 4****REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE
AND EMPLOYEES****LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS
OCTOBER 2022 TO NOVEMBER 2022****Purpose of the Report**

1. To inform the Committee about Local Government and Social Care Ombudsman's (LGSCO) decisions relating to the Council since the last report to Committee was completed and any decisions after 28th October 2022.

Information

2. Members have asked to see the outcome of Ombudsman investigations regularly and promptly after the decision notice has been received. This report therefore gives details of all the decisions received since the last report to this Committee which was held on 30th November 2022.
3. The LGSCO provides a free, independent and impartial service to members of the public. It looks at complaints about Councils and other organisations. It only looks at complaints when they have first been considered by the Council and the complainant remains dissatisfied. The LGSCO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the Ombudsman finds that something has gone wrong, such as poor service, a service failure, delay or bad advice and that a person has suffered as a result, the LGSCO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGSCO publishes its decisions on its website (www.lgo.org.uk/). The decisions are anonymous, but the website can be searched by Council name or subject area.
5. A total of twelve decisions relating to the actions of this Council have been made by the Ombudsman in this period. Appendix A to this report summarises the decisions made in each case for ease of reference and Appendix B provides the full details of each decision.
6. Following initial enquiries into eight cases, the LGSCO decided not to continue with any further investigation for the reasons given in Appendix A

7. Full investigations were undertaken into four complaints. Appendix A provides a summary of the outcomes of the investigations. Where fault was found, the table shows the reasons for the failures and the recommendations made. If a financial remedy was made the total amount paid or reimbursed is listed separately.
8. There were four complaints where fault was found. The first one is an Adults complaint where Mrs X complained about Mr Y's needs assessments and mental capacity assessment. Also, the care packages and charges for care. Fault was not found in the decision regarding Mr Y not being able to manage his own finances, but the fact that there is no record of the decision, as well as the fact that the assessment of need does not offer a clear rationale as to why this level of care was required. The Ombudsman recommended the Council review its training in these areas and ensure Mr Y did not pay for two care workers. The Council has agreed to all the recommendations of the LGO and is implementing these, as well as carrying out additional training. The issues raised to the LGO could potentially have been resolved without recourse to this, therefore there is work underway to review the Adults complaints process to ensure that there is an extra check on those that remain unresolved at the second stage.
9. The second one is in Place. The complaint is about the payments Mrs M received to transport her daughter, G, to school. The Council has agreed an additional payment so Mrs M receives the equivalent of its new and improved 'disabled travel assistance payment' from its introduction. This is £2942.05. The fault by the Council in the view of the Ombudsman was the introduction of DTAP, an improved transport offer for disabled children, without taking adequate steps to ensure all those who were eligible, and would be better off, transferred from previous transport allowances. It would appear the Ombudsman has not understood the difference between the DTAP and Grant. The Grant is simply a calculation of mileage x 22.6p paid in arrears for the number of days attendance. The DTAP is only available to eligible pupils who also have an EHCP. This enables them to make their own home to school travel arrangements and provides families more flexibility with their travel arrangements. The amount of money a family would receive for mileage would be based on the distance between the family home and the young person's school and would be paid at 45p a mile based on two return journeys each day. If a young person has been assessed as requiring an escort to support them when they travel the DTAP would also include a payment for the escort. This includes the purchase of travel related goods and services. The DTAP is a signed legal contract between the Parent / Carer and NCC with strict rules on how/what and when the money can be used. The Ombudsman appears to ignore this contract which we believe is wrong and outside of the LGO remit which should be to review whether we have correctly followed our Policy and procedures.
10. The third complaint is in Adults. This was a complaint that the County Council has failed to ensure that the adapted kitchen for Miss B in her District Council tenancy met her needs and would be accessible by her; and communicate with her properly about this. Miss B says that as a result of the Council's failings she has been unable to properly access or use her kitchen for some time. There was no fault in how the County Council worked with the housing authority to get Miss B's kitchen adapted. The Ombudsman did state however that it is not clear that the County Council properly considered its power to intervene when problems with the work were not corrected for many months. The Ombudsman has not recommended the Council take action to remedy this, because, given the circumstances, it is unlikely it would have decided to intervene.

11. The fourth complaint is in Place. The complaint is about the Council failing to determine definitive map modification applications in a timely way which may adversely affect the available evidence and has caused Mr C unnecessary time and trouble. This complaint from Mr C is with reference to a recent decision by the Ombudsman which found the Council at fault for failing to determine public rights of way (RoW) Definitive Map Modification Orders (DMMOs - claims for footpaths, bridleways and byways) in a timely way and failing to comply with directions by the Planning Inspectorate within a specific timescale. As part of legislation, Defra had introduced a 'cap' to claiming public rights of way based on old historical documents and maps by 2026. Defra encouraged user groups and members of the public to make claims for RoWs throughout England and Wales. As a result of this, authorities were inundated with applications over a very short period of time. No extra funding was provided for this change in legislation. This legislation has now been abolished, however, the authorities and the Planning Inspectorate (who are also dealing with a large backlog) still have to process the applications. The Ombudsman has stated that the Council has to arrange a meeting with Mr C to discuss ways of working with landowners to deal with their objections to claims, complete a review of the DMMO process, report the findings to the Council and provide an update to the Council every six months for the next two years.

Statutory and Policy Implications

12. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Data Protection and Information Governance

13. The decisions attached are anonymised and are publicly available on the Ombudsman's website.

Financial Implications

14. The details of the financial payments are set out in Appendix A. £2942.05 will come from the Place department's budget.

Implications for Service Users

15. All the complaints were made to the Ombudsman by service users, who have the right to approach the LGSCO once they have been through the Council's own complaint process.

RECOMMENDATION/S

16. That members note the findings of the Local Government and Social Care Ombudsman and welcome the lessons learned and actions taken in response to the findings

Marjorie Toward

Monitoring Officer and Service Director – Customers, Governance and Employees

For any enquiries about this report please contact:

Richard Elston Team Manager – Complaints and Information Team

Constitutional Comments (HD (Standing))

17. Governance and Ethics Committee is the appropriate body to consider the content of this report. If the Committee resolves that any actions are required, it must be satisfied that such actions are within the Committee's terms of reference.

Financial Comments (SES 08/11/2022)

18. The financial implications are set out in paragraph 14 of the report.

19. The details of the financial payments are set out in Appendix A. £2,492.05 will be funded from Place Department budgetary provision.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All

APPENDIX A

DECISIONS NOT TO INVESTIGATE FURTHER

DATE	LGO REF	PROCEDURE	COMPLAINT SUMMARY	REASON FOR DECISION
08.11.22	22005371	Adults	Complaint about financial assessment for Mr X's Mother when considering cost of care	No investigation as case was outside timescales of 12 months since last Council response so Ombudsman declined to investigate
29.11.22	22009751	Corporate	Complaint about the appeal of a school admission place given to child.	Cannot investigate Miss X's complaint about an unsuccessful appeal for a school place. This is because there is not enough evidence of fault and so cannot question the merits of the panel's decision.
15.11.22	22008760	Children's	Complaint about that the Council failed to take account of evidence showing its involvement with his family is unjustified when completing family assessment	We will not investigate this complaint about the production and content of a child and family assessment because we would achieve nothing significant by doing so
29.11.22	22010856	Children's	Complaint about the fact that the Council took her nephews and niece into care and has failed to communicate properly with the family throughout its involvement with the children	Ombudsman decided investigation would achieve nothing significant.
29.11.22	22010356	Children's	Mr X said the Council did not listen to his information and made his child subject to a child protection plan without having fully considered all the evidence. He said the child has been forcibly removed against the child's wishes	Cannot investigate something that was formed in court proceedings or could have been.
26.11.22	22009327	Corporate	Mr X lives in a property with a Council-owned tree outside. He complains the Council is refusing to act in response to Mr X's complaints about droppings, from birds in the tree, falling on his car	There is not enough evidence of fault in the Council's decision-making process, nor sufficient personal injustice caused to Mr X or his family, to warrant an investigation
08.11.22	22009564	Children's	Complaint about living arrangements of his children. Mr X is also concerned the Council has told his former partner she can access his medical records. Mr X wants the Council to tell her she does not have the right to do this	Ombudsman cannot investigate or get involved in matters that could be decided through the courts. Mr X has a right to go to court about the living arrangements of his children and his level of contact. It is reasonable for Mr X to use the legal remedy available to him
28.10.22	22009269	Corporate	Complaint about the fact that the Council accessed private information about her from social media and shared it with others without her permission.	The Ombudsman won't investigate because matters concerning data breaches are better considered by the Information Commissioner

THERE WERE NO FULL INVESTIGATIONS WHERE NO FAULT FOUND

FULL INVESTIGATIONS WHERE FAULT FOUND

DATE	LGO REF ANNEX PAGE NO	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY	STATUS OF AGREED ACTION
09.11.22	21017566	Adults	Complaint by Mrs X about Mr Y's needs assessments and mental capacity assessment. Also, the care packages and charges for care.	The Council was at fault in the mental capacity assessment and care and support plan. The LGSCO recommended the Council review its training in these areas and ensure Mr Y did not pay for two care workers. The Council has agreed to this	The Council agreed to the Ombudsman's recommendation to review its training around mental capacity and ensure all workers who may need to complete mental capacity assessments: -Review its care and support planning training and ensure all care and support plans are based on evidence and an accurate needs assessment. -Sample twenty care and support plans with at least five by social worker A, and check for accuracy and evidence. -Ensure Mr Y was not charged for two workers at any of his care calls	Not applicable	To be completed by early February 2023
11.11.22	21004069	Place	Complaint about the payments Mrs M received to provide school transport for her daughter, especially the 'parental mileage allowance' she received which had not increased since 2012; and she was not told she could claim a 'direct travel assistance payment' introduced in 2017 which she believes is considerably higher.	The Ombudsman decided the fault by the Council was the introduction of DTAP, an improved transport offer for disabled children, without taking adequate steps to ensure all those who were eligible, and would be better off, transferred from previous transport allowances.	The Ombudsman has calculated payments Mrs M would have received if she had received DTAP from its introduction (rather than the 'parental mileage allowance'). The Council has agreed to pay Mrs M the balance.	£2492.05	Payment sent for instruction and awaiting approval 05.12.22

DATE	LGO REF ANNEX PAGE NO	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY	STATUS OF AGREED ACTION
03.11.22	21006244	Adults	Miss B complains that the County Council has failed to ensure that her adapted kitchen met her needs and would be accessible by her; and communicate with her properly about this	There was no fault in how the County Council worked with the housing authority to get Miss B's kitchen adapted. It is not clear however, that the County Council properly considered its power to intervene when problems with the work were not corrected for many months.	The Ombudsman has not recommended the Council take action to remedy this, because, given the circumstances, it is unlikely it would have decided to intervene and no injustice caused.	Not applicable	Not applicable
09.11.22	21015106	Place	Complaint about the Council failing to determine definitive map modification applications in a timely way which may adversely affect the available evidence and has caused Mr C unnecessary time and trouble.	The Ombudsman found fault by the Council in failing to meet deadlines set	The Council is to arrange for the Chair of the Committee to discuss with Mr C how the system could be further improved particularly in providing resources to facilitate discussions with landowners to deal with their concerns and to include this as part of its wider review. Also the Council must complete a review of the changes to its DMMO service to assess the impact of its additional resource and system improvements to ensure this action is effective in helping the Council to reduce the backlog and report the findings of the above review to councillors and seek approval for any additional changes identified as necessary to further reduce the backlog within three calendar months of completing the review; provide an update to councillors on its progress in reducing the DMMO backlog every 6 months for the next two years.	Not applicable	Meeting has been arranged for December with the Chair and Mr C. Other actions are ongoing and will be completed by the 3 month deadline

The Ombudsman's final decision

Summary: Mrs X complained about Mr Y's needs assessments and mental capacity assessment. Also, the care packages and charges for care. We found fault in the mental capacity assessment and care and support plan. We recommended the Council review its training in these areas and ensure Mr Y did not pay for two care workers. The Council has agreed to this.

The complaint

1. The complainant, whom I shall refer to as Mrs X, complains on behalf of her brother, Mr Y. She complains that the Council:
 - Did not complete an adequate needs assessment or mental capacity assessment for Mr Y.
 - Arranged care packages which included unnecessary support for which Mr Y was charged.
 - Changed a successful care package to provide additional support Mr Y did not want or need.
 - Did not explain about charging; the first correspondence on this was an invoice for well over £15,000.
 - Did not provide Mrs X with a breakdown of the charges when she asked for this several times.
2. Mrs X says the social worker never met Mr Y except in a virtual meeting. She was impatient and abrupt and did not allow time for Mr Y to process information and respond, due to his brain injury. She telephoned many times but did not allow enough time for Mr Y to reach the phone. Mrs X says the social worker insisted on increasing the care package to four calls per day although Mrs X, Mr Y and the existing care workers advised that he only needed two. Mrs X says she told the social worker that Mr Y would not cope with four visits and, as she predicted, Mr Y refused to allow the care workers in at all even when the package was reduced back to two calls per day.
3. Mrs X says these events caused much distress to Mr Y and herself. She says the Council should reconsider the charges for the unwanted and unnecessary care services and the charges incurred in the independent capacity assessment. Mrs X arranged this following an inaccurate assessment by the social worker.

The Ombudsman's role and powers

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
6. We may investigate complaints made on behalf of someone else if they have given their consent. (*Local Government Act 1974, section 26A(1), as amended*). Mr Y has given his consent for Mrs X to complain on his behalf.

How I considered this complaint

7. I considered information from the Complainant and from the Council.
8. I sent both parties a copy of my draft decision for comment and took account of the comments I received in response.

What I found

Background

Safeguarding

9. A council must make enquiries if it thinks a person may be at risk of abuse or neglect and has care and support needs which mean the person cannot protect themselves. An enquiry is the action taken by a council in response to a concern about abuse or neglect. An enquiry could range from a conversation with the person who is the subject of the concern, to a more formal multi-agency arrangement. A council must also decide whether it or another person or agency should take any action to protect the person from abuse. (*section 42, Care Act 2014*).

Mental Capacity Act

10. The Mental Capacity Act 2005 is the framework for acting and deciding for people who lack the mental capacity to make particular decisions for themselves. The Act (and the Code of Practice 2007) describes the steps a person should take when dealing with someone who may lack capacity to make decisions for themselves. It describes when to assess a person's capacity to make a decision, how to do this, and how to make a decision on behalf of somebody who cannot do so.

Mental capacity assessment

11. A person aged 16 or over must be presumed to have capacity to make a decision unless it is established they lack capacity. A person should not be treated as unable to make a decision:
 - because they make an unwise decision;
 - based simply on: their age; their appearance; assumptions about their condition, or any aspect of their behaviour; or
 - before all practicable steps to help the person to do so have been taken without success.

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12. The council must assess someone's ability to make a decision when that person's capacity is in doubt. How it assesses capacity may vary depending on the complexity of the decision.
 13. An assessment of someone's capacity is specific to the decision to be made at a particular time. When assessing somebody's capacity, the assessor needs to find out the following:
 - Does the person have a general understanding of what decision they need to make and why they need to make it?
 - Does the person have a general understanding of the likely effects of making, or not making, this decision?
 - Is the person able to understand, retain, use, and weigh up the information relevant to this decision?
 - Can the person communicate their decision?
 14. The person assessing an individual's capacity will usually be the person directly concerned with the individual when the decision needs to be made. More complex decisions are likely to need more formal assessments.
 15. If there is a conflict about whether a person has capacity to make a decision, and all efforts to resolve this have failed, the Court of Protection might need to decide if a person has capacity to make the decision.

Best interest decision making

16. A key principle of the Mental Capacity Act 2005 is that any act done for, or any decision made on behalf of a person who lacks capacity must be in that person's best interests. The decision-maker also has to consider if there is a less restrictive choice available that can achieve the same outcome. Section 4 of the Act provides a checklist of steps decision-makers must follow to determine what is in a person's best interests.
17. If there is a conflict about what is in a person's best interests, and all efforts to resolve the dispute have failed, the Court of Protection might need to decide what is in the person's best interests.

The Court of Protection

18. The Court of Protection deals with decision-making for adults who may lack capacity to make specific decisions for themselves.
19. The Court of Protection may need to become involved in difficult cases or cases where there is disagreement which cannot be resolved in any other way. The Court of Protection:
 - decides whether a person has capacity to make a particular decision for themselves;
 - makes declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make such decisions;
 - appoints deputies to make decisions for people lacking capacity to make those decisions;
 - decides whether a Lasting Power of Attorney or Enduring Power of Attorney is valid; and
 - removes deputies or attorneys who fail to carry out their duties.

Lasting Power of Attorney

20. The Mental Capacity Act 2005 introduced the “Lasting Power of Attorney (LPA)”. This replaced the Enduring Power of Attorney (EPA). An LPA is a legal document, which allows a person (‘the donor’) to choose one or more persons to make decisions for them, when they become unable to do so themselves. The ‘attorney’ or ‘donee’ is the person chosen to make a decision on the donor’s behalf. Any decision has to be in the donor’s best interests.
21. There are two types of LPA.
- **Property and Finance LPA** – this gives the attorney(s) the power to make decisions about the person’s financial and property matters, such as selling a house or managing a bank account. Unless the donor says otherwise, the attorney may make all decisions about the donor’s property and finance even when the donor still has capacity to make those decisions.
 - **Health and Welfare LPA** – this gives the attorney(s) the power to make decisions about the person’s health and personal welfare, such as day-to-day care, medical treatment, or where they should live.
22. An attorney or donor must register an LPA with the Office of the Public Guardian before the attorney can make decisions for the donor.

Court appointed Deputies

23. If there is a need for continuing decision-making powers and there is no relevant EPA or LPA, the Court of Protection may appoint a deputy to make decisions for a person. It will also say what decisions the deputy has the authority to make on the person’s behalf. The Office of the Public Guardian (OPG) oversees the work of attorneys and court-appointed deputies and produces detailed guidance for them.

Appointeeship

24. An appointee is responsible for making and maintaining any benefit claims on behalf of someone who cannot manage their own finances. There can only be one appointee acting on behalf of that person at any one time. An appointee can be held responsible if benefit is overpaid. The appointee must:
- tell the benefit office about any changes which affect how much the claimant gets; and
 - spend the benefit it receives in the claimant’s best interests.
25. An appointee does not have authority to deal with any other aspects of a person’s finances.

What happened

26. Mr Y lived at home on his own. He had difficulties with mobility, short term memory issues and cognitive impairments. Mrs X helped Mr Y with his finances, and shopping. Following a hospital admission, he was discharged home in February 2021 with short term home care. This service, from Care Provider Q, was intended to be for a maximum of 21 days to ensure Mr Y could be discharged from hospital and a long term package put in place. These events happened during the COVID-19 crisis and the related restrictions.
27. Social worker A, from the hospital discharge team, advised Mrs X that Mr Y would need a financial assessment once the short term arrangement ended. Mrs X was not sure how much Mr Y had in his bank accounts but knew it was close to the threshold. It was possible Page 19 of 68

decide whether Mr Y was self funding until it knew all his financial information, but Mrs X was not able to access it all. Although Mrs X helped him with his finances, Mr Y had no one able to deal with his finances on his behalf. Mrs X believed he had money in an overseas account but she could not check this out. Social worker A remained responsible for Mr Y while he continued to receive short term care.

28. In mid March, the Council was alerted to safeguarding concerns about Mr Y's finances and it decided to complete a section 42 enquiry. Social worker A also became aware Mr Y was not engaging with the care workers and spoke to him by phone. She suggested alternative accommodation with support, but he was not happy discussing this. He wanted to stay in his home and was very clear about that. This call appears to be the call that the social worker used to assess Mr Y's capacity around finances though there is no formal record of this. She concluded that he did not have capacity to make decisions about his finances. The Council advised Mrs X it could source a long term provider but if Mr Y was self funding, he would pay a brokerage fee as well as the full care costs. Records note Mrs X was "OK" with this. It said Mr Y would receive six weeks COVID funding and would then move to a charged service which would be Care Provider Q until it found a replacement.
29. In late April, another social worker (B) was allocated to complete the section 42 enquiry.
30. Mrs X complained to the Council as she was not happy that Mr Y was assessed by phone. She was also unhappy that Mr Y had been supported by a care worker in the phone conversation and this included discussion of his finances. She also said social worker A had called her many times from a withheld number and not left a message and was unhappy with social worker A's communication.
31. A senior practitioner spoke to Mrs X about her complaint and explained that they were trying to arrange a provider for a care package four times daily. They noted that Mrs X asked if 3 calls a day would be sufficient rather than four.
32. Social worker B spoke to Mr Y and Mrs X, separately, about Mr Y's finances. Mrs X spoke about the difficulty she was having dealing with Mr Y's bank and finding out about his overseas bank account. The bank agreed for her to get statements and cheque books. She was trying to get a lasting power of attorney arranged. Social worker B told Mrs X that social worker A had completed a mental capacity assessment and found he lacked capacity around his finances. She told Mrs X that the arrangements would now need to go through the Court of Protection. Mrs X said she thought the assessment was not done properly as it caused Mr Y much distress and irritation according to the care worker who supported him. Mrs X said social worker A had also told her she had ten days to arrange care workers to replace Care Provider Q which had caused anxiety and confusion. She had since been told that Care Provider Q would continue. Mrs X said she had already sourced a care provider who could provide two calls a day as one of the care workers had said Mr Y would probably be ok with two calls. Social worker B advised Mrs X to wait until the Council could arrange a long term care package and Mrs X agreed. Mr Y agreed that Mrs X and his sister in law Ms Z, would be best to deal with his finances. Mr Y remained unclear about his finances and Mrs X and Ms Z confirmed they were happy to apply to the Court of Protection (CoP) to be Deputies for him.
33. Social worker B also spoke to Care Provider Q who confirmed Mr Y was upset following the mental capacity assessment call and he did not like the questions

asked. They also confirmed Mr Y's needs fluctuated and sometimes he could manage with two visits but sometimes he could do with four. Sometimes he didn't want any visits, but Care Provider Q felt three visits should be maintained even if just to check on his welfare because he was at high risk of falls and high blood pressure. They felt Mr Y might get frustrated with four visits a day. Social worker B had various conversations about how Mr Y's finances should be managed while they waited for Mrs X and Ms Z to arrange deputyship. The finance team advised that Mrs X should apply to be Mr Y's appointee in the meantime.

34. The Council struggled to find a care provider to replace the short term provider so the short term arrangement continued for some months. Mr Y and Mrs X were happy with this as Mr Y developed a good relationship with the care workers. Social worker A was still responsible for finding a long term arrangement, reviewing Mr Y's care and support, and assessing his needs. Since Mr Y's support was working well, social worker A had little involvement with Mr Y at this time. Although social worker A considered Mr Y remaining with Care Provider Q, it was not possible unless Mr Y made a private arrangement. At this stage, neither Mrs X nor the Council knew whether Mr Y was entitled to Council funding.
35. In June, Mrs X told social worker B that she had agreed with Ms Z to ask social worker B to appoint an independent Deputy as it was too onerous for them. Mrs X had begun the application but got so confused she felt it was not something she was prepared to take on. She agreed to a referral to an agency that supports people with managing their money.
36. Social worker A completed a review of Mr Y's care and support plan and increased his care package to four calls a day, from three, and with two care workers at each, rather than one. The review noted that the support from Care Provider Q had helped him a lot and he would like this increased to four calls. She also spoke to him about his finances. The review noted that Mr Y's cognition was declining and his mobility worsening. Also that the family was at breaking point with their caring role. Social worker B advised Mrs X that a long term provider, Care Provider K, had been arranged and Care Provider Q's last call would be towards the end of June. Mrs X was unhappy with that because they wanted Care Provider Q to continue. Social worker B advised this was not possible.
37. Mr Y's bank advised Mrs X that a third party Deputyship would create difficulties. She told social worker B that she would need to liaise with the third party about anything out of the ordinary and so might as well apply for Deputyship. Mrs X was not keen to apply for appointeeship as she was concerned it would affect her own finances. Social worker B said they needed to agree a plan and agreed that Mrs X would think about it over the weekend. Mrs X emailed social worker B and advised she was struggling to cope with all the things she had to deal with for Mr Y. She had had lengthy discussions with Ms Z and Mr Y's solicitor. She said she had nothing in writing to say that Mr Y did not have capacity to deal with his finances and needed that to apply to the CoP. She was also concerned about the new package of care. Social worker B said Mr Y would be receiving four calls a day initially. She acknowledged that Mrs X had reservations about this but said it was decided this would be most beneficial in the beginning. It could be reduced if necessary at the review about six to eight weeks later. She reassured Mrs X that Care Provider Q would provide a full handover to Care Provider K. Mrs X said the solicitor had suggested an independent capacity assessment for Mr Y and social worker B said it was up to her if that's what she wanted to do. She also advised Mrs X that the Council could provide her with something in writing to confirm that

he lacked capacity. The solicitor said that Mr Y might not have capacity to manage his own finances but he felt he did have capacity to decide who should do this for him. This meant Mr Y might still be able to sign powers of attorney in favour of Mrs X and/or Ms Z.

38. In July 2021, a financial assessment found Mr Y had funds in his known bank accounts which exceeded the upper threshold. This meant he was required to self fund his care and was not eligible for Council funding. The Council still did not know what funds were in his overseas account. It could not therefore calculate the point at which he would become eligible for Council funding. The Council agreed to adjust the cost of the care in light of Mrs X's complaint about the four calls a day and waived £332.
39. At the end of August 2021, Mrs X complained to the Council again about the care provided to Mr Y and how his care was dealt with. She also complained about social worker A's decision that Mr Y lacked capacity to manage his finances and the confusion this caused with charging. She wrote again at the beginning of October. The Council responded three weeks after the second letter. It set out that she was advised in August that Mr Y would have to pay the full cost of his care because he had in excess of the threshold in his UK bank accounts. It could not calculate when he would be eligible for Council funding until it knew how much he had in his overseas account. The Council acknowledged an error in the costs of care and adjusted Mr Y's contribution to match the actual costs which resulted in a net adjustment of around £9,000. It acknowledged the difficulties that Mrs X had with social worker A and noted that the section 42 enquiry had made communication more complicated. It apologised for any distress and acknowledged that the lack of communication and tone had not helped the uncertainty and distress she experienced.
40. Mrs X was unhappy with the Council's response and asked why social worker A made the decision to add an extra call to Mr Y each day despite the concerns. The Council provided a further response in January 2022 from social worker A's manager who was satisfied that the decision for increased care was made in Mr Y's best interests at the time. Mr Y had begun to refuse care from Care Provider Q so it could not be sure that the change was the cause of this. It agreed to waive £332 of the costs and apologised that Mrs X felt calls were forced on Mr Y and any distress.
41. Mrs X made other arrangements for Mr X's care from February 2022.

Was there fault which caused injustice?

42. It is not my role to decide whether Mr Y had the mental capacity to decide about his finances but to decide whether the Council considered this properly.
43. No formal capacity assessment was recorded, so we cannot say whether social worker A completed the assessment properly or which specific decision they considered. However, Mr Y was referred to as lacking capacity regarding his finances before this call. A safeguarding enquiry was underway into concerns about his finances, and social worker B advised Mrs X that Mr Y did not have capacity around his finances. I am therefore satisfied, on the balance of probability, that the capacity assessment considered Mr Y's capacity to deal with his finances. The Council was fault here in the failure to record the assessment. However, given that nobody, including Mr Y, disagreed that he was unable to manage his finances, the injustice caused here was fortunately limited. However, this is concerning and in other circumstances could have caused significant injustice.

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44. The Council had to ensure Mr Y had someone to manage his money safely and, given the safeguarding concerns around this, was inclined to involving the CoP. It would have been at fault if it had not taken steps to arrange this. The Council could not just leave Mr Y without a formal and accountable arrangement in place. I found no fault in the Council's approach. If Mrs X had arranged an LPA, she would have been able to manage Mr Y's finances and access his overseas accounts. This would have enabled the Council to complete an accurate financial assessment. The Council would then have had to raise any concerns it might have through the Office of the Public Guardian.
45. Social worker A's initial needs assessment of Mr Y led to the package of care by Care Provider Q with which both Mr Y and Mrs X were very happy. The assessment happened during the COVID-19 restrictions which caused great difficulty with assessments. Mrs X did not specify in which way this assessment was not adequate, but I found no fault here.
46. The package of care from Care Provider Q was always intended to be short term and it was fortunate that it was able to continue as it did. Social worker A did not unnecessarily end it and had repeatedly advised that it would have to end. I found no fault here.
47. There are records of discussions with Mrs X about charging from early on when Mr Y was first discharged. It was clear from these discussions that Mr Y would be charged for the service and, if he was a self funder, he would have to pay the full costs. Once the Council confirmed he was a self funder, it invoiced him for the full cost of care. I found no fault here. There was an error in the invoicing which the Council corrected and apologised for before Mrs X complained to us.
48. Social worker A's review of Mr Y's care and support by phone was carried out with the support of his care workers. Mr Y was able to make his own decisions about his care and support however, he did want Mrs X involved in his care and support. At this stage, social worker A was aware that Mrs X had said that she was finding it difficult to continue with the level of support she provided to Mr Y. Mrs X had declined to apply for Deputyship and asked social worker B to find an independent Deputy. Social worker A mentioned family being "at breaking point" in the review. It seems likely, therefore, that the increased package of care and support was agreed on to help with this. When social worker B advised Mrs X about the resultant package of care, she did not note that Mrs X was strongly against the package. She said it could be changed at the review after 6-8 weeks. Mrs X says she strongly objected and told social worker B she had "repeatedly" told social worker A that Mr Y could not cope with four people calling daily and he did not need personal care or meals cooked. There is no record of these repeated conversations. Anyway, the care and support plan not only increased the number of calls but increased the number of care workers to two at each call. There was no reason provided for this. Mr Y never had two care workers at one call, for this reason, I have concluded that the increase in care support was not properly considered or evidenced. This was fault and caused stress, anxiety and uncertainty to Mrs X and Mr Y. The Council has already waived some costs relating to this and this is likely to be an appropriate remedy. However, it should ensure Mr Y was not charged for two care workers at any of these calls.
49. The Council apologised for not sending a breakdown of care costs when Mrs X asked and sent a breakdown. This is an adequate remedy and there is no outstanding injustice here.

Agreed action

50. To remedy the injustice identified above, I recommended the Council:
- Review its training around mental capacity and ensure all workers who may need to complete mental capacity assessments, are clear about how these should be completed and recorded.
 - Review its care and support planning training and ensure all care and support plans are based on evidence and an accurate needs assessment.
 - Sample twenty care and support plans with at least five by social worker A, and check for accuracy and evidence.
 - Ensure Mr Y was not charged for two workers at any of his care calls.
 - Complete these recommendations within three months of my final decision.
51. The Council has agreed to these recommendations.

Final decision

52. I have completed my investigation. The Council will complete the agreed actions to remedy the injustice it caused.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs M complains about the payments she received to transport her daughter, G, to school. The Council has agreed an additional payment so Mrs M receives the equivalent of its new and improved 'disabled travel assistance payment' from its introduction.

The complaint

1. Mrs M complains about the payments she received to provide school transport for her daughter. In particular, Mrs M complains:
 - a) the 'parental mileage allowance' she received has not increased since 2012; and
 - b) she was not told she could claim a 'direct travel assistance payment' introduced in 2017 which she believes is considerably higher.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. Once we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I have considered:
 - information provided by Mrs M; and
 - information provided by the Council.
6. I invited Mrs M and the Council to comment on my draft decision.

What I found

7. Mrs M's daughter, G, is disabled. Mrs M has transported G to school since 2006. Initially, she received payments for two return journeys a day at the 'parental mileage allowance rate'. The Council reduced the rate from 45p per mile to 22.6p per mile on 1 January 2012.
8. The Council introduced the 'direct travel assistance payment', known as DTAP, for children with special educational needs in 2017. DTAP is a form of personal budget. It is one of a number of transport options for disabled children.
9. DTAP is paid termly in advance. The payments are based on two return journeys a day at 45p per mile and can be spent on travel related expenses. Parents sign a contract with the Council governing the use of the payment. Their spending is audited, and the Council reclaims unused funds.
10. The Council invited Mrs M to apply for the 'direct travel assistance payment' in November 2019 and agreed a payment in June 2020.

Mrs M's complaint

11. Mrs M complained to the Ombudsman in June 2021. She believes the Council should have increased the 'parental mileage allowance rate' each year.
12. Mrs M referred to the Council's 2010 transport policy which says that "if bus fares increase or decrease, the grant (allowance) will be amended and parents will be notified at the earliest opportunity."
13. Mrs M says bus fares have increased every year since 2012, but the parental mileage allowance has remained the same.
14. She calculated the amount she believes she is owed, based on an annual increase of 4% in the 'parental mileage allowance rate', to be £3,900.
15. Alternatively, Mrs M thinks the Council should pay the 'direct travel assistance payment' rate since its introduction in 2017. In this case, she calculated she is owed £2,968.
16. We asked the Council to respond to Mrs M's complaint. The Council said it was satisfied it had made the correct payments. The Council did not comment on Mrs M's view the 'parental mileage allowance rate' should have increased.
17. Dissatisfied with the Council's response, Mrs M asked the Ombudsman to consider her complaint.

Consideration

18. Mrs M has kept detailed records of her dealings with the Council over the years. I am grateful for the information she provided.
19. The law says a complaint must be made within 12 months, although we have the power to disapply this requirement.
20. I have decided to investigate Mrs M's complaint about the payments she received from date DTAP was introduced in 2017. This marked a significant change in the Council's school transport allowances which Mrs M complains parents were not told about at the time. Mrs M complained once she became aware of the change, so her complaint is not late and it is possible for me to investigate her concerns.
21. I will not consider Mrs M's complaint the Council did not increase the 'parental mileage allowance' between 2010 and 2017 because this complaint is too old. Mrs M could have complained sooner.

The direct travel assistance payment

22. Mrs M believes she would have been paid considerably more if she had received the direct travel assistance payment (DTAP) since its introduction in 2017 rather than the parental mileage allowance. She complains she was not invited to apply for DTAP until November 2019. Mrs M has received the DTAP since June 2020.

Does DTAP pay more than the 'parental mileage allowance'?

23. The parental mileage allowance Mrs M received until June 2020 and the direct travel assistance payment she has been paid since then are not directly comparable.
24. The parental mileage allowance has no conditions attached. It is based purely on a child's attendance at school. The direct travel assistance payment, in contrast, is a contract between a parent and the Council. Its use is subject to conditions, claims are audited and unused funds reclaimed. A pupil in receipt of DTAP can use different forms of transport whereas parental mileage allowance is only paid when a parent uses their own car.
25. However, either payment could be claimed by a parent to provide transport in their own car.
26. I explored the way DTAP worked to see whether Mrs M would have received the same amount, after audit, if she had claimed DTAP rather than 'parental mileage allowance'. On the evidence seen, it appeared likely she would have received almost twice as much.
27. It appears that a parent claiming DTAP could receive almost twice as much as a parent claiming 'parental mileage allowance' for exactly the same transport. This makes the payments appear arbitrary and has scope to cause confusion.

How was DTAP publicised?

28. Mrs M complains she knew nothing about DTAP until she was invited to apply in November 2019 by a transport officer who suggested she would be better off claiming the new allowance.
29. The Council explained that it does not routinely review travel arrangements for children with special educational needs. It says the introduction of DTAP was widely publicised and Mrs M could have applied sooner if she had wanted the payment.
30. The Council says it published information on its website and in documentation and leaflets about the transfer of statements of special educational need to education, health and care plans that was taking place at the time.
31. Mrs M disputes the Council's claim the introduction of DTAP was widely publicised. She says she held a role in the Nottinghamshire Parent Carer Forum at the time and has no recollection. She says she has searched her archive of *IRIS* magazines and can find no reference. The Iris Project produces a quarterly magazine with information about special educational needs and disabilities on behalf of Nottinghamshire County Council and Nottingham City Council.

Conclusions: should Mrs M have received DTAP sooner?

32. The introduction of DTAP was a positive step by the Council. It gave eligible children and young people with disabilities and their carers choice, freedom and flexibility in their school travel arrangements.

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33. However, its introduction created an anomaly because the Council's existing school transport offer, the 'parental mileage allowance', appears considerably less generous.
34. Either payment could be used by a parent to provide transport in their own car. Offering two different mileage rates for essentially the same transport appears arbitrary.
35. Since the Council introduced an improved offer for parents of disabled children with the DTAP, it was fault not to ensure all eligible parents were aware of the offer from its introduction. Simply advertising the offer and expecting parents to realise they would be better off and apply was unreliable, as Mrs M's complaint demonstrates.
36. I conclude, based on the information I have seen, the Council should have offered Mrs M DTAP when it was introduced in 2017. If it had, I conclude on balance she would have accepted and would have been paid considerably more.

Agreed action

37. We have published guidance to explain how we calculate remedies for people who have suffered injustice as a result of fault by a council. Our primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred.
38. The fault by the Council was the introduction of DTAP, an improved transport offer for disabled children, without taking adequate steps to ensure all those who were eligible, and would be better off, transferred from previous transport allowances.
39. The injustice suffered by these parents was that they missed out on the improved transport offer the Council intended for disabled children. Mrs M cannot now retrospectively benefit from the flexibility offered by DTAP.
40. Nevertheless, I have calculated payments she would have received if she had received DTAP from its introduction (rather than the 'parental mileage allowance'). The Council has agreed to pay Mrs M the balance.
41. The Council has agreed to pay Mrs M £2,942.05.

Final decision

42. I have completed my investigation. The Council has agreed an additional payment so Mrs M receives the equivalent of its new and improved 'disabled travel assistance payment' from its introduction.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: There was no fault in how the County Council worked with the housing authority to get Miss B's kitchen adapted. It is not clear however, that the County Council properly considered its power to intervene when problems with the work was not corrected for many months. I have not recommended the Council take action to remedy this, because, given the circumstances, it is unlikely it would have decided to intervene.

The complaint

1. Miss B complains that the County Council has failed to:
 - ensure that her adapted kitchen met her needs and would be accessible by her; and
 - communicate with her properly about this.
2. Miss B says that as a result of the Council's failings she has been unable to properly access or use her kitchen for some time. This has impacted on her physical and mental health and put her to unnecessary time and trouble to resolve the issue. She says it is exhausting and frustrating. Miss B wants the Council to change the kitchen rather than try to adapt the unsuitable kitchen units.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I considered the information provided by Miss B and discussed the issues with her. I considered the information provided by the Council including its file documents. I also considered the law and guidance set out below. Both parties

had the opportunity to comment on a draft of this statement. I considered the comments received before issuing a final decision.

What I found

The law and guidance

6. The County Council has an underlying primary duty under social care legislation (The Care Act 2014) to meet the assessed eligible needs of a disabled adult. This duty cannot be delegated to another body external to the Council.
7. The Ombudsman does not consider the primary duty to have been discharged until the disabled adaptations have been completed to a satisfactory standard.
8. Miss B is a tenant of the District Council, who agreed to carry out and fund the disabled adaptations. The actions of the District Council are not in the Local Government and Social Care Ombudsman's remit, because here it is acting in its role as a social housing provider.
9. Section 23 of the Care Act sets out the boundary between councils' care and support functions and their housing functions. It prevents a council from meeting needs for care and support by doing anything which it or another local authority is required to do under housing legislation.
10. Government Guidance says that section 23 does not prevent authorities working together or prevent a council in its care and support role from providing more specific services such as housing adaptations (*Paragraph 15.52, Care and Support Statutory Guidance*)

What happened

11. Miss B has a degenerative disability and is a permanent wheelchair user. She cannot stand and has limited strength through her arms. Miss B lives in a property owned by the District Council. I have not investigated the actions of the District Council for the reasons set out below. Miss B found that she could no longer use her kitchen independently. To do so she needed adaptations to the kitchen and in 2017, the County Council's Occupational Therapist (OT) and the District Council's surveyor visited Miss B's home to assess what adaptations were needed. The OT and surveyor conducted a second visit with a representative from the contractors who would do the work.
12. Between 2017 and 2019, the OT, surveyor and contractor continued to work with Miss B to finalise the plans. The case notes show the OT asked the contractor about the height of the kitchen units and how Miss B will be able to get the footplates of the wheelchair under these, and also about the sink unit, pull out storage and larder. The final plans included a detailed specification made by the OT, having measured the clearance needed beneath the units, the height of the work surfaces and other aspects of how Miss B would use the kitchen independently.
13. The work started in January 2020. In February the OT wrote to the District Council. She reported that the work was nearing completion but there were significant issues including that:
 - Miss B would not be able to use the work surfaces as despite the OT's detailed specification, the units installed do not allow Miss B clearance for her wheelchair.

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- The sink is too deep and it puts Miss B at risk of scalding. The OT said she has identified a shallower sink and needs approval that the District Council will fund this.
 - The taps and plug are also unsuitable for Miss B to use.
14. Miss B viewed and tested an alternative sink and taps in early March. The OT passed the new sink and taps details to the District Council. She also told it that Miss B could not use the new oven as she cannot grip the controls.
 15. The case notes show that by July 2020, none of these issues had been resolved, although the surveyor had been chasing the contractor, they were unable to work on site due to COVID-19 restrictions. There was some confusion as the surveyor did not realise Miss B had chosen the sink and taps. The OT reminded the surveyor that she had already sent details. After checking again with Miss B, the OT confirmed the sink specification, the issue with the taps and how this might be resolved, and that Miss B was struggling to grip the knobs of the oven and it had now broken. Miss B would look at the ovens available for a more suitable model and the OT would consider whether there was a suitable turner so once fixed, the oven would be accessible. The OT later confirmed that there was no suitable turner for the current oven and Miss B would need a different model.
 16. Miss B and the OT also raised that Miss B could not use the hob and so the contractor refitted Miss B's original one but this did not work.
 17. In August, Miss B found a suitable oven and the OT sent the details to the surveyor so that funding could be considered. However, the sink and taps were not fitted until late September 2020.
 18. In October, the Council revisited the issue of the oven and the OT got details of the new model, but when the OT checked again in December there was problems with supplying this. The OT reviewed how the new kitchen was meeting Miss B's needs. She found that Miss B still needed changes to the sink depth and taps as water was splashing back every time she used it.
 19. In April 2021, Miss B made a formal complaint about how the County Council had handled the adaptations to the kitchen. In response to Miss B's complaint, the surveyor and the OT visited her home. At this visit, the County Council established that:
 - the kitchen units were wrong. Miss B still could not get her wheelchair footplates beneath them.
 - Miss B would need a carousel or snake cupboard but the contractor would need to see what was possible;
 - the taps were not suitable and the District Council would get technical advice on whether lowering the water pressure would resolve this;
 - there were ongoing supply issues with the correct model of digital oven but there was one in stock that might be suitable; and
 - It agreed the works needed to put the kitchen right but also said that lots of the issues were out of its control.
 20. In June, the County Council's OT, the contractors and the District Council's surveyor visited Miss B's home again. The contractor agreed to look at bespoke modifications to the kitchen units. They found the sink and taps still splashed too much when in use. Other taps had been explored but were not accessible and lower taps would make it difficult to do usual things such as fill a kettle or pan. The

contractor agreed to explore reducing the water pressure. At this time, a new oven had arrived but it was the incorrect model. The contractor had already arranged for the correct one to be delivered and installed.

21. The contractor quickly sent the quote for the bespoke works and was due to start work in August, but could not due to COVID-19 infections in Miss B's household. Miss B again cancelled the next appointment in September because she was not well enough for the work to go ahead.
22. In response to my enquiries, the County Council has explained that it had been trying to arrange a joint meeting between its OT, Miss B, the District Council's surveyor, and the contractors from August 2021 to January 2022. The surveyor and the County Council's OT revisited to agree what still needed to be done in November, but the contractor was not available until January 2022. At the November meeting the OT and the surveyor observed that:
 - the taps or water pressure still needed to be adjusted;
 - Miss B could not access the fitted larder, and the contractor had proposed a bespoke larder but Miss B could not agree to the design; and
 - the clearance for foot plates under the units was still not resolved.
23. The County Council says the existing kitchen was left intact while the new adaptation was undertaken and the old kitchen was not removed until the final stages of completion of the adaptation. This was to give Miss B as much of a functioning kitchen as possible during the works.
24. The County Council says that there was functioning oven in place throughout, despite that Miss B had accidentally broken one of the controls. The new oven was accessible when the original specification was drawn up but Miss B's hand function had deteriorated since. The Council sourced a new oven but there were ordering issues which meant that the correct item was not received until the summer of 2021.

Was there fault and service failure causing Miss B injustice?

25. It is clear that the problems with the kitchen were not resolved in good time, taking many months. I recognise that dealing with this and trying to resolve the issues would have been frustrating and exhausting for Miss B. My task however, is to determine whether this was due to fault by the County Council.
26. The County Council ensured the District Council's cooperation at the beginning of the process, with a formal referral and specification for works that would meet Miss B's needs. The County Council's plans and specifications as agreed by Miss B were detailed and there was no fault here.
27. The County Council first alerted the District Council that there were significant problems with the kitchen in good time. Following that the County Council worked with Miss B to put the issues right. The OT helped Miss B source new fittings, and acted as a liaison point between Miss B and the District Council who retained responsibility for the adaptations.
28. It is clear that it took too long for the new kitchen to be made accessible to Miss B. Although it was incredibly frustrating and exhausting for Miss B, as far as possible, the care plans suggest that the County Council understood she could not use the kitchen independently and her package of care and support reflected this.

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29. It is not clear that the County Council properly considered its power to step in and finish the adaptations itself. However had it considered this, it may not have decided that it would have been the right course of action to intervene. The adaptation was complicated; some of the problems were not foreseeable; the contractor availability was a significant problem; the work was already substantially underway; and the County Council had ensured that the package of care took account of the problems with the adaptations. It would also have had to consider that primary legislation is clear that housing obligations should be met by the housing authority (in this case the District Council). On balance it is likely that it would have decided not to intervene, but to continue to support Miss B to progress the work and to help her use the kitchen despite the issues with it. The Council might want to review how it might properly consider whether to intervene in future cases of delays or lack of provision in housing adaptations.
30. Although there have been significant delays in putting the kitchen right, the County Council has, in the main, kept Miss B informed of its actions to try to progress the works.
31. I have seen Miss B's care plans as assessed and agreed by the County Council. These took account of the fact that although it was intended that Miss B should be able to use her kitchen independently, the problems with the kitchen meant that she still needed help and support with meal preparations.

Final decision

32. I have completed my investigation. There was fault by the Council but this did not cause injustice to Miss B.

Parts of the complaint I did not investigate

33. We cannot investigate complaints about the provision or management of social housing by a council acting as a registered social housing provider. (*Local Government Act 1974, paragraph 5A schedule 5, as amended*)
34. For this reason, I have not investigated the District Council's actions in progressing the adaptations.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr C complains the Council is failing to determine definitive map modification applications in a timely way which may adversely affect the available evidence and has caused him unnecessary time and trouble. We have found fault by the Council in failing to meet deadlines set but consider the agreed action of a review of measures to address the backlog of applications provides a suitable remedy.

The complaint

1. The complainant, whom I shall refer to as Mr C, complains the Council is routinely failing to determine definitive map modification applications in a timely way. Mr C further says the Council has failed to comply with directions by the Secretary of State to deal with applications within a specific timescale.
2. Mr C says because of the Council's fault, the availability of evidence and its weight may be adversely affected and he has been caused unnecessary time and trouble in pursuing the matter.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I read the papers provided by Mr C and discussed the complaint with him. I have considered some information from the Council and provided a copy of this to Mr C. I have explained my draft decision to Mr C and the Council and considered the comments received before reaching my final decision.

What I found

What should happen

7. Councils must prepare and keep up-to-date definitive maps and statements to show public rights of way (PROW) in their area such as public footpaths and bridleways.
8. The law sets out how people may apply to their council for a definitive map modification order (DMMO) to have a public right of way recorded on the definitive map. Once the council has a properly made DMMO application, it should “*as soon as reasonably practicable*” decide whether to make an order. A decision to make an order needs evidence a right of way exists or is reasonably alleged to exist.
9. If 12 months passes without a decision, the applicant may ask the Secretary of State to direct the council to decide the application. The Secretary of State’s direction may include a deadline for the council to make its decision. The Government’s Rights of Way Circular 1/09 says, when considering whether to make a direction with a deadline, the Secretary of State:

“...will take into account any statement by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant.”
10. Circular 1/09 also says, councils “*should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way...*”
11. If a council decides not to make an order, the applicant has 28 days to appeal to the Secretary of State. On appeal, the Secretary of State will consider the evidence to decide if there is a case for making an order and, if so, direct the council to do so. The Secretary of State’s direction may include a deadline for the council to make the order.
12. If a council makes an order, further legal steps follow, which may include the Secretary of State deciding whether to confirm the order if people have objected to it. A public inquiry may be necessary and people asked about their use of claimed rights of way where there are inconsistencies in the evidence.
13. The Planning Inspectorate acts for Secretary of State with respect to the determination of an DMMOs by local authorities.

What happened

14. The Council’s policy for dealing with DMMOs is set out in its Rights of Way Management Plan 2018 – 2026. This says that DMMO applications will be processed in the order they are received with certain exceptions. The exceptions include:
 - where the public benefit to be gained is of more than limited impact
 - where a claim affects a householder in proving the existence or nonexistence of a right of way
 - a claimed route triggered by an event such as fencing off the line of a regularly used path
 - where an application is claimed on 20-year use the personal circumstances of path users will be taken into account

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- where a claimed route is under threat due to development or major road schemes
15. The policy also states that the Council will use dedications where possible in lieu of DMMOs to allow a quicker route onto the definitive map.
 16. The Council has confirmed that a direction from the Planning Inspectorate will generally override this policy. The Council also says it has engaged with Mr C and the Ramblers Association to ensure it prioritises its resources to deal with the most important cases first.
 17. Mr C complained to the Council about its response to various applications where the Planning Inspectorate had made a direction to the Council. Mr C made specific reference to six applications and I will deal with each in turn below.

Claim A

18. The Council says this is a claim based on historical documentary evidence relating to a part existing footpath and upgrade to a restricted byway. The Council says it also identified another bridleway during the research. The Planning Inspectorate directed the Council to make a decision by 15 July 2020 on whether to decline the application or make an order. The Council decided to make an order on 7 January 2022 and this was completed on 22 February 2022.
19. The Council says it has received one objection and is negotiating with the landowner to provide a diversion and part extinguishment to reflect the modern landscape and remove the objection. If the objection remains the matter will be referred to the Planning Inspectorate.

Claim B

20. The Council says this is a claim relating to an extinguishment, dedication of a path and a DMMO which was based on user evidence. The Planning Inspectorate directed the Council to make a decision by 25 February 2020 on whether to decline the application or make an order. The Council has highlighted this is a complex case which required the current legal definitive line to be extinguished and a walked line to be created and dedicated by agreement with the landowner. It also required a DMMO to upgrade the walked footpath to a public bridleway. The DMMO 'extinguishment' Order was confirmed on 4 March 2022 with the dedication by the landowner confirmed on 13 May 2022. The research has been completed for a DMMO to upgrade to a public bridleway and a report was due to be presented at the Council's Planning and Licensing Committee on 5 July 2022.

Claim C

21. The Council says this is a DDMO based on user evidence. The Planning Inspectorate directed the Council to make a decision by 19 December 2020 on whether to decline the application or make an order. The Council has highlighted the complex nature of this case as it involved several claimed routes, adding bridleways and upgrades to a bridleway for which it received a large number of objections. The Council says a report would be presented to its Planning and Licensing Committee on 5 July 2022.

Claim D

22. The Council says this is a claim based on user evidence. The Planning Inspectorate directed the Council to make a decision by 19 December 2020 on whether to decline the application or make an order. The Council has confirmed

the DMMO was made and confirmed on 4 March 2022 with the right of way now available.

Claim E

23. The Council says this is a claim based on user evidence. The Planning Inspectorate directed the Council to make a decision by 21 October 2021 on whether to decline the application or make an order. The Council says it has put the proposal out to pre-consultation and received objections. The Council is currently negotiating another claim made by Mr C affecting the same landowner (claim F below) and has decided it is prudent to conclude those negotiations before making a decision on this claim.

Claim F

24. The Council says this is a claim based on user evidence and some historical documentary evidence. The Planning Inspectorate directed the Council to make a decision by 22 October 2021 on whether to decline the application or make an order. The Council has reached a legal agreement with the landowner to dedicate two footpaths as bridleways and the relevant documents will be signed once the physical upgrades are completed this summer.

Council's comments on the delays identified in the above claims

25. In responding to the Ombudsman, the Council says it is dealing with an unprecedented number of applications to research and register public rights of way. This is due to legislation which proposed a cut-off date of 2026 to stop claims for public rights of way based on old historical documentary evidence. There was a research project known as the Lost Ways Project by the former Countryside Agency. A key part of this work and a priority was ensuring that applications from all stakeholders including Mr C, representing both the Ramblers Association and the British Horse Society be validated and entered onto the Authority's DMMO register, as they would be protected by the cut-off date. Although the legislation was passed it was not brought into force by Parliament and in 2022 it was announced that Central Government had abolished the Lost Ways Project. The Council says this register is up to date and continues to be updated as more applications come in from stakeholders.
26. The Council further says the process of dealing with DMMO applications is intensive and time-consuming requiring detailed research of archives at County Hall, libraries, County and the National Records Office at Kew. The Council also notes it can be emotive particularly the Lost Ways type applications from Mr C where the majority of paths have not been used, sometimes for at least 200 years. Such application can create a large number of meetings, discussions and enquiries from landowners and others who are initially surprised and have concerns regarding their land and privacy.
27. The Council says the COVID-19 restrictions also affected the holding of meetings and undertaking research with the closure of Council Offices, libraries and the local Archives Office. There has also been an impact on staffing levels during this period. The Council says this impact was recognised by the Planning Inspectorate with the average timescale provided being six months before the impact of COVID-19 restrictions but is currently an average of 18 months.
28. Although the Council accepts Mr C's applications provide an extensive catalogue of research it still has to research and check the research to ensure the right decision is reached. The Council notes many applications receive objections and it must ensure the evidence is robust for any Public Inquiry.

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29. The Council says it spends a considerable amount of time negotiating and working with all stakeholders particularly those directly affected by a claim for a public right of way. The Council says Mr C is aware the results can be beneficial with a number of paths being added to the Definitive Map and Statement by means of a quicker and more efficient dedication of public rights.
30. The Council says it employed an extra officer in the late summer 2021 who is primarily working on three user evidence claims applied for by Mr C. The Council has prioritised these three applications due to the large number of applicants and demand from the local community. The Council notes the applications are time consuming as they involve dealing with hundreds of User Evidence Forms and undertaking interviews as well as dealing with rebuttals from the affected landowners. The Council says Mr C is aware of this work and approves of the priority the applications are receiving.
31. The Council also recruited an experienced Commons, Village Green and Definitive Map Officer in August 2022 to fill a vacancy following retirement.
32. The Council says it has recently invested in new technology which assists it in managing public rights of way assets. As part of this technology there are useful automated systems in place which will help with the extensive administrative work which is associated with the legal procedures of adding public rights of way to the legal record. The Council says work is continuing on setting this up and it is hoped the advantages of this system in reducing the administrative tasks will be seen in the near future.

Is there fault causing injustice

33. The Ombudsman has recently issued a Focus Report, 'Under Pressure'. The Report recognises councils face budget pressures and that delay caused by service request backlogs is a key theme in many of our investigations. The Report says the presence of delay does not necessarily mean there is fault by a council. Rather, we will consider whether the law requires councils to act in a set time; what steps a council has taken to explain what is happening and to anticipate and respond to increasing pressures. We will also consider the impact of delay on the complainant.
34. The key issue in Mr C's complaint is the time it is taking the Council to make an order or otherwise on DMMO applications. The law does not set a time limit for councils to deal with DMMO applications but requires them to act 'as soon as reasonably practicable'.
35. The Council accepts it has a backlog of applications and has not been able to meet directions set by the Secretary of State. The available evidence shows the Council's DMMO backlog is longstanding. I consider there is fault by the Council in failing to meet deadlines set to deal with applications and directions.
36. However, I note the Council has made progress on the six applications highlighted by Mr C to the Ombudsman. This includes making a DMMO on two applications with a report to Committee for another two applications, a legal agreement reached on one and cogent reasons for delay on the one remaining.
37. I have also noted the Council's actions both in terms of its resourcing and new technology which the Ombudsman would welcome.
38. More generally, applications for DMMOs often involve evidence given by local people about the use they have made of claimed rights of way. That evidence will be in written statements. Where an order is made and opposed, it is often

necessary and helpful to ask people to clarify and or expand on what they have written. Similarly, if unresolved objections lead to a public inquiry, people may attend and describe their use of a claimed path to the inspector acting for the Secretary of State. As years pass, people move away, may die or become unable and or unwilling to take part in public inquiries.

39. I do find that other DMMO applicants may be facing similar lengthy waits before the Council both investigates their claimed paths and, where appropriate, makes an order (see paragraph 4 of this statement).

Agreed action

40. In order to provide a remedy for the injustice caused to Mr C by the fault I have identified above, the Council will within two months of my final decision:
- arrange for the Chair of the Committee to discuss with Mr C how the system could be further improved particularly in providing resources to facilitate discussions with landowners to deal with their concerns and to include this as part of its wider review.
41. In order to remedy the wider injustice identified, the Council will within three months of my final decision:
- complete a review of the changes to its DMMO service to assess the impact of its additional resource and system improvements to ensure this action is effective in helping the Council to reduce the backlog;
 - report the findings of the above review to councillors and seek approval for any additional changes identified as necessary to further reduce the backlog within three calendar months of completing the review; and
 - following the above, provide an update every six months to councillors on its progress in reducing the DMMO backlog for the next two years.

Final decision

42. I have completed my investigation as I have found fault causing injustice but consider the agreed action above is enough to provide a suitable remedy.

Investigator's decision on behalf of the Ombudsman

4 January 2023**Agenda Item: 5****REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE &
IMPROVEMENT****INTERNAL AUDIT CHARTER REFRESH****Purpose of the Report**

1. To review and approve an updated version of the Internal Audit Charter.

Information

2. The charter is a formal document defining the Internal Audit Section's purpose, authority and responsibility. It establishes the Section's position within the Council, including the nature of the Interim Chief Internal Auditor's functional reporting relationship with the Governance & Ethics Committee. It authorises access to records, personnel and physical properties relevant to the performance of audit engagements, and it defines the scope of Internal Audit's activities. Final approval of the charter rests with the Governance & Ethics Committee.
3. The charter should be reviewed periodically, to ensure it remains relevant and up to date; it was last updated in December 2021. Mostly minor changes are proposed in this update, to reflect changes in job titles, team names and distribution of reports.
4. The revised charter is attached as Appendix 1. It may also provide further assistance to the members of the Governance & Ethics Committee in understanding the role of Internal Audit in the Council.

Other Options Considered

5. The establishment and maintenance of a formal internal audit charter is a requirement of the PSIAS.

Reason/s for Recommendation/s

6. To ensure that this Council's Internal Audit Charter remains up-to-date and relevant to the developing needs of the authority from its internal audit service.

Statutory and Policy Implications

7. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human

rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

8. The activities of the Internal Audit service are a key element in the governance framework within the Council. The formal Internal Audit Charter is a key document in ensuring the Council receives an effective service from the resources it deploys on this area of activity.

RECOMMENDATION/S

- 1) That the revised Internal Audit Charter be approved.

Nigel Stevenson

Service Director for Finance, Infrastructure & Improvement

For any enquiries about this report please contact: Simon Lacey, Interim Chief Internal Auditor

Constitutional Comments (GR – 10/11/2022)

9. Pursuant to the Nottinghamshire County Council Constitution this committee has the delegated authority to receive this report and make a decision contained within it.

Financial Comments (SES – 11/11/2022)

10. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All



Nottinghamshire County Council

Internal Audit Charter

1. **INTRODUCTION**

- 1.1 This Charter defines Internal Audit's role within the County Council. The Charter complies with the Public Sector Internal Audit Standards (PSIAS), the Accounts and Audit Regulations 2015, and the County Council's Financial Regulations. This Charter has been approved by Nottinghamshire County Council's Governance and Ethics Committee, acting as the 'Board' under the requirements of the PSIAS.

2 **MISSION OF INTERNAL AUDIT**

- 2.1 To enhance and protect organisational value by providing risk-based and objective assurance, advice, and insight.

3 **CORE PRINCIPLES**

- 3.1 The Internal Audit Team strives for compliance with the following 10 core principles for the professional practice of internal auditing, as set out in the PSIAS:
- Demonstrates integrity
 - Demonstrates competence and due professional care
 - Is independent, objective, and free from undue influence
 - Aligns with the strategies, objectives and risks of the organisation
 - Is appropriately positioned and adequately resourced
 - Demonstrates quality and continuous improvement
 - Communicates effectively
 - Provides risk-based assurance
 - Is insightful, proactive, and future-focused
 - Promotes organisational improvement.

4 **PURPOSE, AUTHORITY AND RESPONSIBILITY**

- 4.1 The purpose of Internal Audit is to provide an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

- 4.2 It objectively examines, evaluates and reports on the adequacy of the control environment as a contribution to the proper, economic, efficient and effective use of resources.

In particular it:

- (a) carries out a risk-based review and evaluation of the entire control environment of the Council
- (b) provides management and Members with advice and assurance to assist them in the effective discharge of their responsibilities
- (c) plans audit work having regard to the Authority's corporate plans.

- 4.3 Internal Audit derives its authority from the Accounts and Audit Regulations 2015, from this Charter and from Nottinghamshire County Council's Constitution. The Financial Regulations, which are part of the Constitution, set out that:

- The Section 151 officer carries responsibility for ensuring an effective internal audit service is in place
- Internal audit reviews and reports on the Council's control environment and its arrangements for securing value-for-money, and it makes recommendations requiring a formal response
- Internal Audit staff have the right of access to such records, assets, premises and personnel, and are entitled to receive such information and explanation, as they think necessary for the proper fulfilment of their duties
- Internal Audit has a defined role in the Council's Fraud Response Plan
- Internal Audit reports its findings to Members of the Council, and it co-ordinates its activities with external audit.

- 4.4 The following key roles and responsibilities are established at Nottinghamshire County Council to ensure the requirements of the PSIAS and this Audit Charter are complied with:

- The role of the 'board' is fulfilled by the Governance and Ethics Committee
- The role of senior management is fulfilled by the Corporate Leadership Team, comprising the Chief Executive and Corporate Directors of the Authority
- The role of the chief audit executive is fulfilled by the Interim Chief Internal Auditor. The Interim Chief Internal Auditor reports directly to the Section 151 Officer, but also has unrestricted access to senior management and members, particularly the Leader of the Council, the Chair of the Governance and Ethics Committee, the Chief Executive, Corporate Directors and Service Directors. The Interim Chief Internal Auditor reports in their own name.

- 4.5 In addition to Internal Audit, the Interim Chief Internal Auditor is responsible the delivery of services by the Risk and Insurance Team. To maintain segregation from operations, the Interim Chief Internal Auditor has put in place arrangements for avoiding conflicts of interest. These are focused on obtaining independent, external assurance that internal controls are effective in respect of the Council's arrangements for risk and insurance. Periodic reviews of these areas are carried out by external providers of internal audit, the findings of

which are reported independently of the Interim Chief Internal Auditor to the Section 151 Officer and members of the Governance and Ethics Committee.

- 4.6 The resourcing of Internal Audit is under continuous review by the Section 151 Officer and the Interim Chief Internal Auditor. The resource requirements are brought into sharp focus during discussions and agreement on the Internal Audit Strategy and Termly Plans. Further details are set out in Section 8.
- 4.7 In addition, the Team undertakes internal consultancy work, carries out some suspected irregularity investigations and provides an audit service, on a contract basis, to specific external clients. The nature and extent of work for external clients is kept under review to ensure a) it does not impinge on the audit work carried out for the Council, and b) there is no conflict of interest or impairment of independence arising from this work.
- 4.8 In carrying out consultancy work, the Internal Audit role is to assist management in the achievement of the Authority's objectives. The work involved may cover facilitation, process design, training, advisory services and investigatory work. For most assignments, specific terms of reference will be drawn up to define the scope and limits of the work involved.

5 INDEPENDENCE AND OBJECTIVITY

- 5.1 The Internal Audit Team is organised so that it is independent of the activities that it audits. Because of this, the Team can provide impartial and unbiased professional opinions and recommendations. Internal Audit is free to plan, undertake and report on its work, as the Interim Chief Internal Auditor deems appropriate.
- 5.2 The status of the Interim Chief Internal Auditor is sufficient to allow the effective discussion of audit strategies, plans, results and improvement plans with senior management in the organisation.
- 5.3 Internal Audit is accountable to the Section 151 Officer and the Authority's Governance and Ethics Committee, both being involved in determining its priorities. It reviews the resources available to it on a regular basis to ensure that it has sufficient resources to fulfil its responsibilities, reporting the results of the review to the Governance and Ethics Committee, as part of its termly planning process.
- 5.4 The Interim Chief Internal Auditor provides termly updates to the Authority's Corporate Leadership Team, membership of which includes the three statutory officers: the Chief Executive, the Section 151 Officer and the Monitoring Officer. Key issues concerning the governance of the Authority are discussed and the Annual Governance Statement is kept under ongoing review.
- 5.5 The Interim Chief Internal Auditor is required to confirm annually the organisational independence of the internal audit activity. The Interim Chief Internal Auditor has the right to direct and unrestricted access to senior management and the Board.
- 5.6 Individual internal auditors are also required to have an impartial, unbiased attitude and avoid any conflict of interest. To meet this requirement, each auditor is required to declare any interests they have that could have an impact

on their audit work, and to confirm they have read the Authority's Code of Conduct for employees. The Interim Chief Internal Auditor will not assign work to an auditor where a conflict of interest may arise. If independence or objectivity is impaired, either in fact or appearance, the details of the impairment must be disclosed to the relevant parties.

- 5.7 Internal Auditors also have due regard to the Seven Principles of Public Life (the Nolan Principles) – Selflessness; Integrity, Objectivity; Accountability; Openness; Honesty; and Leadership.

6 PROFICIENCY AND DUE PROFESSIONAL CARE

- 6.1 Internal Audit operates in accordance with the PSIAS. Compliance with the Standards is reviewed annually by the Interim Chief Internal Auditor.
- 6.2 A thorough recruitment process, in accordance with the Authority's procedures, applies to the appointment of Internal Audit staff to ensure the Team has the appropriate, professional skills and experience to fulfil its objectives. The Interim Chief Internal Auditor is appointed by the Section 151 Officer and must have a full CCAB qualification and have significant post qualification experience, preferably gained in an internal audit role. Similarly, the Audit Team Manager and Audit Supervisor should be qualified accountants with at least three years' financial and managerial experience. The qualifications and skills required for all posts are detailed in job descriptions and person specifications maintained by the Interim Chief Internal Auditor.
- 6.3 Internal Auditors have an annual review of their performance and development needs. They are provided with the appropriate training to fulfil their responsibilities and to maintain their professional development and competence.

7 QUALITY ASSURANCE AND IMPROVEMENT PROGRAMME

- 7.1 The Interim Chief Internal Auditor reviews the work of the Team on an annual basis to provide assurance that it conforms to the relevant standards and requirements of the Internal Audit Charter.
- 7.2 The Internal Audit Team takes the following actions to provide a professional service:
- Adopts a flexible, risk driven approach
 - Works in partnership with managers and staff to develop and maintain adequate and reliable systems of corporate governance, risk management and internal control
 - Continually seeks to improve the effectiveness and efficiency of its services in consultation with managers from across the Authority
 - Maintains an effective Audit Manual and regularly reviews its procedures to ensure they remain appropriate
 - Monitors and reports on specific performance indicators and targets.
- 7.3 The PSIAS require that an external assessment of Internal Audit be conducted at least once every five years by a qualified, independent assessor from outside the organisation. The Interim Chief Internal Auditor will raise this periodically

with the Governance and Ethics Committee to determine the form of external assessment, the required qualifications and independence of the assessor and the frequency of the assessment.

- 7.4 Arising from the internal review, external assessments and the annual review of Internal Auditors' performance and development, the Interim Chief Internal Auditor will, in discussion with senior management and the Governance and Ethics Committee, develop an Improvement Programme.
- 7.5 Where non-conformance to the PSIAS impacts on the overall scope or operation of the internal audit activity, the Interim Chief Internal Auditor must disclose the non-conformance to senior management and the Governance and Ethics Committee.

8 MANAGEMENT OF INTERNAL AUDIT ACTIVITY

- 8.1 Internal audit work is planned at all levels of operation in order to establish priorities, achieve objectives and ensure the efficient and effective use of audit resources in meeting the Internal Audit Charter.
- 8.2 The Interim Chief Internal Auditor produces an Internal Audit Strategy, and this provides the framework within which three termly plans are delivered in each financial year. Each termly plan covers a period of four months and is developed in consultation with the Corporate Directors, Section 151 Officer and Senior Managers. The Strategy details how the assurance for the opinion on the overall adequacy and effectiveness of the organisation's corporate governance, risk management and control environment will be demonstrated.
- 8.3 The Internal Audit plans are subject to revision and approval by the Section 151 Officer for reporting to the Governance and Ethics Committee. These plans include an element of contingency to allow Internal Audit to be responsive to changes in conditions and to requests for assistance from managers. They also take account of the Authority's risk management process with the aim of identifying and evaluating any residual risks, not covered by appropriate control mechanisms, which need to be included in the Internal Audit Plan. The Plan process also involves assessing, through ongoing liaison with management and External Audit, any new developments or significant changes in the Authority's responsibilities.
- 8.4 Scopes are prepared for each Internal Audit engagement and are normally discussed with relevant line managers before the work is started. Internal Audit will schedule regular update meetings with the client while the audit is being undertaken, to ensure emerging findings and possible recommendations are raised, verified and discussed while the audit is live. At the close of the fieldwork, a feedback meeting will be arranged to discuss the findings of the review. During this closing meeting, draft management responses to recommendations will be elicited wherever possible, for inclusion in the formal, draft report when issued. Internal Audit will usually give reasonable notice to the relevant manager of the start of an audit and will minimise any disruption to the smooth running of the area under review. However, Internal Audit reserves the right to make unannounced visits where the Interim Chief Internal Auditor considers it necessary.

- 8.5 The Team adopts a structured approach to all its work, including the use of a risk-based, systematic approach, where appropriate, for opinion audits.

9 GOVERNANCE AND ETHICS COMMITTEE RESPONSIBILITIES

- 9.1 Internal Audit has a responsibility to report to the Authority's Governance and Ethics Committee. The Committee is chaired by a member of the majority party and consists of 11 members. The Committee meets on a six-weekly basis and has clear terms of reference. It reviews both Internal and External Audit work throughout the Authority and contributes to the organisation's overall process for ensuring the Authority has good governance in place.
- 9.2 The Committee reviews and comments upon:
- Internal Audit Charter
 - Internal Audit's Annual Report (including the annual opinion on the Authority's control environment)
 - Internal Audit's strategy, termly plans and progress reports (including key findings and recommendations)
 - Assurance mapping
 - Annual Fraud Report
 - External Audit's Annual Audit Letter and Annual Plan
 - Reports on the implementation of Internal Audit recommendations
 - Reports on relevant public sector publications concerning general audit developments
 - Any significant audit issues that may arise within the Authority.
- 9.3 The Interim Chief Internal Auditor attends every meeting and presents Internal Audit reports to the Committee.

10 ADVISORY AND CONSULTANCY SERVICES

- 10.1 Internal Audit offers an advisory and consultancy service to provide support and assistance to the Council in the development of its systems and procedures. Internal auditors are well positioned to offer this type of input, due to their detailed knowledge of the Council's activities, and due to their expertise in assessing value for money and options for process re-engineering.
- 10.2 The nature and scope of consultancy engagements are agreed with the client and are intended to add value and improve the Council's governance, risk management and control processes. Consultancy input may take the form of counsel, advice, facilitation and training. This type of input is beneficial to both clients and internal auditors alike; clients receive timely advice whilst systems and processes are being designed, and internal auditors have the opportunity to influence the developing control framework in the Council.

11 SUSPECTED IRREGULARITY INVESTIGATIONS

- 11.1 In accordance with the Authority's Financial Regulations, Internal Auditors may carry out investigations into suspected financial irregularities. All managers in the Authority have an obligation to maintain an effective internal control system within their areas of work, and this includes a responsibility for the prevention

and detection of fraud, corruption and other irregularities, as well as managing the risks of fraud or corruption.

- 11.2 When conducting audit engagements, Internal Auditors are alert to circumstances, such as control weaknesses, that could allow fraud. If any evidence of fraud or other irregularity is discovered, the relevant line manager is informed.
- 11.3 Managers are required to inform Internal Audit immediately if a fraud or other irregularity is suspected. In such cases, they should ensure that:
- Any supporting information or other evidence is secured
 - Confidentiality is maintained so as not to prejudice any subsequent investigation.
- 11.4 Internal Audit will consider each suspected fraud or irregularity and determine whether to investigate it itself or to resolve it by another means, for example, referral to Action Fraud and the Police, as appropriate. Internal Audit's role in tackling suspected cases of fraud or irregularity is set out in the Council's Fraud Response Plan.
- 11.5 The Interim Chief Internal Auditor may carry out other special investigations at the request of the Section 151 Officer or other senior managers.




12 **INTERNAL AUDIT REPORTING**

- 12.1 Internal Audit reports its findings to appropriate managers, who have a responsibility to respond promptly to the reports' recommendations. Recommendations are priority ranked, as follows:

Priority Level	Description
Priority 1	Fundamental for effective governance, risk management and internal control, must implement recommendations to improve existing arrangements
Priority 2	Desirable for effective governance, risk management and internal control, should implement recommendations to improve existing arrangements

'Advisory recommendations may also be raised in feedback meetings with managers at the close of fieldwork.

- 12.2 Reports on assurance work contain an audit opinion on the area reviewed. One of the following three audit opinions of the level of assurance is provided:

	LIMITED ASSURANCE	Risk levels are high
	REASONABLE ASSURANCE	Risk levels are acceptable
	SUBSTANTIAL ASSURANCE	Risk levels are low

The spread of Internal Audit opinions each year is one factor used to inform the Head of Internal Audit's Annual Report and the Authority's Annual Governance Statement.

- 12.3 Management responses to Internal Audit's draft reports are sought in accordance with the protocol set out in Table 1 below:

Table 1: Protocol for chasing responses to Internal Audit's Draft Reports	
Week 0	Issue draft report, typically to Group Manager and Service Director, requesting a response within 2 weeks
Week 3 – no response	Reminder issued by Head of Internal Audit to Group Manager, Service Director and Corporate Director. Request a response in 2 weeks.
Week 5 – no response	Issue a reminder and copy to: Chair of the Governance & Ethics Committee, Chief Executive and Corporate Director. Request a response in 1 week
Week 6 – no response	Issue final report with no response and schedule the report on the next meeting of the Governance and Ethics Committee, with the relevant manager(s) being requested to attend to provide an update to the Committee on proposed actions to address the report's recommendations
N. B	<p>At any point in the above procedure, the timeline may be re-set to deal with particular circumstances such as:</p> <ul style="list-style-type: none"> to further discuss the audit findings and recommendations wherever concerns with them remain to allow for extended response times during periods of extreme workloads or the non-availability of key staff revised timescales for responses should be formally agreed

- 12.4 Management responses to draft reports are incorporated into a final version for circulation, as standard, to the following:

Members

- All Members of the Governance and Ethics Committee
- Cabinet Member and Deputy for Finance
- Cabinet Member and Deputy for the relevant Portfolio
- Leader and Opposition Leaders

Officers

- Relevant Corporate Director(s), Service Director(s) and Group Manager(s)
- Section 151 Officer and Monitoring Officer
- Group Manager Finance and relevant Senior Finance Business Partners
- External Audit

Members can raise queries on reports as appropriate by contacting the Interim Chief Internal Auditor or Audit Team Manager directly on issues which concern them. This direct access by Members to Internal Audit applies in any situation where Members wish to raise issues of concern with Internal Audit.

- 12.5 All Internal Audit recommendations are followed up to confirm the agreed management actions are taken. Two levels of assurance are applied to confirm implementation, as detailed below:

Priority rating of recommendation	Management assurance	Internal Audit assurance
Priority 1	Assurance is sought from management that all agreed actions have been taken	Compliance testing scheduled to confirm all agreed actions relating to Priority 1 recommendations are carried out consistently.
Priority 2		Compliance testing is scheduled for selected Priority 2 actions

- 12.6 Six-monthly progress on the implementation of agreed management actions is reported to senior management and to the Governance and Ethics Committee. The Governance and Ethics Committee determines whether it wishes to receive an update from senior managers at its next meeting to provide further assurance regarding actions to improve the internal controls in a specific area of activity.

13 **COORDINATION OF AUDIT ASSURANCE**

- 13.1 The Interim Chief Internal Auditor co-ordinates Internal Audit Plans and activities with other internal and external providers of assurance, including the External Auditors, to ensure the most efficient use of the total resources devoted to audit work. Regular liaison meetings take place during the course of the year as appropriate.
- 13.2 Internal Auditors foster constructive relationships with Members, the managers and others involved in the areas being audited, and also with other review and specialist agencies that it may encounter as part of its work.
- 13.3 Liaison with managers takes place at key stages of the audit process, namely: planning; undertaking; reporting; and responding to audits. The guiding principle adopted throughout is one of assistance in the achievement of the Authority's objectives and plans.
-

4 January 2023

Agenda Item: 6

**REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE &
IMPROVEMENT****COUNTER-FRAUD PROGRESS REPORT****Purpose of the Report**

1. To update the Governance and Ethics Committee on the counter-fraud work undertaken to date in 2022/23.

Information

2. Counter-fraud work has continued to focus on key risk areas during 2022/23 and the Council has remained vigilant to the threat of fraud and emerging risks.
3. The report brings together work undertaken in relation to:
 - The National Fraud Initiative (NFI) – matches from the 2020-22 exercise
 - NFI progress with the information submission for 2022-23
 - Counter-fraud activities – to provide an update on recent, pro-active work; and
 - Counter-fraud action plan - an update on progress made against the action plan

National Fraud Initiative

4. The Council participates every two years in the compulsory NFI exercise. Data matching reports were generated from the exercise, comparing Council data to data sources such as the Driver & Vehicle Licensing Agency (DVLA), mortality data, and the Department for Work & Pensions (DWP). The outcomes for 2020-22 with a comparison to the 2018-20 outcomes are shown below in **Table 1**. The outcomes and reasons for the matches have remained the same as reported in the Annual Fraud Report presented to Governance and Ethics committee in July 2022.

Table 1 – Headline Categories of Potential Fraud/Error - 2018-20 & 2020-22

Category	2018-20	2020-22
Pension Overpayments (Deceased)	£83,028	No outcomes yet to report. 160 from 870 (17%) matches checked.

Category	2018-20	2020-22
Personal budgets	£2,049	Not included in the latest matching exercise due to NFI GDPR issues.
Trade Creditors	£0	£81,640 (See paragraph 6, below)
Payments to Private Care Homes for Deceased Persons	£6,409	Not included in the latest matching exercise due to NFI GDPR issues.
Total	£91,486	£81,640
Other significant estimated results		
Blue Badges cancelled or withdrawn (no's)	576 cases	480 cases - with a potential value of: £276,000
Concessionary Travel Passes Cancelled (no's)	115 cases	1839 cases With a potential value of: £44,136
Theoretical estimates based on average value of cases above (not previously estimated in this way before)	691 cases	Total of 2319 cases with a potential value of: £320,136

5. The table above brings to an end the 2020-22 NFI exercise with the figures in the table and confirms the final outputs for the year which is consistent with those reported in the annual report in July. Work has now commenced to submit the data required for the next exercise for 2022-23. The first outputs from these matches are not due until January 2023 and we will provide an update on the value of matches in the next Annual Fraud Report in July 2023.

Counter-fraud E-learning and Other Activities

6. As identified in the previous progress report, the take-up of training had declined. In response to this, we have undertaken a re-refresh and re-launch of the e-learning materials, and this was again promoted to Team Managers and staff through Team Talk articles as part of International Fraud Awareness Week. This ran from 13 – 19 November 2022 and was publicised on the council's intranet from the end of October till the end of November. We have monitored the completion of the training and since the relaunch, 299 staff have now undertaken the training.
7. As reported in our Annual Fraud Report in July, we had an action to carry out a piece of work to analyse previous fraud cases and identify any key control weaknesses. This work has now concluded, and a draft report has been issued. Recommendations have been made in relation to direct payments, care provider engagements and claims processing, purchase cards, raising of cheques and segregation of duties in schools to strengthen the councils counter-fraud arrangements.
8. The Risk and Insurance Team remain vigilant to potentially fraudulent claims and continue to undertake pro-active detection work, including using the fraud checklist to assist in the identification of fraudulent claims. No fraudulent claims were identified during financial year 2021/22, although the team have been active in the successful defence of claims made against the council and generated estimated savings of £2.5m during 2021/22 through such work. A further update on the current financial year will be provided in the next Annual Fraud Report.

9. Internal Audit continues to be involved in fraud investigation activities and are currently involved in three live cases. The developments and outcomes continue to be reported to the Chairman of this committee through regular updates with the Interim Chief Internal Auditor and summarised to all members in the Annual Fraud Report.
10. Whilst attempts to commit fraud continue to occur, we do have measures in place to detect and address these occurrences. Staff in the Business Service Centre (BSC) are vigilant to supplier mandate frauds, and we are still actively engaged with reporting these cases to Action Fraud. We will continue to report our findings and recommendations to management in relation to recommended redress and /or strengthening of the control environment.
11. As part of our current termly counter-fraud plan, work is underway to gain assurance over the robustness of controls in relation to mandate fraud, both for the Council and Local Authority maintained Schools.

Fighting Fraud and Corruption Locally (FFCL) Strategy and Checklist

12. FFCL 2020 is the latest national strategy developed jointly by central government and Cifas (a not-for-profit fraud prevention membership organisation). It is aimed at providing a coordinated approach to tackling fraud locally.
13. The national strategy contained a recommendation for organisations to consider their options in relation to providing counter-fraud coverage and provided a self-assessment checklist for completion. Internal Audit previously completed the self-assessment for the Council, and the outcome was presented to Members.
14. In line with the counter fraud action plan, we have reviewed progress against the counter fraud checklist contained within FFCL 2020. This was previously reported as an appendix to the report. We are still committed to look at this and work continues within the team to address the questions raised. Our work includes:
 - Providing regular reports on fraud risks to the Chairman of Governance and Ethics Committee
 - Monitoring compliance with standards of conduct across the local authority
 - Reviewing the Registers of Interest for Members and staff.
 - Using data analytical techniques to identify fraudulent activity
15. We have also updated the Counter Fraud Risk Assessment for 2022 to capture FFCL emerging issues, along with emerging Covid19 related and cost of living crisis frauds that have surfaced through our connections with national fraud networks (see further details below). The risk assessment identifies high priority areas for the consideration of pro-active counter-fraud work. High risks continue to include procurement and mandate fraud, adult social care abuse of payments, blue badge misuse, pension fund fraud and cyber-crime.
16. Nationally, increased numbers of people have also been recorded to the enhanced internal fraud database maintained by Cifas. This includes increased numbers of people falsely applying for jobs, providing fake employment details and concealing adverse employment history to gain employment. We have confirmed that the Business Services Centre (BSC) have robust measures in place ensuring that appropriate pre-employment checks are

undertaken when a new starter is employed, and they are also currently exploring options with regards to the Cifas database to see if it can further enhance counter-fraud controls.

17. The completion of right to work checks are a statutory obligation and an essential part of the Authority's onboarding process. No new starters are setup on payroll unless a right to work in the UK check has been successfully completed. The BSC has recently introduced an online system for Digital Identity Verification Process (DIVP) which removes the need for managers to arrange to collect the necessary evidence from the candidate. DIVP will enable candidates who hold a current UK or Irish passport to use a new online process to submit and confirm their right to work in the UK. The recruitment team will now complete these identity checks on behalf of managers in most cases. This will also extend to DBS checks shortly.
18. In the past year our work included post-payment assurance, which incorporated the checking of emergency and non-routine payments during the pandemic. Work has already been undertaken by Internal Audit to test for potentially fraudulent activity that has occurred in relation to such payments. These pieces of work continue to be incorporated into our termly planning, and key findings will be shared with Members.
19. It remains a key area of focus for the Internal Audit team to support the Council through the provision of timely advice and consultancy on appropriate counter-fraud measures and internal control. Recent examples have included advice on the Household Support Fund and the Homes for the Ukraine Fund. Outcomes from this work will continue to be reported to Members as part of our termly updates.

Counter Fraud Networks and National Picture

20. We continue to disseminate any alerts received from other bodies such as Cifas, National Anti-Fraud Network (NAFN) and the Midland Counties Counter-Fraud Group (MCCFG). The MCCFG Knowledge Hub continues to be used as a forum to raise questions and share knowledge of potentially fraudulent activity or issues that have arisen at other local authorities to inform our risk assessment.
21. Recent activity included a notification from NAFN and NFIB (City of London Specialist Operations) regarding a County-Wide attempted mandate fraud where fraudsters posed as a key Council supplier which had multi-million-pound contracts with local Councils. In addition, fraud alerts are disseminated by Trading Standards through their 'email-me' newsletter which goes to over 17,000 scam alert subscribers. This includes a recent new strand of fraud concerning the Omicron variant of Covid-19 where fraudsters circulated posts on social media purporting to be from the NHS. In this instance, Trading Standards also sent out messages on social media in relation to this scam. Latest statistics suggest that overall reporting of email and social media hacking is the most reported type of fraud currently, representing 43.1% of total reports.
22. Education is one of the most highly reported sectors of this type of fraud and as part of a piece of work on fraud root cause analysis, we highlighted several fraud risks related to email hacking. We have disseminated counter-fraud information to school head teachers to raise awareness of these issues.

23. Previously Nottinghamshire County Council took part in the annual Chartered Institute of Public Finance and Accountancy (CIPFA) Fraud and Corruption Tracker (CFACT) survey in 2020. The survey gives a national picture of fraud, bribery and corruption across UK local authorities and the actions being taken to prevent it. It aims to:

- help organisations understand where fraud losses could be occurring
- provide a guide to the value of detected and prevented fraud loss
- help senior leaders understand the value of counter-fraud activity
- assist operational staff to develop pro-active, counter-fraud plans

24. The results of this survey were presented to Members in July 2022 as part of the Annual Fraud report, but no further surveys have taken place. Once the survey is resurrected, the Council will continue to support its completion and report findings back to the Governance and Ethics Committee through the Annual Fraud Report.

Counter Fraud Action Plan Progress

25. We have reviewed the implementation of actions within the Counter-Fraud Action Plan which was reported to the Governance and Ethics Committee in July 2022. The table below is an update on progress for each of the outstanding actions. All previously completed actions have been removed from the current action plan.

Action	Timescale
Pro-active work with the Travel & Transport team to respond to the threat of Blue Badge and Concessionary Travel Fraud, including an audit of the notification process (Tell Us Once) and the hot-listing system once established.	July 2023
Review progress with actions from the FFCL self-assessment and address outstanding actions.	Reviewed November 2022 and will continue
The Business Service Centre to work with Internal Audit to develop additional in-house options to identify duplicate payments using Excel and IDEA Audit software.	September 2023
A piece of work has been undertaken to identify the root-cause of past fraud cases and identify any key control risks to enhance further learning.	Completed
Review internal and external controls in relation to preventing mandate fraud.	In progress due to report in March 2023

26. The Council's Counter-Fraud & Counter-Corruption Strategy and Fraud Response Plan were reviewed and updated in May 2022 and the latest versions are available on the intranet. A further update will be carried out in 2023 as part of the annual report.

Other Options Considered

27. The Audit Section is working to the Public Sector Internal Audit Standards and the contents of the Counter Fraud Action Plan. This report follows the requirements of the Standards to undertake a risk-based approach to counter fraud work and report progress and outcomes of such work. No other option was considered.

Reason for Recommendation

28. To report the progress made by the Interim Chief Internal Auditor – in undertaking counter fraud work.

Statutory and Policy Implications

29. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Crime and disorder

30. The Council's Counter-Fraud Policy provides for a zero-tolerance approach to fraud and corruption. The Fraud Response Plan provides for all suspected cases being considered for referral to the Police for investigation.

Human Resources implications

31. Under the zero-tolerance approach in the Council's Counter-Fraud Policy, all suspected cases involving members of the Council's staff are investigated and consideration given to disciplinary proceedings.

Financial Implications

32. Any money lost to fraud is money that cannot be spent delivering critical public services to the citizens of Nottinghamshire. The Annual Fraud Report for 2021/22 was presented to the Governance & Ethics Committee in July 2022 and identified that the value of detected or prevented fraud in that year amounted to approximately £671,000.

RECOMMENDATION

1) Members note the contents of the report.

Nigel Stevenson

Service Director for Finance, Infrastructure & Improvement

For any enquiries about this report please contact:

Simon Lacey

Interim Chief Internal Auditor

Constitutional Comments (LW 30/11/2022)

33. Governance and Ethics Committee is the appropriate body to consider the content of the report.

Financial Comments (SES 30/11/2022)

34. There are no specific financial implications arising directly from the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All

4 January 2023**Agenda Item: 7****REPORT OF SERVICE DIRECTOR – CUSTOMERS GOVERNANCE AND
EMPLOYEES AND SENIOR RESPONSIBLE OFFICER FOR RIPA****REGULATION OF INVESTIGATORY POWERS ACT 2000 – ANNUAL
REPORT****Purpose of the Report**

To report to the Committee:

- a. Activity by the Council under the Regulation of Investigatory Powers Act 2000 (RIPA) for the period since the last update to Committee on 27 January 2022.
- b. Activity by the National Anti-Fraud Network (NAFN) on behalf of the Council under the Investigatory Powers Act 2016 (IPA) in respect of Communications data.
- c. An update on mandatory training for Officers.
- d. An update following the three-yearly Investigatory Powers Commissioner's Office inspection in August 2022.

Information**Background**

2. The Regulation of Investigatory Powers Act 2000 (RIPA) gives the Council the power to undertake covert surveillance in relation to certain investigations. Since 2017 the Investigatory Powers Commissioner's Office (IPCO) has been responsible for the oversight of the use of RIPA.
3. There is a strict authorisation process set out in the legislation; applications are considered by senior officers before final approval is given by the Magistrates Court. The Council is required to submit an annual statistical return to the IPCO on the number of authorisations made and is subject to periodic inspections.
4. The Council is also able to obtain certain communications data (i.e. data about electronic communications) through the National Anti-Fraud Network (NAFN), an expert provider accredited by the IPCO and the Home Office. This process is carried out in accordance with the Investigatory Powers Act 2016 (IPA). NAFN submits the annual statistical return to the IPCO on the number of submissions made by it on behalf of the Council.
5. A programme of monitoring and review is set out in the Council's RIPA policy and guidance. Since 2017 annual reports are made to the Governance and Ethics

Committee. Throughout the year quarterly reports of Trading Standards activity, which includes use of RIPA, are made to the Cabinet Member for Communities.

6. This is the fifth oversight report to Governance and Ethics Committee since November 2017. This report covers January 2022 to December 2022.

Annual Activity January 2022 to December 2022

7. There have been no new RIPA applications or authorisations during this period.
8. NAFN has confirmed that it has made no new applications for communication data access for this period on behalf of the Council.
9. Training and awareness raising activity has been undertaken as follows:
 - a. Refresher RIPA training was undertaken by the Council's Senior Responsible Officer (SRO) for RIPA (the Service Director for Customers, Governance and Employees), the Service Director for Place and Communities and the Group Manager for Trading Standards and Communities in March and July 2022. The recently appointed Service Director for Help, Protection and Care (formerly Service Director for Youth, Families and Social Work) will receive training in early 2023.
 - b. Trading Standards Officers accessed EM Law Share webinars in relation to RIPA in January and March 2022 and they also participated in interactive training with Nottinghamshire Police with regards to RIPA authorisation in relation to social media communications on 2 December 2022. They are also in the process of securing additional external training for 2023.
 - c. Awareness raising for employees and staff will be undertaken imminently via Yammer and an article for publication on Team Talk will be submitted in Spring 2023.

IPCO Inspection

10. On 5 August 2022 the Council was inspected by the IPCO. This was a video and desktop inspection and was facilitated by the Council's Senior Responsible Officer. The previous inspection was undertaken in November 2019. In summary, the Inspector noted that since the last inspection the suggested improvements had been made, to what were already good compliance standards. The Inspector was satisfied that the Council's RIPA policy is well formed and regularly reviewed and that training and refresher training for relevant Officers is an established feature within the Council. A suggested amendment to the existing policy related to retention periods and ensuring that these are compliant with the safeguarding chapters of the RIPA Codes of Practice, and in response to this work is currently in progress with the Information Governance Team with regards to ensuring uniformity within the Council's Corporate Retention Schedule. This will in turn be added to the existing policy and guidance. In conclusion, the Inspector commented that, "Your authority has been found to be in a good place" and that the information provided in the inspection demonstrated a level of compliance that removed the requirement for a physical inspection.
11. The Council will submit the annual statistical return to IPCO for the 2022 period by 31 January 2023.

Other Options Considered

12. None. Activity under the RIPA Policy requires reporting to Committee.

Reason/s for Recommendation/s

13. To ensure the Council is able to exercise its statutory powers in relation to RIPA (and for NAFN to make the relevant applications on its behalf in respect of communications data in relation to IPA) where it is necessary and proportionate to do so.

Statutory and Policy Implications

14. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Where appropriate consultation has been undertaken and advice sought on these issues as required

Crime and Disorder Implications

15. Use of surveillance can assist the Council in relation to the reduction of crime in Nottinghamshire.

Human Rights Implications

16. Every authorisation for surveillance requires consideration of human rights including the right to privacy and the right to a fair trial. The rights of people under surveillance need to be balanced against public safety and the prevention of crime. Every authorisation, therefore, has to clearly set out why the surveillance is considered necessary and proportionate in the circumstances.

RECOMMENDATION/S

- 1) That Committee notes the content of the report regarding activity over the past 12 month period.

Marjorie Toward

Service Director, Customers Governance and Employees and Senior Responsible Officer for RIPA

For any enquiries about this report please contact:

Emma Hunter, Legal Services: emma.hunter@nottscc.gov.uk

Constitutional Comments (HD- 6/12/2022)

17. The report falls within the remit of Governance and Ethics Committee as the body responsible for oversight of the Council's broad governance framework of which the

RIPA arrangements form an important element. The Council is required to have procedures and policies in place to meet the legal requirements of the RIPA legislation and this report sets out relevant activity in respect of those matters within the past 12 month period.

Financial Comments (SES 14/12/2022)

18. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Electoral Division(s) and Member(s) Affected

All

4 January 2023**Agenda Item: 8****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND
EMPLOYEES****WORK PROGRAMME****Purpose of the Report**

1. To review the Committee's work programme for 2022-23.

Information

2. The County Council requires each committee to maintain a work programme. The work programme will assist the management of the Committee's agenda, the scheduling of the Committee's business and forward planning. The work programme will be updated and reviewed at each pre-agenda meeting and Committee meeting. Any member of the Committee is able to suggest items for possible inclusion.
3. The attached work programme includes items which can be anticipated at the present time.

Other Options Considered

4. None

Reason/s for Recommendation/s

5. To assist the Committee in preparing and managing its work programme.

Statutory and Policy Implications

6. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

- 1) That Committee considers whether any changes are required to the work programme.

Marjorie Toward

Service Director, Customers, Governance and Employees

For any enquiries about this report please contact:

Kate Morris, Democratic Services Officer

Tel. 0115 804 4530

E-mail: kate.morris@nottsc.gov.uk

Constitutional Comments (EH)

7. The Committee has authority to consider the matters set out in this report by virtue of its terms of reference.

Financial Comments (NS)

8. There are no financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All

GOVERNANCE & ETHICS COMMITTEE – WORK PROGRAMME (as at 8 December 2022)

<u>Report Title</u>	<u>Brief Summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
22 February 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Annual Audit Findings Report 2021/22		Nigel Stevenson	Glen Bicknell
Corporate Risk Management Update	To consider the updated corporate risk register and the Council's arrangements for corporate risk management	Nigel Stevenson	Keith Palframan
Whistleblowing update	To update the committee on whistleblowing activity during 2022	Marjorie Toward	Heather Dickinson
Whistleblowing Policy Review	To consider the outcome of the review	Marjorie Toward	Heather Dickinson/ Catherine Haywood
Attendance at Key National Conferences	To update approvals for attendance at key national conferences	Marjorie Toward	Keith Ford
Update on Communication improvement's	To update the committee on the communication improvements raised via previous considerations of Ombudsman Report	Melanie Williams	Nicola Peace
22 March 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Annual Audit Report 2021/22	To consider the external auditor's annual audit report for 2021/22	Nigel Stevenson	Glen Bicknell
Corporate Governance Update	To receive an update on progress against the Annual Governance Statement action plan for 2022/23	Nigel Stevenson	Simon Lacey
Internal Audit Term 2 (2022-23) Report and Term 1 Plan 2023-24	To review the outcomes of Internal Audit's recent work and consider proposals for planned coverage in the next term	Nigel Stevenson	Simon Lacey
Councillor Code of Conduct Review	To consider the findings of the working group	Marjorie Toward	Heather Dickinson
3 May 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston

Governance and Ethics Committee Annual Report	To consider the draft annual report	Nigel Stevenson	Simon Lacey
Statement of Accounts 2022-23 – Accounting Policies	To consider the draft annual report and recommend to full council for consideration	Nigel Stevenson	Glen Bicknell
Informing the risk assessment – 2022-23 Statement of Accounts	To consider the risk assessment	Nigel Stevenson	Glen Bicknell
Corporate Risk Management 6-monthly update	To consider the updated corporate risk register and developments in the Council’s approach to risk management	Nigel Stevenson	Simon Lacey
Follow-up of Internal Audit recommendations – 6-monthly update	To consider an update on progress with implementing agreed actions from Internal Audit reports	Nigel Stevenson	Simon Lacey
14 June 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
External Audit Plan 2022-23	To consider the External Audit Plan for the forthcoming audit	Nigel Stevenson	Glen Bicknell
Assurance Mapping Annual Report 2022-23	To review the assurance provided from the map in 2022/23 and consider coverage for 2023/24	Nigel Stevenson	Simon Lacey
Internal Auditor’s Annual Report	To consider the Head of Internal Audit’s annual opinion of the arrangements for governance, risk management and control	Nigel Stevenson	Simon Lacey
Update on the use of the Councillor’s Divisional Fund	To consider the annual update	Marjorie Toward	Keith Ford
19 July 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Annual Fraud Report 2020-21	To review the incidence of fraud over the year and an update on risks and mitigations	Nigel Stevenson	Simon Lacey
Internal Audit Term 3 progress 2022/23 and Term 2 plan 2023/24	To consider proposed audit coverage for Term 2	Nigel Stevenson	Simon Lacey