Nottinghamshire County Council

Governance and Ethics Committee

Wednesday, 04 March 2020 at 10:30

County Hall, **West Bridgford, Nottingham, NG2 7QP**

AGENDA

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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)	
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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 Keith Ford (Tel. 0115 977 2590) 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

Nottinghamshire County Council

minutes

Meeting	GOVERNANCE AND ETHICS COMMITTEE
Date	Wednesday 22 January 2020 (commencing at 10.30 am)

membership
Persons absent are marked with `A'

COUNCILLORS

Bruce Laughton (Chairman)
Andy Sissons (Vice-Chairman)

Nicki Brooks
Steve Carr
Kate Foale
John Handley
Errol Henry JP
Rachel Madden **A**
Phil Rostance **A**
Keith Walker
Jonathan Wheeler **A**

SUBSTITUTE MEMBERS

Richard Butler for Phil Rostance

Steve Vickers for Jonathan Wheeler

OTHER COUNTY COUNCILLORS IN ATTENDANCE

John Longdon

OFFICERS IN ATTENDANCE

Tracey Montgomery Malcom Potter	Adult Social Care and Public Health Department
Adam Crevald Heather Dickinson Keith Ford Angela Howat Simon Lacey Marie Rowney Simon Smith Marjorie Toward Nigel Stevenson	Chief Executive's Department
Jon Hawketts Claire Morgan	Children and Young People's Department
James Silveston	Place Department

1. MINUTES

The Minutes of the last meeting held on 22 January 2020, having been previously circulated, were confirmed and signed by the Chairman.

2. APOLOGIES FOR ABSENCE

The following apologies for absence were reported:-

Phil Rostance – on other Nottinghamshire County Council business

Jonathan Wheeler – other reasons.

3. DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

None

4. UPDATE ON LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN (LGSCO) DECISIONS OCTOBER -DECEMBER 2019

Heather Dickinson, Group Manager, Legal, Democratic and Complaints, introduced the report which detailed the LGSCO decisions received in this latest monitoring period.

Tracey Montgomery, Team Manager, Quality and Market Management, responded to Members' queries which sought assurances that the lessons learnt from the complaint about care providers had been shared to help avoid such communication problems with users occurring in the future.

RESOLVED: 2020/001

That no further actions were required in relation to the issues contained within the report.

5. REVISED CORPORATE COMPLAINTS PROCEDURE

Marie Rowney, Group Manager – Customer Service, introduced the report which sought approval for a revised corporate complaints process following a review recommended by the Local Government and Social Care Ombudsman.

In response to Members' queries, it was agreed to amend the procedure to ensure that all County Councillors were sent quarterly updates on any complaints within their electoral divisions.

RESOLVED: 2020/002

That the revised corporate complaints procedure, subject to the amendment to include quarterly updates to County Councillors on any complaints within their electoral divisions, be approved.

6. UPDATE ON THE NATIONAL AUDIT OFFICE CYBER SECURITY AND INFORMATION RISK GUIDANCE FOR AUDIT COMMITTEES

Adam Crevald, Group Manager – Customer and Service Design, introduced the report which updated the Committee on this guidance.

RESOLVED: 2020/003

That a further update be submitted to the Committee in six months' time.

7. FOLLOW-UP OF INTERNAL AUDIT RECOMMENDATIONS

Rob Disney, Group Manager Assurance, introduced the report which updated the Committee on progress with the implementation of agreed management actions arising from Internal Audit recommendations.

Angela Howat, Senior Practitioner - Health and Safety, Jon Hawketts, Group Manager – Placements and Commissioning and Malcolm Potter, Commissioning Officer, responded to Members' queries around progress with the recommendations in their areas of work.

During discussions, Members highlighted the discussions at Policy Committee on 15 January 2020 about the possibility of internal audit looking into the lack of take-up of exceptional payments for school clothing and footwear. Discussions were ongoing about this proposal. The Chairman underlined that other suggestions from Members about potential issues to audit were welcomed.

RESOLVED: 2020/004

That no further and more detailed updates on progress on the areas covered in the report were required at this point.

8. UPDATE ON USE OF RESOURCES BY COUNCILLORS

Keith Ford, Team Manager, Democratic Services, introduced the report which summarised the use of resources by Councillors and their support staff during the period April -September 2019 and provided an update on actions previously agreed by the Committee.

RESOLVED: 2020/005

1) That no further information or actions were required in relation to the actions previously agreed by the Committee.

2) That no further information or actions were required in relation to the use of resources within the April-September 2019 period.

9. WORK PROGRAMME

RESOLVED: 2020/006

That the work programme be agreed, with no further changes required.

The meeting closed at 11.20 am.

CHAIRMAN

Nottinghamshire County Council

Report to Governance and Ethics Committee

4 March 2020

Agenda Item: 4

REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE AND EMPLOYEES

LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS NOVEMBER TO DECEMBER 2019

Purpose of the Report

1. To inform the Committee about Local Government & Social Care Ombudsman's (LGSCO) decisions relating to the Council since the last report to Committee on 22nd January 2020.

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 up to 20th January 2020.

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 seven decisions relating to the actions of this Council have been made by the Ombudsman in this period. Appendix A is a summary table of the decisions made in each case, for ease of reference and Appendix B to this report provides the details of each decision.

6. Following initial enquires into one complaint about the Council's decision to refuse a Blue Car Badge application, the Ombudsman decided not to continue with any further investigation as there was no evidence of fault on the Council's part. (Appendix B, page 35).

7. Full investigations were undertaken into six complaints. Appendix A provides a summary of the outcome of each investigation. Where fault was found, the table shows the reasons for the failures and the recommendations made. Where a financial recommendation was made,

the amounts paid, reimbursed or waivered are listed separately. (Reference and page numbers refer to the information in Appendix B).

8. During the period the Ombudsman has issued a Public Report. The report is the first document in Appendix B (P1-13). Members will note that the Council received the decision on 6th November 2019, however the Ombudsman confirmed that they were bound by the pre-election period rules which meant they were unable to publish the report at that time or give a firm date until after the outcome of the election. As the report was not published until the 22nd January, it was not included in the previous report to this Committee as the Council was under an embargo regarding its publication until that date.

9. The investigation concerned an adults' social care complaint from the parents of an adult service user. They complained that the Council had reduced their son's personal budget without a full assessment and consideration of his needs and that the decisions made by the department were financially motivated. Several failings were found as outlined on page 10 of the report, paragraphs 60-75. The department accepted the investigator's findings and recommendations, and these are in the process of being implemented as summarised in Appendix A page 1. In addition to letters of apology, financial remedies have been offered. A payment of £1000 was made to the service user for distress and the failure to assess his needs and provide adequate support. A further £1000 payment was sent to the complainants to acknowledge the Council's failure to provide allocated respite funds. In addition, £2,050.62 has been reimbursed to account for the top-up payments made towards the service user's care. A total of £4,050.62 was paid from the adult social care budget as financial remedies. The Council was also required to publicise the report in the local press and make it available for inspection.

10. Two further adult social care investigations found fault in both cases. One complaint related to the process followed by the Council to seek repayment of a direct payment from a service user. The failures identified were that the department had not carried out regular annual care reviews between 2012-2016 nor raised any concerns with the complainant about her management of the direct payment during this period. The adult social care department accepted the findings and recommendations and after further consideration of these agreed to apply a waiver to the full outstanding debt of £52,343.67.

11. The second complaint concerned the review of a service user's care and support plan, how the Council calculated the complainant's disability related expenditure and the amount he was being asked to contribute towards his care. The investigator found some fault based on the lack of detailed recording of contemporaneous records by the worker about the discussions, explanation and advice given during the contact. No fault was found in the Council's decision to charge the service user for his support package or to refuse to offer any further waivers to his contribution. (Ref:18011349, page 37)

12. No fault was found in two adult social care complaints. One case was a joint investigation with the Parliamentary and Health Service Ombudsman about the care and treatment provided to a service user with mental health problems. (Ref: 19006727 page 21). The second complaint was about the outcome of a service user's financial assessment. (Ref: 19003401, page 46).

13. One corporate complaint investigation involved the process followed by the independent school admission appeal panel. Fault was found in that the appeal panel did not provide sufficient reasons for its decision to refuse the appeal. The Council accepted the recommendation to arrange a fresh appeal. (Ref: 19006744, page 14)

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. Appropriate consultation has been undertaken and advice sought on these issues as required.

Data Protection and Information Governance

15. The decisions attached are anonymised and will be publicly available on the Ombudsman's website.

Financial Implications

16. Paragraphs 10 and 11 show that a total of £4,050.62 was paid out in one case and a waiver of £52,343.67 was applied in a second case from the adult social care budget.

Implications for Service Users

17. All of 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

That members consider whether there are any actions they require in relation to the issues contained within the report.

Marjorie Toward
Monitoring Officer and Service Director – Customers, Governance and Employees

For any enquiries about this report please contact:

Laura Mulvany-Law, Temporary Team Manager – Complaints and Information Team

Constitutional Comments (HD (Standing))

Governance & 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 24/01/2020)

The financial implications are set out in paragraph 16 of 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

APPENDIX A

DECISIONS NOT TO INVESTIGATE FURTHER

DATE	LGO REF/ANNEX PAGE No.	PROCEDURE	COMPLAINT SUMMARY	REASON FOR DECISION
09.01.20	19 013 235 P. 35	Corporate	The customer considers his specific health needs means he is entitled do a Blue Car Badge which has been refused.	Insufficient evidence of fault by the Council.

FULL INVESTIGATIONS

DATE	LGO REF ANNEX PAGE No	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY
06.11.19	18 015 558 Pgs 1-13	ASCH& PP	The Council reduced his adult son's, personal budget without full assessment and consideration of his needs. Complainant believes decisions taken to reduce son's personal budget were financially motivated. Consequently, parents had to top-up his budget to enable him to continue receiving support from a specific care provider.	**Fault found** i)Failure to review service user's care for three years ii) Personal budget was reduced by Council because the cost of service was above set rates iii) Service user had to top up personal budget from state benefits causing hardship iv) Parents had to top up payments for long standing care service. Council should have ensured personal budget was sufficient to cover service. v) The suggested change of care provider seemed financially motivated as service user was told his budget may reduce further in the future without knowing what his needs may be. vi) Service user and parent were both found to be eligible for respite care funds but have not received the payments from	Corporate Director for Adult Social Care to write and apologise to service user and parents for failures. Review service user's assessment and produce care and support plan to detail how needs will be met. Financial remedies for stress and loss of respite services to service user and to his mother Complete a new financial assessment to include all disability related expenditure Review care's assessment and produce	£1000 each to service user and parents. £2,050.62 reimbursement of top up fees. **Total 4,050.62**

				the Council. This has impacted on them both. vii) Concern raised about social care support literature in circulation which is out of date.	a support plan setting out how needs will be met. By 5th February 2020 the Council should: • consider if other service users may have been affected by arbitrary upper limits on hourly rates, and take any necessary action to address this; • amend its procedure to ensure the Council does not set arbitrary limits of hourly rates; and • take steps to actively publicise its current literature to address concerns about the previous literature it has issued	
10.12.19	19 006 744 P.14	Corporate	Complaint about the process followed by the independent school admission appeal panel. The panel upheld an earlier decision by the Council not to give a place for a child at a nearby primary school.	**Fault** found in one part of the complaint. This was that the appeal panel did not provide satisfactory reasons for its decision, causing uncertainty. The investigator suggested the outcome of the appeal might otherwise have been different.	To remedy the injustice identified at paragraph 40 the Council has agreed that within 20 working days of a decision on this complaint it will arrange for the complainant to have a fresh appeal. This will be heard by a different panel and different appeal clerk. The Council will also contact the other unsuccessful appellant and offer them a fresh appeal.	
20.12.20	19 006 727 P.21	Joint Adult Social Care	The care and treatment provided to a service user with mental health	**No fault**	No recommendations	

		and Health Service Complaint	problems by Nottinghamshire County Council, Bassetlaw Clinical Commissioning Group and Nottinghamshire Healthcare NHS Foundation Trust.			
07.01.20	19 000 339 P.29	ASCH&PP	The Council unreasonably sought repayment of the direct payment. Complainant used the amount to pay husband to provide her care. Council also refused to meet complainant to discuss her concerns about how it had calculated the amount she needed to repay.	**Fault** Department only undertook one annual review and did not raise concerns about the service user's spending between 2012 and 2016. Policy and statutory guidance state annual reviews should take place. This meant the complainant did not have an opportunity to amend the way she managed her direct payments.	The Council should amend its calculation of the amount to be repaid to reflect the Council's acceptance that the complainant's husband provides 25 hours care per week which can be funded. The Council should write to the complainant to confirm the remaining amount to be recovered; • write to the complainant to confirm it is no longer intending to pursue recovery of the £21,768.26 it considers she has misused the account for; and • apologise for the faults identified in this statement.	The department agreed not to pursue recovery of £21,768.26 and the additional debt of £30,575.41. A waiver was applied for the full amount totalling **£52, 343.67**
17.01.20	18011349 P.37	ASCH&PP	The Council's review of the service user's care and support plan The amount it is asking him to pay.	**Fault** Lack of contemporaneous record following the assessment to explain why some aspects of support package were being removed and increase others.	The Council should: • offer the service user a further review of his care and support plan • Seek agreement with the complainant what his support needs are.	

			How the Council has sought to obtain information about the complainant's disability related expenditure.	**Fault** Assessor did not explain to service user what the review would cover before it began. Records did not show the department tried to reach an agreement with the service user about the level of support he needed, leading to a misunderstanding. There was no evidence found that the service user was advised to complete a financial form so the Council could consider his disability related expenditure. **No fault** in Council's decision to charge the service user for his support or refuse to offer a further waiver to his contribution.	• the Council should accept any information the complainant sends it in support of his request for DRE. If it agrees to allow increased DRE, I recommend it backdate this increased amount to January 2019 (except for any expenditure that began after that date).	
20.01.20		ASCH&PP	The way the Council completed spouse's financial assessment. The complainant considered they had paid too much towards the cost of their care.	**No fault**	No recommendations	

Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Nottinghamshire County Council (reference number: 18 015 558)

DATE 6 November 2019

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- apologise
- pay a financial remedy
- improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr Y	The complainant
Mr X	The complainant's father and representative
Mrs X	The complainant's mother

Report summary

Adult care services

Mr X complains the Council reduced his adult son, Mr Y's, personal budget without full assessment and consideration of his needs. Mr X believes decisions taken to reduce Mr Y's personal budget were financially motivated. Consequently, Mr Y had to top-up his budget to enable him to continue receiving support from a Care Provider.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

To remedy the injustice caused, we recommend the Council should within four weeks:

- provide Mr Y and Mr & Mrs X with an apology from the director of adult services for the failures set out in this report;
- review Mr Y's assessment and produce a care and support plan which reflects his needs over a seven-day period and explain in detail how these needs will be met, in consultation with Mr Y and Mr & Mrs X;
- make a symbolic payment of £1,000 to Mr Y to acknowledge his stress, worry and loss of respite service as a result of the Council's failure to assess his needs and provide adequate support;
- reimburse Mr & Mrs X all monies they have paid to top-up Mr Y's care;
- complete a new financial assessment and consider all relevant Disability Related Expenditure (DRE);
- make a symbolic payment of £1,000 to Mrs X to acknowledge the Council's failure to provide allocated respite funds;
- review Mrs X's carer's assessment and produce a support plan setting out how her needs will be met.

Within three months the Council should:

- consider if other service users may have been affected by the Council's upper limits on hourly rates and take any necessary action to address this;
- amend its procedure to ensure the Council does not set arbitrary limits of hourly rates; and
- take steps to actively publicise its current literature and address our concerns (see paragraph 75) about the previous literature it has issued.

The complaint

1. We will refer to the complainant as Mr Y, and his parents as Mr & Mrs X.

2. Mr Y has autism which means he needs support. He complains the Council has reduced his personal budget without full assessment and consideration of his needs.

Legal and administrative background

3. We investigate complaints about 'maladministration' and 'service failure'. In this report we 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. We 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)***

Social care

4. The Care Act 2014 introduced a requirement that local authorities should promote 'wellbeing' and signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'. The concept of meeting needs recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into. ***(Care and Support Statutory Guidance, Ch1)***

5. A council must carry out an assessment of any adult who seems to need care and support. It must also involve the individual and where appropriate their carer or any other person they might want involved. ***(Care Act 2014, section 9).*** Having identified eligible needs through a needs assessment, the council has a duty to meet those needs. ***(Care Act 2014, section 18)***

6. If a council decides a person is eligible for care, it must prepare a care and support plan. This must set out the needs identified in the assessment. It must say whether and to what extent, the needs meet the eligibility criteria. It must specify the needs the council intends to meet and how it intends to meet them. ***(Care Act 2014, ss 24 and 25)***

7. The care and support plan must set out a personal budget which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. ***(Care Act 2014, s 26)***

8. Where the council is meeting some needs, but not others, the care and support plan should clearly set out which needs it will meet and which ones it will not. It should explain this decision.

9. A person with eligible care needs can have a council arrange their care or, if they wish, they can arrange their own care using a direct payment. ***(Care Act 2014, s 31)***

Carers

10. The Care Act puts carers on an equal footing with those who have care needs. Councils have a duty to promote the wellbeing of carers and to prevent burn out and crisis. Wellbeing is defined in Section 1 of the Care Act 2014.

11. A council must consider whether to carry out a carer's assessment if it appears the carer has need for support. It must assess the carer's ability and willingness to continue in the caring role. It must also consider the results the carer wishes to

achieve in daily life and whether support could contribute to achieving those results. ***(Care Act 2014, s10)***

12. The Act says the local authority can meet the carer's needs by providing a service directly. In these cases, the carer must still receive a support plan which covers their needs and how they will be met. ***(Care Act 2014, s 25)***

13. The Council can also provide a carer's personal budget, which must be sufficient to enable the carer to continue to fulfil their caring role. The Council should consider the carer's wishes for their day-to-day life. The Council should try to agree the personal budget and its use during the planning process. ***(Care and Support Statutory Guidance 2014)***

How we considered this complaint

14. We reviewed Mr X's correspondence with the Council, Mr Y's care and support plan and associated documents and the Council's case notes.

15. We gave Mr and Mrs X and the Council a confidential draft of this report and invited their comments.

16. We have now produced this final report after considering the comments we received from all parties.

Background

17. Mr Y has autism. He lives at home with his parents who provide day to day support. For approximately 12 years he has received 13 hours weekly support from a private provider of day services and outreach for adults on the autistic spectrum or with learning disabilities. The Council funded the full hourly rate of £22 via a direct payment. Mr X says the support has been vital to Mr Y's wellbeing.

18. The Council's '*Snap Overview*' of 2010 records the reasons Mr Y needed support from a specialist agency. The assessor recorded Mr Y needed *"Asperger's specific agency with the expertise to support [Mr Y] …".* Mr & Mrs X had identified such an agency. The assessor recorded the Council did not have a contract with this agency and support could only be purchased via a direct payment. Mr Y transferred to direct payments. He was assessed as needing 13 hours support a week. The Council recorded the hourly cost to be £22 per hour and that the direct payment would cover the full cost.

19. The Council's '*Review of Community Care Assessment'* of September 2014 records that Mr Y was too anxious to meet with the assessor and all the information in the assessment was obtained from Mr & Mrs X. The assessor recorded all of Mr Y's support needs were met by *'unpaid care'* (Mr & Mrs X) and that *"he never left the house without being supported by someone".* Mr Y was receiving 13 hours support per week from the Care Provider and he was very focused on this support. The assessor recorded *"this is extremely important as without the continuity of familiar workers it is very unlikely that he would continue to engage with services".* The assessor recorded the hourly rate charged by the Care Provider was above that of the Council's usual rate, and that Mr Y should continue to receive the support for one year until another provider which could provide the same level of support could be found.

20. The assessor also noted Mrs X was suffering significant mental health problems due to the strain of her caring role.

21. The Council's commissioning panel met on 8 January 2015. It decided that "*Continuity of support is important for [Mr Y] and agreement from panel has been given for funding to continue for 12 months at their hourly rate of £22.00".*

What happened next

22. In 2017, Mr X contacted the Council for help with benefit application forms. Mr Y's benefit was changing from Disability Living Allowance to Personal Independence Payments (PIP). The Council provided the support requested but realised it had not completed a review of Mr Y's needs since 2015. The Council arranged to undertake a review.

23. A social worker visited Mr Y and Mr & Mrs X on 3 November 2017. Mr X says Mr Y was apprehensive and nervous about the review. He asked the social worker if he would lose services from the Care Provider. The social worker said she was not there to change anything, and Mr Y would not lose any service from the Care Provider. Mr Y was reassured by this. Mr X says the social worker made notes during the meeting but did not complete any *"official forms".*

24. Mr X says a couple of weeks later the social worker contacted them to seek permission to speak to the Care Provider.

25. The social worker completed the review paperwork. It says that, *"[Mr Y] struggles with changes and this can often affect his OCD* [obsessive compulsive disorder] *and anxieties.... [Mr Y] appears to want to progress within his life but due to his diagnosis's can find this extremely challenging. [Mr Y's] life is occupied by routines and structure and changes can cause his anxieties to heighten".* She recorded that most of Mr Y's needs in the community were met with support from the Care Provider. He *"attends a day service with [Care Provider] two days a week with 6.5 hours support for each day. [Mr Y] is developing his skills in cooking and socialising. These days provide respite to parents and allow them to pursue own goals and activities".*

26. The social worker recorded that the Council had failed to inform Mr Y and Mr & Mrs X of the Council's panel decision in 2015, that funding for the Care Provider at £22 per hour had been agreed for one year, "…*with the intention of planning a transition period over to another service to bring [Mr Y's] support hours back within the service rates….* [Mr Y] *has formed relationships with [Care Provider] and would potentially struggle to accept the change in services".*

27. The records show a discussion between the social worker and her manager about the costs of Mr Y's support. The manager said Mr Y could continue to receive support from the Care Provider, but he would have to contribute the difference between the Council's set rate and the hourly rate set by the Care Provider.

28. The social worker contacted the Care Provider on 27 November 2017 to discuss a reduction in the hourly rate. It replied on the 4 December 2017 agreeing to a reduced hourly rate of £18 per hour. This was not followed up with a formal written agreement.

29. The social worker arranged to visit the family again on 5 December 2017. Mr X says Mr Y was anxious. At the meeting, the social worker informed Mr Y the Council would only fund £15.12 per hour of the Care Provider's costs, but it would seek to renegotiate the hourly rate from £22 per hour to £18 per hour, and Mr Y would have to fund the difference between £15.12 and £18 per hour. Mr X says he reminded the social worker she had told Mr Y that nothing would change. Mr Y was upset and anxious and Mr X says this impacted on his wellbeing.

30. Mr X complained to the Council on 11 December 2017 saying Mr Y struggled with change and did not want a change of provider. He said the social worker had misled Mr Y at the review meeting by saying no changes to his support would be made.

31. The Council responded to Mr X's complaint in an undated letter. It apologised that Mr Y did not receive a copy of an assessment completed in 2015. It explained that personal budgets are generated from information gathered on needs assessments and the Council had to try to stay within the set budget parameters. In Mr Y's case, his personal budget was £100 per week "…*more than the actual cost of the package".* It added that Mr Y could continue to receive the same service, but he would need to top-up the shortfall between the Council's set rate and that of the Care Provider.

32. Mr Y's state benefits were not enough to cover the shortfall. Paying the shortfall left him with no money, so Mr & Mrs X contributed towards the cost. Mr X says they did so because they had little choice if Mr Y was to retain a service that was vital to his wellbeing.

33. Mr X met with a manager from social services on 24 January 2018. Following the meeting the manager wrote to Mr X to confirm Mr Y would be allocated a different social worker, a new support plan would be completed and a carers assessment of Mrs X would also be completed. Transition to a different Care Provider would take place over a one-year period, introducing new staff on a gradual basis. After one year the new Care Provider would take over completely. In the third year, Mr Y's budget may reduce further but *"this is dependent on what budget is generated and an increase in [Mr Y's] independent living skills".* Mr Y would be referred to psychology/psychiatry.

34. The social worker visited Mr & Mrs X again on 6 April 2018 to complete a care and support plan. Mr Y did not want to be present at the meeting. Mr & Mrs X said Mr Y did not agree to a change in Care Provider. They expressed their concern at the proposal saying his needs were met by the Care Provider and he had been settled for many years. They believed a move would be detrimental to him, so they wanted to retain his current service and agreed to cover the shortfall. The social worker told Mr & Mrs X *"that changes to packages are required due to the reduction in funding from central government*, and recorded *"Discussion ensued about the potential of reducing the level of service provided in the future should [Mr Y] become more independent and this being a local authority initiative for all people receiving a service with a change to use of core providers to enable equality in services for all."*

35. The care and support plan records, *"[Mr Y] is not aware that there is a potential in the future he may have to manage on less hours weekly support".* In response to our enquiries the Council said this was to manage their expectations in the future *"and if this should happen, as a result of reviews, this would not be a surprise to the family".*

36. The Council allocated Mr Y an indicative personal budget of £238 per week. Mr Y would receive 13 hours support per week, at a cost of £18 per hour, a total of £234. The Council agreed to pay £15 per hour, a total of £196.50 per week. It said Mr Y would need to pay the shortfall of £37.54.

37. On 29 June 2018 Mr Y received a letter from the Council's direct payments team to say his direct payment had been decreased with effect from 23 April 2018, to the new amount of £196.56 per week, which was £89.44 per week less than he

previously received. The Council said that because the decrease had been backdated there had been an overpayment of £1162.72 for the period 23 April 2018 to 23 July 2018, which would be recouped from the next two direct payments at £786.24 per month. Mr X says this left Mr Y with no direct payments to pay for support from the Care Provider in July & August 2018.

38. Mr X sent an email to the Council's direct payments team on 30 June 2018 to complain. He received a reply on 2 July 2018 saying the social worker had instructed it to make the changes to Mr Y's direct payments.

39. Mr X sent an email to the Council on 30 June 2018 to query the changes and followed it up with a more detailed complaint on 6 July 2018. He reiterated the points raised in his earlier complaint and said Mr Y would be without any direct payments for two months and would not be able to pay the Care Provider at all. He said the Council had not shown any regard for Mr Y's wellbeing. He also said Mr Y was still paying the Care Provider £22 per hour as the reduction had not been formalised. He added that Mrs X had not received a copy of her carer's assessment, despite him chasing the Council on two previous occasions.

40. The Care Provider continued to charge Mr Y £22 per hour. Mr X contacted it on 2 July 2018. It told Mr X he had agreed with the Council to reduce the hourly rate to £18 per hour, but he had not received formal notification from the Council so continued to charge £22 per hour.

41. Mr X received a response from the Council on 22 August 2018. It said the Council contacted Mr X eight times between March and July 2018 to support its view that it had been supporting and communicating properly with him. Mr X says this correspondence was instigated by him chasing the Council for updates. The Council letter also said that:

'It seems to me there has been some confusion about decreases in [Mr Y's] direct payment which may have been avoided if this had of been confirmed to you in writing. I am sorry that this did not happen and for any distress caused to you and [Mr Y]. In view of this oversight, I have agreed to waiver the backdated decrease between 23 April 2018 and 23 June 2018...which amounts to £1162. The Council reiterated its position on the hourly rate it would pay to a provider: [Mr Y] *needs to pay is a top up amount because the County Council will only pay £15.61 per hour to a provider... Because [Mr Y] is using a provider who charges above the core rate, the difference per hour needs to be made up to the correct amount. This applies to any person who chooses to use a different provider whose charges are above other agencies and whose charges are not in line with the County Council agreed costs (core rate").*

42. The Council added that it had commissioned support from the Care Provider at £18 per hour, and it would ask officers from social services to confirm the arrangement with the Care Provider and notify the Council's finance team "*of my decision in respect of the recoup of charges. [Mr Y's] account will be adjusted to reflect this and I would ask for your patience whilst the financial team make the appropriate arrangements to make the adjustment which may take a few weeks to arrange".*

43. On 28 September 2018, the Council met with an employee from the Care Provider to discuss Mr Y's service and the hourly rate. The Council provided an unsigned copy of the Minutes of the meeting. The notes show the Care Provider said it did not believe the service was appropriate for Mr Y long term. All other service users had learning disabilities and did not have the ability to increase

independent skills and because of this Mr Y's skills had decreased. The Care Provider informed the Council the service had continued to charge Mr Y £22 per hour. After discussion, it agreed to charge the agreed rate of £18 per hour and refund Mr Y the extra money he had paid over 14 weeks (£728). The Council agreed it would pay half, "*as a last resort",* if Mr & Mrs X refused to pay petrol expenses to the Care Provider. Mr & Mrs X say they were not aware of this.

44. We asked for the Care Provider's comments. It told us that due to the Council's funding cuts some service users have lost some or all funding. In relation to Mr Y, it said "*Overall it seems to be working, as [Mr Y] is happy, but understandably the family, on a point of principle are (like many others) very unhappy that they now must contribute, out of the benefits received, when they did not before".* Contrary to the notes of its meeting with the Council in September 2018, there is no suggestion it believed the service is not suitable for Mr Y.

45. The Council wrote to Mr X on 3 October 2018 to say Mr Y would continue to receive 13 hours support per week from the Care Provider. It said it had renegotiated the hourly rate from £22 per hour to £18 per hour, and *"NNC core provider hourly rate is £15.61. Therefore, as previously discussed in other meetings, you would need to pay the difference in the hourly cost of this support".* The letter also says Mr Y would have to *"pay for mileage used when you are transported to activities… a contribution of 45p for every mile you are transported".* If Mr Y declined 'the offer' then the Council would agree a one-year transition to enable him to source an alternative Care Provider.

46. On 1 November 2018 the Council wrote to Mr Y to say following a consultation on charging for care services, it changed the way it calculated how much people paid for services. This meant that Mr Y's direct payment would be reduced to £178.13 from 12 November 2018.

47. The Council wrote to Mr & Mrs X again on 17 December 2018 to say it had not given service users sufficient notice of the changes before implementation. To put matters right it postponed the changes until April 2019, "*and only after proper assessments have been carried out individually… the changes will not happen at once and will be done between April and November 2019".* The Council apologised for any distress caused.

48. The Council said, from 12 November 2018 Mr Y's direct payment would be £202.93 per week and he would not be required to contribute towards his care.

49. On 25 February 2019 the Council wrote to Mr Y again to ask he 'check' a financial assessment form completed on 12 November 2018 and inform the Council of any changes. Mr Y needed to make contributions towards his care from 8 April 2019. The Council said it had "*a standard amount of £20.00 per week, for Disability Related Expenses".* It considered Mr Y's disability related costs and needed clarification from its legal department. Any allowed expenditure would be backdated to 12 November 2018.

50. The Council provided us with a copy of its '*Social Care changing leaflet'* This explains the changes the Council was making to *"implement the care act and balance the books…".* It explains citizens:

- *will receive social care if there is no other way of supporting you*
- *will be provided with social care support in the most cost effective way. This might mean that the Council will not wholly fund your preferred service…You will be expected to do as much as possible for yourself and to*

seek help and support from your family and friends before approaching the Council.

51. Following the issue of our draft report the Council says the *Social Care changing* literature provided to us was out of date and was no longer in use. It provided a copy of its current literature *'Supporting Adults'.* This literature is Care Act compliant. The Council did not say when the change was implemented.

Current situation

52. Mr Y's direct payment has been reduced from £1,144 per month to £786.24. In October 2018 the Care Provider agreed to reduce the hourly rate from £22 to £18 per hour. Mr & Mrs X say they '*had'* to agree to pay the difference between the Council's core hourly rate of £15.61 and the £18 per hour charged by the Care Provider. After this was agreed Mr & Mrs X say they were then told Mr Y had to pay mileage costs incurred by the Care Provider at 45p per mile from October 2018 which works out on average at £22 per week.

53. Since June 2018 the shortfall has been around £400 per month. Mr Y's state benefit (PIP) amounts to £342.40 per month, consequently he has a deficit, so Mr & Mrs X cover the shortfall, which Mr X says can vary because the direct payment has varied since June 2018. Mr X does not understand why.

54. Mr X says he attempted to contact the Council, but it has not engaged with him since he complained to us.

55. Mr & Mrs X say that in the same week they received our draft report they received a letter from the Council notifying them of an increase in Mr Y's contributions towards his care. They contacted the Council to say they disagree with the proposed increase and reiterated the disability related expenditure Mr Y incurs.

Carers Assessment

56. In 2015 the Council recorded Mrs X was experiencing stress because of her caring role and was prescribed anti-depressants. In April 2018 the Council completed a carers assessment which again recorded she was experiencing stress because of her caring role.

57. The assessment concluded Mrs X had eligible needs as a carer and that she *"is entitled to £150 to use for a carers break and also £1600 a year for respite for [Mr Y]".*

58. Mrs X did not receive a copy of the assessment, so Mr X contacted the social worker on 19 June 2018 and 25 June 2018. The social worker said the assessment had not been entered on the system due to other work taking priority and she would inform him when it had. To date Mrs X has not received a copy of the assessment or the allocated funds.

59. In July 2018 Mr X was diagnosed with a serious, lifelong illness. Mrs X provides the care and support he needs.

Analysis

60. It is not our role to decide if a person has social care needs, or if they are entitled to receive services from the Council. Our role is to establish if the Council assessed a person's needs properly and acted in accordance with the law.

61. In this case, the Council failed to do so. There are a number of failings by the Council in this complaint.

62. Prior to 2017 the Council had not reviewed Mr Ys care for three years. This is fault.

63. Everyone must have a personal budget regardless of how their care and support is commissioned. Mr Y purchased services via a direct payment from the Council.

64. In setting the amount of a direct payment (or the personal budget from which it is derived) the Council must ensure it is enough to buy services which will meet the person's assessed eligible needs.

65. The Care and support statutory guidance says, *"In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties… The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how an individual's needs should be met (but not whether those needs are met). However, the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes – doing so would not deliver an approach that is person-centred or compatible with public law principles".*

66. In Mr Y's case, the indicative budget set by the Council was sufficient, but it did not allocate this amount to Mr Y. It reduced the amount because the cost of Mr Y's service was above its set rates. This is fault and not in accordance with the Care Act or Statutory Guidance.

67. Councils must ensure people have enough money to cover their day-to-day living costs. This is known as the minimum income guarantee. If a person's weekly income is equal to or less than the minimum income guarantee, then they should not be charged. The current level is based on the means tested benefit plus a buffer of 25%. Mr Y had to top-up his personal budget from his state benefits, which were not enough to cover the shortfall. This left him with less than the minimum income guarantee and caused him financial hardship.

68. Even after Mr Y made these payments there was still a shortfall in what his care was costing him. Mr & Mrs X had little choice but to cover the cost of this shortfall. They should not have had to do so.

69. Mr Y had not expressed a preference for a more expensive service, it was a service he had received for many years, and the Council's own records acknowledge he would not have been able to cope with a sudden change of provider. The Council should have ensured Mr Y's budget was sufficient to cover the cost of the service he received.

70. The Council correctly points out, the Statutory Guidance allows it to consider the financial cost when deciding how much to pay to meet a person's eligible needs. Cost can be a relevant factor in deciding between suitable alternative options for meeting needs. However, that does not mean choosing the cheapest option. The Council can consider best value, but it cannot make decisions based only on financial considerations as it appears to have done in this case.

71. The Council says it wanted to transfer Mr Y to a cheaper service. However, it had not identified a suitable alternative. It is not acceptable for the Council to reduce support based on a supposed cheaper care provider that does not at present exist. It is not known whether any such care provider would meet Mr Y's needs, and even if it did, the Council identified that because of his disability, a change of care provider would need to be done gradually over a twelve-month period. The Council is aware that for Mr Y continuity is crucial because he is distressed by a

change of routine. The Council's approach appears to have been financially motivated and did not have sufficient regard to Mr Y's specific needs.

72. The Council added to Mr Y's distress by telling him his budget may reduce further in the future. This demonstrates the Council's focus on budgets and not Mr Y's wellbeing. The Council could not know what Mr Y's future needs would be. His needs would determine the budget, so it is not possible to say now whether Mr Y's budget would increase or decrease in the future.

73. The Council concluded Mr Y was eligible for respite care. Although the assessment is complete and a budget allocated, Mr Y has not received the funds. This is fault by the Council. Mr Y has missed services he is entitled to. This has also impacted on Mrs X.

74. Mrs X's caring role was and is having a negative impact on her health and wellbeing. She is taking anti-depressants as a result. The records show the Council has been aware of this since 2014. This was highlighted again during the review in 2017 and in the carers assessment completed in 2018, following which the Council allocated her a carers budget. She has not received it and because of the Council's failure Mrs X has missed out on services she was entitled to and which may have provided relief from her caring role.

75. We also have concerns about some of the content of the Council's social care support literature that it provided to us during our investigation. The Council has a duty to assess any person who appears to need care and support. It cannot negate its duty as it appears to have done by suggesting citizens seek help from family and friends ***before*** approaching the Council. Such a statement may deter citizens from approaching the Council for support to which they may be entitled. The literature also said, "*you will receive support if there is no other way of supporting you"*. This statement is misleading and contrary to the law. The Council has a duty to meet assessed eligible need. It cannot rely on carers/relatives providing unpaid care. It must determine the willingness and ability of any relatives/carers to provide such care. Such a statement may deter citizens from approaching the Council. The Council says this literature is out of date and no longer in use. However, copies of it may still be in circulation and its contents are so contrary to the provisions of the Care Act that citizens may be put off from approaching the Council for support.

Recommendations

76. Our guidance on remedies says a remedy needs to reflect all the circumstances including:

- the severity of the distress;
- the length of time involved;
- the number of people affected (for example, members of the complainant's family as well as the complainant); and
- whether the person affected is vulnerable and affected by distress more severely than most people.

77. To remedy the injustice caused, the Council should within four weeks of the date of this report:

- provide Mr Y, and Mr & Mrs X with an apology from a director of adult services for the failures set out above;

- review Mr Y's assessment and produce a care and support plan which reflects his needs over a seven-day period and explain in detail, how these needs will be met, in consultation with Mr Y and Mr & Mrs X;
- make a symbolic payment of £1,000 to Mr Y to acknowledge his stress and worry and loss of respite service as a result of the Council's failure to assess his needs and provide adequate support;
- reimburse Mr & Mrs X all monies they have paid to top-up Mr Y's care;
- complete a new financial assessment and consider all relevant DRE;
- make a symbolic payment of £1,000 to Mrs X to acknowledge the Council's failure to provide allocated respite funds;
- review Mrs X's carer's assessment and produce a support plan setting out how her needs will be met.

Within three months the Council should:

- consider if other service users may have been affected by arbitrary upper limits on hourly rates, and take any necessary action to address this;
- amend its procedure to ensure the Council does not set arbitrary limits of hourly rates; and
- take steps to actively publicise its current literature and address our concerns (see paragraph 75) about the previous literature it has issued.

78. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

Decision

79. We have found evidence of fault causing injustice and we have recommended a remedy for this.

10 December 2019

Complaint reference:
19 006 744

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr B complains there was fault in how an independent education admission appeal reached its decision on his child's appeal. We uphold the complaint, finding an appeal panel did not provide satisfactory reasons for its decision. This causes uncertainty as the outcome of the appeal might otherwise have been different. The Council has agreed to arrange a fresh appeal.

The complaint

1. I have called the complainant 'Mr B'. He complains there was fault in the decision of an independent education admission appeal. The panel upheld an earlier decision taken by the Council not to give a place for his child 'C' to attend a nearby primary school ('School X'). Mr C says there was fault because:

- the Council representative at the appeal used evidence not shared with parents before the hearing;
- the Council presented false information to the panel;
- the Council representative took an unnecessary adversarial approach at the appeal;
- the Panel did not properly scrutinise the case put forward by the Council; especially in considering the case that admitting extra pupils to the School would cause prejudice to the education of others;
- the Panel did not properly take account of his submissions; this included a statement provided from C's then Headteacher and information from School X's Headteacher;
- the Panel took an irrelevant line of questioning at appeal suggesting bias in its decision;
- the Panel's letter did not provide enough reasoning.

2. Mr B says this resulted in C's case not receiving a fair hearing at appeal. So, Mr B considers the Panel reached an unsound decision on appeal and but for this C would have received a place at School X. Mr B says he feels let down by the appeal procedure and the experience has caused stress and anxiety for him and his family, including C.

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 cannot question whether an independent school admissions appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. ***(Local Government Act 1974, section 34(3), 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. Before issuing this decision statement I considered:

- Mr B's written complaint to the Ombudsman and supporting information he provided. This included detailed submissions made in response to an earlier draft decision when we initially considered his complaint.
- Information provided by the Council in reply to our enquiries. These included details of the application made for C to join School X and the Council's refusal of a place. It included Mr B's submissions appealing the Council's decision and the written case the Council made to the appeal. It also included the Panel Clerk's notes of the appeal hearing and the discussions of the Panel on the merits of the appeal as well as its decision letter.
- Relevant law and guidance as referred to below.
- Comments provided by Mr B and the Council in response to two draft decision statements setting out my thinking about this complaint.

What I found

Relevant law and policy

6. Where parents apply for their child to change schools, a school admission authority must usually comply with their preference. But it can make exception where to do so "*would prejudice the provision of efficient education or the efficient use of resources*". **(School Standards and Framework Act 1998, section 86).**

7. So, when an admission authority receives such an application it should provide a place at the preferred school if there is a vacancy. If there is no vacancy at the school applied for the admission authority should write to the parent refusing the application and telling them of the right of appeal. It can place a child on the school waiting list if there is no vacancy.

8. If a parent appeals a decision not to provide a place, then any appeal must go to an independent appeal panel. They must follow law and statutory guidance which sets out how an appeal will be heard **(School Admissions Code 2014).**

9. The admission authority must provide to the panel clerk *"all relevant documents needed to conduct the hearing in a fair and transparent manner"*. This includes any explanation for why the authority considers admitting an extra child will cause prejudice. The clerk must then copy the admission authority's case to the appellant *"in reasonable time"* for the hearing.

10. The panel must consider whether:

- The school admission arrangements comply with the law.
- The admission authority properly applied the admission arrangements to the case.
- Whether admitting another child would prejudice the education of others.

11. The panel must uphold an appeal if it finds the child would have gained a place at the school but for a flaw in the admission arrangements or their application to the appellant's case. It must also uphold an appeal if it finds admitting more children would not cause prejudice and it can allow all appeals. If material new evidence comes to light during the questioning of the presenting officer, the clerk must ensure the panel considers what bearing that evidence may have on all appeals.

12. In considering whether admitting an extra child would cause prejudice the panel must take account of the school's published admission number. But the admission authority must still show the admission will cause prejudice over and above that number. The panel *"must not reassess the capacity of the school"*. However, it may take account of various matters in deciding this question. These can include considering what effect an extra admission would have on both the current and future academic years. Also, taking account of the school organisation and class sizes.

13. If the panel finds there would be prejudice it must then consider the appellant's individual arguments. If the panel decides the appellant's case outweighs the prejudice to the school, it must uphold the appeal.

14. The panel must communicate its decision, *"including reasons for that decision"*, in writing.

Key facts

15. Mr B applied for C to join the Year 3 class at School X from September 2019. C would be transferring from a combined nursery and infant school. School X is a nearby primary school and Mr B's address lies within its catchment area. It is a voluntary controlled faith-based school, where the Council acts as admission authority.

16. The Council advertised that parents transferring from infant to junior schools for September 2019 admission should apply by January 2019. However, it did not receive C's application until April 2019. Mr B had earlier applied unsuccessfully for C to transfer to a different primary school ('School Y').

17. Mr B expressed a preference for C to join School X because:

- it is local;
- it is a faith-based school with a Christian ethos; Mr C considered C would benefit from a supportive atmosphere;
- C would also benefit from the small class sizes; C suffers anxiety in large buildings;
- it has a good academic reputation; C has an aptitude for maths the school could cater for;
- it has good physical education facilities and opportunities;
- C would have friends attending the school.

18. Mr B provided a letter of support from C's Headteacher at their infant school. This confirmed C suffered anxiety in large buildings. It compared School X

unfavourably with C's allocated school. The Headteacher said *"I strongly consider the only suitable school for [C] is [School X]".*

19. School X has a net capacity of 175 pupils and a published admission number for each year group of 25 pupils. When the Council received C's application, the September 2019 Year 3 group contained 25 pupils. The Council therefore refused C's application. Mr B appealed. The grounds of his appeal being as summarised in paragraph 17 above. The Year 3 group comprised pupils transferring from Year 2 of the school. So, had Mr B applied earlier he would have received the same decision.

20. The Council's written case to the appeal panel, copied to Mr B, said the school had 174 pupils on the school roll. Its September 2019 Reception and Year 1 classes would have fewer than 25 pupils. But its Years 2, 4, 5 and 6 classes had between 26 and 28 pupils. The Council said classrooms *"varied in size but three are only of sufficient size for classes of approximately 20 pupils each"*. It also said the hall at the school could not hold all pupils on the school roll. It said the school had restricted dining space with some children eating lunch in the classroom. The school staggered lunch and break times to minimise crowding in communal spaces. It provided details of the limited number of pupils on the school roll who had special educational needs or for whom English is a second language.

21. C's appeal was one of three heard on the same day for Year 3 admissions. The Panel chose to consider the appeal in two parts. The first, a grouped hearing, considered if the Council had shown that admitting an extra pupil would cause prejudice. The second, an individual hearing, considered Mr B's arguments that C's appeal should succeed, even if this would cause prejudice to the school.

22. The Clerk's notes of the appeal show that during the hearing the presenting officer for the Council clarified the School now had 173 pupils on roll for September 2019 admission. The officer also clarified pupil numbers in each year group, with years 2, 4, 5 and 6 exceeding the published admission number. They also said that three classrooms could only accommodate 17, 20 and 23 pupils respectively. The School currently used those to teach years 1, 2 and 4 respectively. The officer said this meant, *"one Key Stage 2 classroom (i.e. serving years 3 to 6) can only accommodate 23 children and so at some point is an overcrowded classroom"*. The officer also said the school hall was small. The minutes say the School "*split lunchtimes to minimise overcrowding"*. Mr B says in providing this information the officer had documents not shared in advance with appellants.

23. The minutes show both appellants and members of the Panel questioned the Officer. Those questions included finding out the age of School X, built originally in the nineteenth century. Mr B considered the answer misleading as the school has a more modern extension and classrooms in its roof-space. The questioning also established Year 3 would occupy a classroom designed for 30 pupils. I noted one parent commented *"the school told me every child has an assembly every morning"* without any response recorded from the Officer.

24. Another statement from a parent was recorded as follows: *"I recently noted school told to leave at least five spaces for this term".* Mr B says this was a reference to a conversation with the School Headteacher. Mr B says in his own conversation with the Headteacher they have indicated the School can accommodate more pupils in Year 3. The response to the statement made at the appeal from the Council representative was to advise the *"school is not the admission authority. PAN of 25 because of limitations of whole building. According to authorities'*

practices – school cannot admit more". In answer also to another question the Clerk recorded the Council representative saying admitting another pupil would cause "*significant prejudice in terms of capacity to school as a whole".*

25. The Panel considered the Council had applied its admission policies correctly to C's case. It also considered the Council had shown that admitting an extra child would cause prejudice. The Clerk's notes of the Panel's discussion recorded one member *"being unsure [the school] can take more based on classroom sizes"*. A second said they considered some classrooms could take more pupils. But *"Year 4 has more than it can accommodate and hall cannot accommodate all the children"*. They also said *"overall footprint of the school not able to take more children"*. The third member based their view *"looking at the whole school [..] Year 3 could cope with more but Year 4 could not*. *Based on whole capacity of the school".*

26. The Panel therefore went on to hear individual appeals. Mr B presented his case in support of his written appeal submission. The Council Officer and the Panel asked Mr B questions about why he applied late for C to join School X and why he had previously applied for School Y.

27. The Panel decided Mr B's case was not strong enough to outweigh the prejudice caused to the school by admitting another pupil. The Clerk's notes say that members all agreed that Mr B had not shown School X was the only school capable of meeting C's needs. One member also highlighted Mr B applying late and not consulting or following Council guidance on when to apply.

28. The Clerk's decision letter to Mr B summarised his case to the appeal. It said the Panel considered his case *"not sufficient to over-ride the prejudice which they had accepted would result from admission of further pupils to the school"*. The letter did not explain the Panel's reasons for finding such prejudice met.

29. The Panel decided to uphold one of the three appeals after hearing individual cases.

My findings

30. I considered first if there was any fault in the Council's decision not to allocate a place for C at School X when Mr B applied for this in April 2019. I found no reason to find such fault. I am satisfied the Year 3 group had 25 pupils in it already and this is the school's published admission number. So, the Council could refuse C's application. It follows that I cannot criticise the Appeal Panel for taking this view also. I am also satisfied the Appeal Panel had no reason to take issue with the school admission policies.

31. So, I have focused attention on the consideration given by the Panel to the next stages of the appeal, beginning with the question of prejudice. I note here the Council presenting officer gave numbers to the Panel on classroom sizes and numbers of pupils, different from what appears in the written case presented. The officer had up to date information. They did not share this with appellants in advance.

32. However, I do not find this undermined the fairness of the appeal. An admission authority's submission to an appeal must be circulated a week before the hearing, with the statement prepared earlier. Small movements in pupil numbers can take place in the intervening period. We would criticise an admission authority that did not make a panel aware of such changes. I do not consider notice of the minor difference in pupil numbers needed circulation in advance. It did not amount to

significant new information, or the Council advancing a new line of argument, for which appellants or Panel members should be prepared.

33. Similarly, I also consider the Council was not introducing significant new information when it clarified classroom sizes. Its written statement said the school had three classrooms that could each accommodate "*approximately*" 20 pupils. The Officer clarified at appeal the classrooms could accommodate 17, 20 and 23 pupils respectively. I consider the appellants suffered no disadvantage by the officer clarifying the exact numbers at the hearing.

34. I have gone on next to consider if the presenting officer gave the Panel any false information. I can understand why Mr B thought the answer to the question about the age of the school building was slightly misleading. However, I do not consider I could say it was factually inaccurate and there is no evidence panel members put weight on this.

35. But I consider Mr B has a stronger case when he draws attention to the statement the hall could not accommodate all pupils at once. This statement appears in both the written case and the Clerk's minutes. Yet the minutes also note a parent advised the Panel that pupils took assemblies as one group; something Mr B later said the School Headteacher confirmed to him.

36. Reading the Council's submission and the Panel minutes as whole I find some of the discussion around the school hall focused on its capacity at lunchtime. The statement appears that the School could not accommodate all pupils at one lunch sitting. I consider the Panel could reasonably consider the impact on the use of the school hall of admitting further pupils when deciding the question of prejudice. It could do so with reference to both assemblies and lunch-times. But it should have clearly established the facts about assemblies. As one member went on to cite this as a factor in their decision on the question of prejudice, the failure to do this was a fault.

37. On its own, I do not consider this fault enough to undermine the Panel's decision. However, I consider there is fault also when I consider the other reasons recorded by the Clerk for the Panel's decision on prejudice.

38. The decision hinged on the overall impact of extra pupil numbers on future academic years. The Panel was not obliged to accept Mr B's view the Council had not established prejudice. I consider the Council did advance an argument for prejudice. The Panel heard evidence showing that while Year 3 would not be overcrowded in September 2019 by admitting another pupil, either it, or another class would face overcrowding the following year. Because one class with more than 23 pupils would have to use a classroom designed for that number. This was a relevant factor the Panel could take account of and give weight to.

39. I find the Panel asked questions about the Council's case, so there was some scrutiny. But I do not find the scrutiny was enough. Because I consider that as part of its decision on prejudice the Panel had to also take account of the following factors:

- That the School was below its overall net capacity number. This had to be relevant if considering the impact of extra pupils on shared facilities such as the school hall, corridors and so on. At least two of the three panel members gave weight to the overall impact on the School as well as Year 4 in their decision. In which case overall pupil numbers would be a relevant factor.
- That the School Headteacher had reportedly indicated they felt the School could accommodate more pupils without difficulty. I consider it reasonable for

the Council to point out it is the admission authority. But the view of the School Headteacher would still be relevant. As would the clearly documented information that all three-year groups above Year 3 contained over the published admission number. The Panel should have scrutinized more closely therefore the specific impact of these extra pupils on the smaller classroom used to teach Year 4 pupils. It could have adjourned if necessary, to take a statement from the Headteacher to clarify their remarks.

40. I do not find evidence in the Clerk's minutes or the decision letter sent to Mr B the Panel considered these points. That was a fault.

41. The injustice which flows from the above is that I cannot be certain the outcome of the appeal would have been the same but for the fault. We consider uncertainty a form of distress. So, the appropriate remedy here is to seek a second appeal.

42. As I find fault in this stage of the appeal I do not need to also consider in detail how the Panel approached the individual hearing for Mr B.

43. But I have also considered the Panel's letter to Mr B. I agree with Mr B this was inadequate. It gave no reasons for why the Panel had agreed with the Council that admitting extra pupils to School X would cause prejudice. So, this was another fault. In commenting on my initial draft decision, the Council has accepted this and said that it will review appeal letter in future to improve the information they contain and explanation given.

Agreed action

44. To remedy the injustice identified at paragraph 40 the Council has agreed that within 20 working days of a decision on this complaint it will arrange for Mr B to have a fresh appeal. This will be heard by a different panel and different appeal clerk.

45. The Council will also contact the other unsuccessful appellant and offer them a fresh appeal.

Final decision

46. For reasons explained above I uphold this complaint, finding fault in how an independent education admission appeal panel reached its decision. The Council has agreed to remedy the complaint by arranging a fresh appeal. I consider this provides for a fair outcome. So, I can complete my investigation satisfied with its actions.

Investigator's decision on behalf of the Ombudsman

20 December 2019

Complaint reference:
19 006 727

Complaint against:
Nottinghamshire County Council
Bassetlaw Clinical Commissioning Group
Nottinghamshire Healthcare NHS Foundation Trust

Local Government & Social Care OMBUDSMAN

Parliamentary and Health Service Ombudsman

The Ombudsmen's final decision

Summary: The Ombudsmen found no fault by the Council, Trust or CCG with regards to the care and support they provided to a woman with mental health problems. The Ombudsmen did find fault with a risk assessment the Trust completed. However, we are satisfied this did not have a significant impact on the care the Trust provided.

The complaint

1. The complainant, who I will call Mr X, is complaining about the care and treatment provided to his ex-wife, Mrs Y, by Nottinghamshire County Council (the Council), Bassetlaw Clinical Commissioning Group (the CCG) and Nottinghamshire Healthcare NHS Foundation Trust (the Trust).
2. Mr X complains that professionals involved in Mrs Y's care failed to act when her condition deteriorated in early 2018. Mr X also complains that following an incident in February 2018, the Trust and Council imposed unfair sanctions on Mrs Y. Mr X says this means she is unable to access the care and support she needs.

The Ombudsmen's role and powers

3. The Ombudsmen investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship ***(Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended)***.
4. If the Ombudsmen are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, they can complete their investigation and issue a decision statement. ***(Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

5. In making this final decision, I considered information provided by Mr X and discussed the complaint with him. I also considered comments and documentation provided by the Trust and Council. Furthermore, I invited comments on my draft decision from Mr X and the organisations he is complaining about and took account of what they said.

What I found

Relevant legislation and guidance

Mental Health Act 1983

6. Under the Mental Health Act 1983 (the MHA), a person with a mental disorder who is considered to be putting their safety, or that of someone else, at risk, they can be detained in hospital against their wishes for treatment.

7. A person who has been detained for treatment under the MHA can be discharged back into the community under a Community Treatment Order (CTO). A CTO is intended to help patients to maintain stable mental health outside hospital and promote recovery.

8. A CTO includes conditions with which the patient is required to comply. These should ensure the patient receives treatment for the mental disorder. The conditions should also reduce the risk of harm to the patient and other people resulting from the mental disorder.

9. Failure to comply with the conditions attached to the CTO can result in the recall of the patient to hospital. The Mental Health Act Code of Practice that accompanies the MHA emphasises that this a decision for the responsible clinician.

10. Patients under a CTO are entitled to free aftercare services under Section 117 (s117) of the MHA. The statutory duty for providing, or arranging for the provision of, s117 aftercare services rests jointly with the local authority and local clinical commissioning group.

11. Mrs Y is on a CTO and so is entitled to s117 aftercare services. I have included the CCG within my investigation due to its statutory duty in this regard. However, I have also included the Trust as this is the service provider from which the CCG commissions mental health services.

Local policies

12. The Trust produces a policy entitled *Preventing, minimising and managing aggressive and violent behaviour (2017)*. This sets out guidance for staff on how to deal with violent or aggressive behaviour exhibited by patients or service users.

13. Section 1.3 of the policy provides a definition of violence at work. This includes "[a]*ny incident in which a person working in the Healthcare sector is verbally abused, threatened or assaulted by a patient or member of the public in circumstances relating to his or her employment.*"

14. Section 6.1 of the policy says that "[r]*isk assessments are a crucial component in preventing and minimising aggressive and violent behaviour.*" Section 6.5 explains that risk assessments should be subject to "*a regular timely review which must not exceed 12 months.*"

15. Section 11.6 of the policy sets out that any response by staff to violent or aggressive behaviour should be "*a proportionate, legal, acceptable, necessary and reasonable response to the circumstances and risk posed by the service user at that time.*"

Key facts

16. Mrs Y has diagnoses of Delusional Disorder, Mixed Personality Disorder, depression and anxiety. In 2010, following a period of detention under the MHA, Mrs Y was placed on a CTO and discharged home.

17. At the time of the events complained about, Mrs Y was living at home with Mr X.

18. The terms of Mrs Y's CTO required her to attend hospital every fortnight for a depot injection of antipsychotic medication.

19. Mrs Y was under the care of a Local Mental Health Team (LMHT – part of the Trust). As part of the support provided by the LMHT, Mrs Y received regular visits from her care coordinator, a community psychiatric nurse (CPN).

20. In addition, the Council funded six hours per week of support worker visits for Mrs Y.

21. In February 2018, the CPN and a support worker visited Mrs Y at home. The CPN and support worker said that, during the visit, Mrs Y approached them with a kitchen knife. They left the property immediately and reported the incident to the police. However, no charges were brought against Mrs Y.

22. The CPN reported the incident to the Council. At that point, the Council and Trust suspended home visits to Mrs Y pending further assessment of the situation.

23. In March 2018, a multidisciplinary team meeting agreed that health professionals would no longer visit Mrs Y at home. Instead, the meeting agreed Mrs Y would meet with a CPN at her regular depot injection appointments or at her GP surgery.

24. The Council also decided to withdraw Mrs Y's social care support package.

Analysis

Deterioration

25. Mr X complained that the professionals involved in Mrs Y's care failed to take action when her condition deteriorated in early 2018, despite her repeatedly requesting assistance. Mr X said Mrs Y's care plan contained crisis contingency measures that professionals failed to abide by. Mr X said this included the option of recalling Mrs Y to hospital for treatment to prevent further deterioration.

26. The Trust said Mrs Y was suffering from increased levels of anxiety and distress as a result of her ongoing divorce from Mr X. The Trust also acknowledged her reactions to this were exacerbated by her personality disorder diagnosis. However, the Trust said Mrs Y was not exhibiting any new symptoms that indicated a deterioration in her acute mental health. On this basis, the Trust said clinicians did not consider other treatment options (such as medication or recall to hospital) to be appropriate.

27. Mrs Y attended hospital for her depot injection on 1 December 2017. The administering nurse noted that she "[a]*ppeared physically and mentally well*" at that time.

28. Mrs Y made several calls to her CPN over the following week. She reported feeling anxious about living alone in a new property. At times, the CPN noted that Mrs Y was upset. However, he also noted that "[Mrs Y] *expressed no thoughts of harm towards herself or others.*"

29. The CPN visited Mrs Y at home on 8 December 2017. He noted Mrs Y "*presented as settled in her mood and mental health state. She was calmly spoken and smiling throughout the entire visit.*"

30. The care records suggest Mrs Y remained relatively stable over the following weeks. However, after a series of agitated calls from Mrs Y, her CPN visited her at home on 27 December 2017. Mrs Y again expressed her anxiety about the

prospect of living alone. She also said she may take an overdose of her medication. As a result, the CPN agreed to leave Mrs Y with only limited medication and visit her the following day.

31. At the follow-up visit, the CPN felt Mrs Y's presentation was much improved and that she was feeling better. At a further visit on 2 January 2018, the CPN noted Mrs Y "*showed no deterioration in her mental health throughout the visit, nor expressed any concerns regarding her mental or physical health.*"

32. A psychiatrist reviewed Mrs Y on 4 January 2018. He found her to be stable with "*no evidence of agitation*" and "[n]*o psychosis*".

33. Over the subsequent weeks, the records show Mrs Y continued to express anxiety about the prospect of moving to another property and living alone. Nevertheless, the CPN also noted Mrs Y appeared more positive and was planning for the future.

34. On 17 January 2018, Mrs Y met with a psychologist, psychiatrist and social worker to discuss whether her CTO should be extended. The clinicians noted Mrs Y was going through a very stressful period. They found Mrs Y's delusional thoughts would be exacerbated if she stopped taking her antipsychotic medication and that this would cause her additional distress. It was agreed Mrs Y's CTO would be extended for a year to ensure compliance with her medication regime.

35. Mrs Y made several calls to the LMHT at the end of January and beginning of February 2018. She was noted to be upset and tearful. However, at two subsequent home visits on 5 and 6 February 2018, Mrs Y's CPN and support worker noted she was "*smiling and in good spirits*" and "*appeared bright in mood*".

36. On 14 February 2018, Mrs Y made a further call to her CPN. He noted she was very upset and felt unable to live alone. He also noted Mrs Y stated that she may harm herself. The CPN agreed to visit her later that day. He found Mrs Y distressed and noted that she "*stated that she wanted to be in hospital due to going through a divorce.*"

37. A further visit from a CPN on 15 February 2018 found she was still distressed. The CPN noted Mrs Y "*does not appear to be psychotic, no delusional content to her speech or thinking…No obvious evidence of acute mental illness.*" The CPN recorded his view that "[t]*he ongoing issue relating to her divorce and the final settlement appears to be the well agreed driving force to her current level of emotional upset and distress.*" Nevertheless, as Mrs Y was threatening to take all of her medications, the CPN removed them.

38. The following day, Mrs Y's CPN visited her at home. He noted she was feeling better and appeared calmer. The CPN left Mrs Y with enough medication for a week.

39. The CPN and support worker visited Mrs Y again on 27 February 2018. This was when the incident with the knife occurred. I have commented on this in further detail under the 'Trust sanctions' section of this decision statement.

40. I have reviewed the clinical notes for the entirety of this period. These are detailed and appear to show members of the LMHT supported Mrs Y through a series of regular home visits and telephone calls.

41. It is apparent from the records that Mrs Y was very anxious during this period, though her presentation was variable. At times, she was noted to be distressed and at other times calmer and more settled. There is not, in my view, evidence to suggest a sustained deterioration in Mrs Y's presentation.

42. Mrs Y's conversations with members of the LMHT suggest the primary underlying cause for her distress was her ongoing divorce from Mr X. Her reactions to this situation appear in turn to have been exacerbated by traits associated with her personality disorder.

43. Nevertheless, I note clinicians from the LMHT reviewed Mrs Y twice during this period and did not identify any evidence of acute mental illness.

44. Mrs Y's crisis contingency plan set out that she should be recalled from her CTO if "*she is non-concordant with her medication and/or risks can not be met in the community*".

45. The clinical evidence shows Mrs Y was largely concordant with her medication, albeit she would made clear she would prefer not to take it. Although Mrs Y did sometimes fail to attend for her depot injection, these appointments were generally rescheduled promptly.

46. The records also show members of the LMHT also took appropriate action to safeguard Mrs Y when they believed her to be at risk. This included removing excess medication from the property until her condition had stabilised.

47. On this basis, I share the Trust's view that there were no persuasive grounds for recalling Mrs Y from her CTO during this period.

48. In my view, the evidence suggests the Trust provided appropriate care and support to Mrs Y between December 2017 and February 2018. I found no fault by the Trust in this regard.

Trust sanctions

49. Mr X complained that, following the incident in February 2018, the Trust imposed unfair sanctions on Mrs Y. He said this meant she was unable to access the care and support she required. Mr X said these sanctions were based on an inaccurate risk assessment completed by Mrs Y's CPN. Mr X also said the CPN had a conflict of interest as he had been involved in the incident in February 2018.

50. The Trust said the multidisciplinary team decided to withdraw Mrs Y's home visits at a meeting on 27 March 2018. The Trust said this decision was informed by a risk assessment prepared by Mrs Y's CPN but that he had not made the decision in isolation. The Trust said the risk assessment represented the CPN's clinical judgement and contained relevant information. However, the Trust acknowledged it could review the risk assessment to put some of the historical information it contained into context.

51. The clinical records show Mrs Y's CPN and a support worker visited her at home on 27 February 2018. During this visit, the CPN said Mrs Y entered the kitchen before returning with a kitchen knife. He noted Mrs Y "*held this in a grip which made the knife point directly towards where both* [the support worker and CPN] *was sitting*." The CPN went on to note that Mrs Y "*made a deliberate movement towards* [the CPN and support worker]." At that point, they left the property. The CPN said he warned Mrs Y that he would be informing the police.

52. The CPN and support worker subsequently called the police and officers attended to arrest Mrs Y on suspicion of affray. Mrs Y told officers she had not intended to harm the CPN and support worker and was only attempting to demonstrate how distressed she was. Mrs Y was not charged and returned home.

53. On 5 March 2018, the Trust decided all face-to-face contact between Mrs Y and her CPN would now need to take place at her regular depot injection

appointments. The Trust also agreed to convene a multidisciplinary team meeting to discuss the situation further.

54. The Trust convened the meeting on 27 March 2018. The meeting discussed previous incidents in which Mrs Y had acted aggressively towards professionals. The meeting concluded that Mrs Y continued to pose a risk to staff and confirmed that home visits would not recommence. However, the meeting heard Mrs Y would still be able to access her CPN at depot injection or GP appointments and by telephone.

55. The CPN completed a risk assessment the following day.

56. The Trust's *Preventing, minimising and managing aggressive and violent behaviour* document (the policy) defines violence at work. This includes "[a]*ny incident in which a person working in the Healthcare sector is verbally abused, threatened or assaulted by a patient or member of the public in circumstances relating to his or her employment.*"

57. The policy makes clear the response of staff to such behaviour should be "*a proportionate, legal, acceptable, necessary and reasonable response to the circumstances and risk posed by the service user at that time.*"

58. I appreciate Mrs Y's recollections of the visit on 27 February 2018 differ from those of the CPN and support worker. Mrs Y told police that she had not pointed the knife at the professionals and had simply been using it to demonstrate her distress.

59. Nevertheless, it is clear from the CPN's contemporaneous notes that both members of staff felt threatened by Mrs Y's behaviour. In my view, they could not reasonably have been expected to anticipate Mrs Y's motives or intentions. It was appropriate for them to leave the premises in order to remove or reduce any risk posed by Mrs Y's behaviour, therefore.

60. Section 5.6 of the policy states that "[w]*hen a risk of potential violence is identified it is considered essential by the Health and Safety Executive and good practice for staff to communicate all risk concerns where appropriate to all relevant parties.*" This can include the police.

61. As I have explained above, the professionals supporting Mrs Y felt she was not acutely mentally unwell at the time of this incident. There was no basis on which to recall her from her CTO, therefore. However, Mrs Y was still armed when Trust staff left her property. In the circumstances, I the CPN's decision to contact the police was in keeping with the Trust's policy. In my view, this represented the best way of reducing the risks Mrs Y's behaviour posed to herself and others.

62. Taking everything into account, I found no fault by the Trust with regards to the actions of its staff on 27 February 2018.

63. In his representations to the Ombudsmen, Mr X also challenged the CPN's risk assessment. He said the assessment was inaccurate and contained misleading information.

64. I note Mr X's concerns. The evidence I have seen suggests the information contained in the risk assessment was taken from Mrs Y's clinical records. This included reference to specific historical incidents and behaviours. I am unable to comment on whether these events were accurately recorded in the clinical records. However, there is evidence to suggest Mrs Y had behaved aggressively towards both health and social care staff in the past.

65. In my view, the risk assessment the CPN completed was lacking in detail. The CPN documented various risk factors in his assessment. However, he provided little context for the incidents and behaviours described. I would also have expected to see more detailed consideration given to how these factors contributed to the total risk posed by Mrs Y's behaviour. I found no evidence of this consideration. This is fault by the Trust.

66. Nevertheless, I am not persuaded this had a significant impact on the decision to remove Mrs Y's home visits. This decision was made by the multidisciplinary team at the meeting on 27 March 2018. The records provided by the Trust and Council suggest the meeting discussed the matter in detail and that all members of the team agreed it would not be safe for staff to visit Mrs Y at home. This was ultimately a matter of professional judgement for the officers involved.

67. I appreciate Mr X and Mrs Y found the restrictions placed on Mrs Y's contact with the LMHT frustrating. However, the clinical records contain a clear care plan detailing how Mrs Y would access clinical support. This included regular meetings with her CPN (albeit not at home) and medication reviews. I found no evidence to suggest Mrs Y was left without support. I found no fault by the Trust, Council or CCG with regards to ongoing provision of care for Mrs Y.

Withdrawal of social care support

68. Mr X complained that the Council withdrew six hours of care per week from Mrs Y on the basis of the Trust's flawed risk assessment and did not undertake its own risk assessment.

69. The Council said that, following the incident on 27 February 2018, professionals concluded it would not be safe for support workers to visit Mrs Y at home. The Council said it explained this to Mrs Y.

70. Prior to this incident, Mrs Y received care visits each week amounting to six hours in total. These were primarily to prompt her to complete activities of daily living (such as preparing meals and maintaining personal care).

71. The case records show Mrs Y's CPN told the Council about the incident on the day it occurred. The Council notified the care provider and visits were suspended with immediate effect.

72. A social worker discussed the case with the care provider. He established that Mrs Y's behaviour could be unpredictable and that she was sometimes aggressive towards the attending care workers. In addition, the care provider advised him that many care visits were unsuccessful as Mrs Y would not admit the visiting care workers.

73. The multidisciplinary team meeting on 27 March 2018 (which the social worker attended) discussed the matter further. The professionals present agreed that, based on the information available to them, it would not be safe for health or social care staff to visit Mrs Y at home.

74. The social worker wrote to Mrs Y to explain this on 3 April 2018. He wrote that "[h]*aving reviewed the current Care and Support Plan, which describes the tasks* [care provider] *staff have been supporting you with, I noted that the bulk of the work takes place in your home. Regrettably, the incident in question and your history indicate there is a significant risk of harm to staff seeking to support you at your property, so we have no alternative but to withdraw the social care support.*" The social worker also made clear that the situation could be reviewed at a later date if there was sufficient evidence that staff would no longer be at risk.

75. The evidence shows the Council did work with the Trust assess the risk posed to staff by Mrs Y's behaviour. However, I do not agree that the Council accepted the Trust's views uncritically. In my view, the case records demonstrate that the Council made appropriate enquiries with the care provider and formulated its own risk assessment in collaboration with health colleagues. I found no fault by the Council I this regard.

76. I understand the Council recently reviewed the situation and has now reinstated some social care support for Mrs Y.

Final decision

77. I found no fault by the Council, Trust or CCG with regards to the care and support they provided to Mrs Y during this period.

78. I did find fault with the Trust's risk assessment of 28 March 2018. However, I do not consider this had a significant impact on Mrs Y's care.

79. I have now completed my investigation on this basis.

Investigator's decision on behalf of the Ombudsmen

Local Government & Social Care OMBUDSMAN

7 January 2020

Complaint reference:
19 000 339

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mrs B complained the Council unreasonably sought repayment of direct payment monies which she had used for her care and refused a meeting to discuss her concerns. The Council only undertook one annual review and did not raise any concerns about Mrs B's spending between 2012 and 2016. That meant Mrs B had no opportunity to amend the way she managed her direct payments account. An apology to Mrs B and a recalculation of the amount to be recovered is satisfactory remedy for the injustice caused.

The complaint

1. The complainant, whom I shall refer to as Mrs B, complained the Council:
   - unreasonably sought repayment of direct payments when she has used it to pay her husband to provide care; and
   - refused to meet with her to discuss her concerns.

The Ombudsman's role and powers

2. 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)***

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. As part of the investigation, I have:

- considered the complaint and Mrs B's comments;
- made enquiries of the Council and considered the comments and documents the Council provided;
- considered Mrs B's comments on my draft decision; and
- considered the Council's comments on my draft decision.

What I found

Chronology of the main events

6. Mrs B began receiving a direct payment for her care in May 2012. Most of that payment is for Mrs B to employ a personal assistant.
7. On 22 April 2013 the Council wrote to Mrs B to tell her about its annual audit of her direct payments account. The Council asked Mrs B to provide bank statements and receipts for any cash payments. The Council considered the bank statements Mrs B provided and wrote to her on 12 July to tell her it had completed the audit. The Council did not raise any concerns about Mrs B's spending.
8. On 27 May 2015 the Council wrote to Mrs B to tell her about an audit of direct payments. The Council asked for original bank statements, timesheets, wage slips, invoices, receipts, tax and national insurance contributions, employers and public liability insurance policy and any other paperwork for the period 20 June 2011-30 April 2015. I do not have any evidence of the Council receiving that documentation or of it completing the audit in 2015.
9. The next entry in the Council's documentation is a report on 30 June 2016, raising concerns about some of the expenditure on Mrs B's bank statements and changes made to internet printouts of bank statements. The officer completing the review raised concerns about misuse and fraudulent statements.
10. On 1 July 2016 the Council wrote to Mrs B to tell her it had selected her for a random audit. The Council told Mrs B the audit would cover 12 July 2011-30 April 2015. The Council asked Mrs B for various documents to support her spending for the period. The Council asked for the information by 22 July.
11. The Council completed its audit by the end of August 2016. The Council decided Mrs B had misused part of the funds in her account and had not provided wage slips for part of the period her husband was providing overnight care to her.
12. A Council social worker met with Mrs B on 19 October. During that meeting Mrs B admitted she had not managed the direct payments account well.
13. On 4 November the Council spoke to Mrs B and confirmed her husband would provide 25 hours per week care. The Council said the other PA's would provide 14 hours per week and five hours per week, making 44 hours. From 8 November the Council transferred Mrs B's direct payment to Penderels Trust for management.
14. On 12 November the Council issued an invoice to Mrs B for repayment of £53,145.25.
15. Mrs B disputed the invoice on 18 November. Mrs B asked for a meeting with the officer that had agreed recovery on 19 December. Mrs B chased the Council for a response to her request for a meeting on 6 January 2017. On 20 January the Council told Mrs B it did not consider a meeting necessary.

Care and support statutory guidance

16. The care and support statutory guidance (CSSG) says following a 6-month review, the local authority must then review the making of the direct payment no later than every 12 months.

17. The CSSG says the outcome of the review should be written down, and a copy given to all parties. Where there are issues that require resolving, the resolution method should be agreed with all parties involved, as far as is reasonably practicable. Where appropriate, local authorities should advise people of their rights to access the local authority complaints procedure.

18. The CSSG also notes that direct payments are designed to be used 'flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support needs.'

The Council's direct payments policy and staff guidance

19. The Council's direct payments policy says the Council will consider allowing direct payments recipients to pay close family members living in the same household to provide support on a case-by-case basis.

20. The Council's direct payments policy says it will carry out financial audits of service user accounts and can recover money if the direct payment is misused or where it is not known how the money has been used.

21. The Council's direct payments staff guidance says following an initial review the Council must review the direct payment no later than every 12 months.

22. The Council's direct payment staff guidance says suspected misuse of direct payments money will be alerted to the relevant district or reviewing team and may require further investigation. The guidance says if the Council is satisfied the direct payment has been intentionally misused it should make a decision as to whether, and how, to recover the misspent money.

23. The Council's direct payment staff guidance says where an alert is raised regarding potential misuse of a direct payment contact should be made with the service user to undertake an exploratory conversation to decide whether any misuse has taken place and, if so, whether there was deliberate intent.

24. The Council's direct payment staff guidance goes on to say the Council needs to ensure it can evidence it has provided the service user with all the relevant information to ensure they understood their responsibilities under the direct payment agreement and what the direct payment could and could not be spent on. That includes locating a support plan which clearly identifies what the direct payment could or could not be used on.

25. The Council's direct payment staff guidance says for non-deliberate misuse the team manager must decide whether the misused amount of direct payment monies should be claimed back by the Council.

Analysis

26. Mrs B says the Council should not have sought repayment of £53,145.25 in direct payments when she has used that amount to pay her husband to provide care. Mrs B points to the fact the NHS has now taken over her care package and it is considerably greater than that which the Council funded. Mrs B therefore says it was unreasonable for the Council to seek to recover money which she used to provide for her care. In contrast the Council says Mrs B did not provide evidence to support the amount she said she had paid her husband to provide care. The Council also says Mrs B spent money from her direct payments account on items

not covered by her support plan. I am exercising the Ombudsman's discretion to investigate the complaint even though it concerns events which happened more than 12 months ago. That is because I am satisfied Mrs B was not aware of the Council's concerns until 2016 and has been in regular correspondence with the Council about the matter since then.

27. Having considered the documentary evidence it is clear there are two issues here. The first issue is the lack of wage slips for the care Mrs B's husband provided between 2012 and 2016. The second is spending on items the Council does not consider meets Mrs B's care needs. I am concerned it took the Council until 2016 to identify those issues and to explain its concerns to Mrs B. As I said in paragraphs 16 and 21 the care and support statutory guidance and the Council's own policy makes clear it should carry out an annual review of direct payments. In this case I have found no evidence to suggest the Council carried out an annual review in 2014. Nor do I have any evidence to show the Council completed the annual review it began in 2015. The Council did complete a review in 2013. There is no evidence the Council raised any concerns with Mrs B in 2013 or at any point again until 2016. Failure to carry out annual reviews is fault. Failure to explain the Council's concerns following the annual review in 2013 is also fault. Without any annual reviews or communication with Mrs B about concerns between 2012 and 2016 I cannot see how she could have known she was not managing her direct payments account properly. I therefore do not consider the Council gave Mrs B an opportunity to either amend her spending or to correct the situation by keeping proper records of her spending.

28. I am also concerned about how the Council decided to recover the direct payments from Mrs B. As I say in paragraphs 22 and 25, the Council's direct payments guidance makes clear the decision on whether to recover misspent direct payments is not automatic. Instead, in each case the Council has to consider whether the funds were misspent intentionally. The Council then has to decide whether it is right to recover the money. In this case I have seen no evidence the Council had a proper discussion with Mrs B about its findings. There is no evidence the Council gave Mrs B an opportunity to provide any extra evidence or to provide information to allow the Council to decide whether to recover the direct payment. Nor is there any evidence the Council gave any consideration to the circumstances in which Mrs B spent the money. There is no evidence the Council considered the impact of it not communicating any concerns to Mrs B about her spending between 2012 and 2016 before deciding to recover the money. I am particularly concerned about the Council's decision to recover all the money paid to Mrs B's husband as her overnight PA where Mrs B has not provided wage slips when the Council accepts Mrs B's husband has provided 25 hours per week care throughout the period. Failure to consider properly whether to recover all of the £53,145.25 or to take into account the care the Council accepts Mrs B's husband provided is fault.

29. The Council has provided a copy of the various direct payments agreement signed by Mrs B. Those direct payments agreements make clear Mrs B must keep proper documentary records which includes wage slips. Mrs B did not do that for all the money paid to her husband as her PA. However, on the other hand the Council has accepted Mrs B's husband provides 25 hours per week care. The point of the rules about direct payments is so the Council can ensure the amount spent is legitimately spent on the service user's care needs. In this case the Council has not questioned whether Mrs B's husband provided 25 hours per week overnight care support to Mrs B. The Council has also accepted it can pay Mrs

B's husband as her carer for that period. I therefore do not consider it would be right for the Council to seek to recover the entire amount paid to Mrs B's husband between 2012 and 2016 for which there are no wage slips. I recommended the Council recover only amounts which Mrs B paid to her husband over and above the agreed 25 hours per week. I therefore recommended the Council recalculate the amount overpaid for the period 2012-2016 to reflect the care the Council accepts Mrs B's husband has provided. The Council has agreed to that.

30. There then remains the £21,768.26 the Council considers Mrs B has misused. I have considered Mrs B's support plan and the bank statements she has provided. Based on those documents I understand why the Council has concerns about Mrs B spending money on items not included in her support plan. However, I cannot ignore the fact some of those items were included on the bank statements Mrs B provided in 2013. As I said earlier, the Council did not raise any concerns about her spending with Mrs B following the 2013 review. So, I do not consider Mrs B would have understood what she was spending money on was not suitable. As the Council also did not complete reviews in 2014 and 2015 Mrs B had no way of knowing the Council considered some of her spending unacceptable. If the Council had acted as it should have done and communicated its concerns to Mrs B in 2013, or completed reviews in 2014 and 2015 and then shared its concerns with Mrs B, she would have had an opportunity to amend the way in which she spent her direct payment. She could then have avoided some or all the recovery she now faces. In those circumstances I recommended the Council also write off the £21,768.26 it considers Mrs B misused between 2012 and 2016. The Council has agreed to that.

31. Mrs B says the Council refused to meet with her to discuss her concerns about how it had calculated the amount she needed to repay. I have already explained earlier in this statement where I consider the Council at fault for how it dealt with Mrs B's direct payments account and in how it sought to recover some of the money paid. I consider if the Council had arranged a proper meeting with Mrs B to go through the expenditure it was concerned about that may have prevented Mrs B having to go to time and trouble to pursue her complaint. In addition to the remedy recommended in paragraphs 29 and 30 I also recommended the Council apologise to Mrs B both for the failures in how it dealt with her direct payments account and for failing to consider meeting with her to explain its concerns in more detail. The Council has agreed to that.

Agreed action

32. Within one month of my decision the Council should:

- amend its calculation of the amount to be repaid to reflect the Council's acceptance that Mrs B's husband provides 25 hours care per week which can be funded. Following that the Council should write to Mrs B to confirm the remaining amount to be recovered;
- write to Mrs B to confirm it is no longer intending to pursue recovery of the £21,768.26 it considers she has misused the account for; and
- apologise to Mrs B for the faults identified in this statement.

Final decision

33. I have completed my investigation and uphold the complaint.

Investigator's decision on behalf of the Ombudsman

9 January 2020

Complaint reference:
19 013 235

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about the Council's decision not to give the complainant a Blue Badge. This is because there is insufficient evidence of fault by the Council.

The complaint

1. The complainant, whom I refer to as Mr X, says he is entitled to a Blue Badge because he has 10 points with the Personal Independence Payment (PIP).

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'. We provide a free service, but must use public money carefully. We may decide not to start an investigation if we believe it is unlikely we would find fault. ***(Local Government Act 1974, section 24A(6), as amended)***

How I considered this complaint

3. I read the complaint and the Council's responses. I considered Mr X's application, the Council's assessment and the medical evidence provided by Mr X. I also considered the government guidance, Mr X's PIP award and comments he made in reply to a draft of this decision.

What I found

Blue badge

4. People qualify for a badge if they are unable to walk, experience very considerable difficulty when walking (including psychological distress) or are at serious risk when walking or pose a serious risk to other people.

5. People who have been awarded 10 PIP points with descriptor E (cannot undertake a journey because it would cause overwhelming psychological distress) automatically qualify for a badge. There are other descriptors which have 10 PIP points which do not passport the person to a badge. The Department for Work and Pensions (DWP) decides if a person is eligible for PIP and what descriptors to award. The DWP if not part of the Council.

What happened

6. Mr X applied for a Blue Badge. He explained he has a significant hearing loss, mental health problems and an irritable bladder which can mean he needs prompt access to a toilet. Mr X receives 10 PIP points under descriptor D (cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid). Mr X gave the Council proof of his PIP award and supporting medical evidence.

7. The Council decided Mr X does not automatically qualify for a badge because he receives PIP descriptor D.

8. The Council then considered if Mr X qualifies under the discretionary rules. The Council accepted that Mr X may struggle to plan a journey and that he can have problems due to panic attacks. It recognised he can feel overwhelmed at times and may feel fearful in open spaces. It was also aware of the problems Mr X had reported about needing easy access to toilets. The Council accepted Mr X has some difficulties when walking but decided he does not qualify for a badge. It decided he does not experience considerable difficulty when walking and was neither at risk nor posed a risk to other people.

9. Mr X disagrees with the Council's decision because he has 10 PIP points. He says it is a legal requirement for the Council to give him a badge. He says the Council gave different reasons for refusing the badge.

Assessment

10. I will not start an investigation because there is insufficient evidence of fault by the Council.

11. The rules say a person automatically qualifies for a badge if they receive PIP descriptor E. Mr X receives 10 PIP points but under descriptor D not E. The Council's decision that Mr X does not automatically qualify for a badge is consistent with the rules and there is no suggestion of fault.

12. The Council considered if Mr X qualifies under the discretionary rules. It considered issues such as risk, awareness, anxiety, ability to cope and control. It accepted Mr X has some health difficulties and some problems when walking. But, it did not accept these difficulties are severe enough to qualify for a badge. In addition, the rules do not say someone is entitled to a badge purely because they have many health issues. The Ombudsman does not act as an appeal body and I have not seen any fault in the way the Council reached its decision.

13. Mr X says the Council gave different reasons as to why he is not entitled to a badge, particularly in relation to the PIP points. I appreciate this may have been frustrating but I can confirm that it is correct that Mr X's PIP does not entitlement him to a badge.

Final decision

14. I will not start an investigation because there is insufficient evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman

17 January 2020

Complaint reference:
18 011 349

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr D complains about the Council's review of his care and support plan. And about the amount it is asking him to pay. The Ombudsman has found some fault with how the Council sought to seek agreement with Mr D about the review. And in how it has sought to get information about Mr D's disability related expenditure.

The complaint

1. The complainant, whom I shall describe as Mr D, complains about the Council's review of his:

- financial contribution, as it is charging him more than he can afford;
- care needs. Mr D says he asked for increased hours, due to worsening health. The social worker accepted some increased needs. But she reduced other eligible needs, leading to unchanged eligible hours.

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. 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

4. As part of the investigation, I have:

- considered the complaint and the documents provided by Mr D;
- considered our earlier decision;
- made enquiries of the Council and considered its responses;
- spoken to Mr D;
- sent my draft decision to Mr D and the Council and considered their responses.

What I found

Legal and administrative background

The Care Act

5. The 2014 Care Act introduced a single framework for assessment and support planning. Sections 9 and 10 of the Care Act 2014 require local authorities to carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the results they want to achieve. The Act says the assessment should also seek to promote independence and reduce dependency.

6. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. ***(Care Act 2014, sections 27(4) and (5))***

7. The *Care and Support Statutory Guidance* ('the Guidance') has a checklist of broad elements to cover in a review. It advises assessors to communicate this checklist, before the review process begins:

- have the person's circumstances and/or care and support or support needs changed?
- what is working in the plan, what is not working, and what might need to change?
- have the outcomes identified in the plan been achieved or not?
- does the person have new outcomes they want to meet?
- could improvements be made to achieve better outcomes?
- is the person's personal budget enabling them to meet their needs and the outcomes identified in their plan?
- is the current method of managing it still the best one for what they want to achieve, for example, should direct payments be considered?
- is the personal budget still meeting the sufficiency test?
- are there any changes in the person's informal and community support networks which might impact negatively or positively on the plan?
- have there been any changes to the person's needs or circumstances which might mean they are at risk of abuse or neglect?
- is the person, carer, independent advocate satisfied with the plan?

Personal Budgets

8. Everyone whose needs the local authority meets must receive a personal budget, as part of the care and support plan. The personal budget gives the person clear information about the money allocated to meet the needs identified in the assessment and recorded in the plan. The detail of how the person will use their personal budget will be in the care and support plan. The personal budget must always be an amount enough to meet the person's care and support needs.

9. There are three main ways in which a personal budget can be administered:

- As a managed account held by the local authority with support provided in line with the person's wishes;

- As a managed account held by a third party (often called an individual service fund or ISF) with support provided in line with the person's wishes;
- As a direct payment.

Charging for non-residential services

10. Councils can make charges for care and support services they provide or arrange. Charges may only cover the cost the council incurs. ***(Care Act 2014, section 14)***

11. There are certain items of spending that can be deducted from a person's income, before the council decides whether a person can afford to contribute to social care costs. This is called Disability Related Expenditure, or DRE. Councils must take DRE into account when assessing a person's finances. The financial assessment should set out exactly what the Council considers to be DRE.

12. The Guidance has a non-exhaustive list of costs (for specialist items needed to meet a person's disability needs), that should be counted as DRE. These include:
    - specialist washing powders or laundry;
    - special dietary needs due to illness or disability;
    - special clothing or footwear (or extra wear and tear);
    - extra bedding;
    - extra heating costs;
    - internet access, for example for blind and partially sighted people;
    - any care that social services does not meet;
    - buying and maintaining disability-related equipment;
    - reasonable costs of basic garden maintenance, if necessitated by the individual's disability;
    - any transport costs above that met by the mobility part of disability benefits.

13. Other costs may also be accepted. Councils should not be inflexible and should always consider individual circumstances. Council should consider everything a person has to buy or pay for because of their disability. The Guidance allows councils to use a standard rate DRE allowance, although this should not work as a blanket allowance, when a service user has DRE above the standard figure.

14. The Council uses a standard DRE allowance of £20 a week.

Background

15. Mr D has a visual impairment, since an accident at work in 2003. He had a nervous breakdown then. He still suffers from some mental health problems, including social anxiety. He also has a skin condition that flares up when he is stressed.

16. In 2015 Mr D's welfare benefits changed. This led him to him having to pay more towards the Council arranged care he receives. The Council agreed to waive those costs from February 2015, to allow Mr D time to improve his budgeting skills. This included looking at how he could reduce some costs related to his disabilities.

17. The Council ended its waiver of the costs from April 2017. From then Mr D has been liable for a contribution towards his care costs. An October 2018 Ombudsman decision found no fault with the Council's decision to end the waiver.

We did, however, find fault with a delay in reviewing Mr D's care and support needs. We asked it to carry out a review.

18. The Council pays Mr D a direct payment and he arranges his own care and support, including employing a personal assistant.

Changes to the Council's charging policy

19. The Council has decided to change its charging policy for adult social care. A key change is it has started to take into account some welfare benefits that it had previously disregarded. This means some service users have to make a bigger contribution towards the costs of their care. The new policy still meets the minimum criteria set out in the national Guidance.

20. After feedback from citizens, the Council decided to implement the changes in two stages; in April and November 2019.

The current complaint

The care and support plan review

21. In August 2018 a social worker (Officer 1) contacted Mr D to arrange a visit, so she could carry out a review of his care and support plan. In response, Mr D advised her:

- He was worried about a questionnaire he had received asking about his financial contribution.
- His GP had increased his dose of anti-depressants, as he felt close to suicide.
- He felt he needed extra visits – teatime and lunchtime, because his skin condition had worsened. But he was worried the Council would cut his hours.

22. On 18 September Officer 1 visited Mr D to carry out the review. She reminded him the Council had offered to refer him to an agency for advocacy support. She also offered Mr D the support of a visual impairment enablement officer to promote his independence; for example around managing nutrition.

23. The new care and support plan:

a) Said Mr D had eligible needs. The support he was getting was meeting those needs.

b) Noted Mr D's previous package of care. This included:

- 1 hour in the morning = 7 hours a week;
- 45 minutes in the evening = 5.25 hours a week;
- 4 hours a week for "domestic and laundry";
- 6 hours for "community support and shopping";
- 3.5 hours a week for "keeping safe".

Total hours per week of 25.75.

c) Outlined the new recommended package of care:

- 1.25 hours in the morning = 8.75 a week;
- 1 hour in the evening = 7 hours a week;
- 2 hours a week for "domestic and laundry";
- 1 hour a week for help with bulk food preparation with his personal assistant;
- 6 hours for "community support and shopping".

Total hours per week of 25.75.

d) Had a next review date of January 2019 to "look at whether independence can be promoted".

24. On 28 September, Officer 1 contacted Mr D to discuss the outcome of the review. She advised him again the Council's view was it should refer him to its Visual Impairment Team, for support with being independent and making meals at home. Mr D advised this upset him. It would not work for him because of his anxiety in meeting new people. Mr D also advised he was upset about the revision in his package of care.

25. I note Officer 1's records of the September review and later telephone call were not entered onto the Council's case notes until 30 October. It seems this might have been because she was unexpectedly off work due to ill-health.

26. On 30 October 2018 Officer 1 sent Mr D a copy of the new assessment and support plan. She asked for any comments, but noted she believed it was correct, as she had typed it up when she was with him.

27. Mr D told us Officer 1 told him, when she met him, that she would recommend increased support and more hours with his personal assistant. But she then came back to him to say her manager had refused.

28. The Council has no record of trying to carry out the scheduled January 2019 review. It says this was because, at that time, officers were in frequent contact with Mr D about his care needs and financial assessment.

The financial assessment

29. Mr D's view is he cannot afford to pay his care costs. So he has not been paying all his assessed contribution, since the end of the Council's waiver in 2017. This has led to increasing arrears on his account. Mr D's concerns about the assessed contribution have been compounded by the Council's policy decision to change the way it charges for care.

30. At the end of October 2018, a manager (Officer 2) contacted Mr D, offering him a review of his financial contribution and a new financial assessment. Mr D did not respond to Officer 2, so he followed this up in November. Mr D did not respond.

31. Because Mr D's arrears were building up, Officer 2 decided to change the way the Council paid Mr D, so the liability for the debt transferred to the Council. Its records show it did this to ensure Mr D could continue to pay his care costs.

32. The change in Mr D's liability meant he was building up a debt with the Council, as he was still not meeting his full assessed payment. The Council passed Mr D's account to its Debt Recovery Team. That Team invoiced Mr D.

33. The Council completed its most recent financial assessment of Mr D's contribution in November 2018, with a start date of January 2019. This noted:

- it had not completed a financial review the previous year.
- The Council was allowing Mr D its standard £20 allowance for disability related expenditure.
- Mr D's assessed contribution was £39.75 per week.

34. In March 2019 Officer 2 asked a different senior officer (Officer 3) to work with Mr D about his concerns about his personal contribution. Officer 3 emailed Mr D at the end of the month, introducing herself. She told him the Debt Recovery

Team would be sending him an income and expenditure sheet for him to fill in. She suggested some organisations that could help him to complete this.

35. In April Mr D's assessed contribution increased to £62.77 a month, due to annual changes to benefits and the change in the Council's policy. The Council wrote to Mr D about this. He contacted it advising he could not afford the increase. It sent him an income and expenditure sheet to complete.

36. The Council says Mr D did not return a completed income and expenditure form. So it used information from the Department of Work and Pensions for working out his income.

37. In June Officer 3 tried to contact Mr D to arrange a visit. In mid-July Officer 3 did meet with Mr D. She updated the Group Manager (Officer 4) after this visit:

- Mr D was concerned his DRE was far greater than £20 a week (ie the Council's standard allowance).
- Mr D had made considerable steps to improve his wellbeing. But he was still fragile and emotionally up and down, with episodes of poor mental health.
- Mr D had provided an expenditure sheet.
- Mr D said he could not afford an internet connection. Officer 3's view was he was at risk of social isolation and an internet connection and more choice of TV would be beneficial. But Mr D would not risk this expense.
- Mr D only had a basic pay as you go mobile telephone.
- The debt impacted on Mr D's mental health and physical health. He was also worried about maintenance of the home he owned.
- Mr D managed his skin condition through diet and reducing stress. Officer 3 was satisfied Mr D's claim to need to eat low salt, fresh, clean food was justified.
- One of Mr D's medicines was no longer on prescription.
- A podiatry service Mr D used had been cut.
- Mr D needed to use taxis, especially for hospital visits.
- Mr D needed special washing powder.
- Mr D had agreed to increase his weekly contribution and make a payment towards the arrears.
- Officer 3 suggested a plan to wipe out the accrued debt and agree a further waiver of part of Mr D's contributions. These were due to increase due to a change in the Council's charging policy.

38. Officer 4's decision was not to agree a further waiver of Mr D's contributions.

39. In a follow up email to Officer 4, Officer 3 noted it appeared Mr D's *"…expenses which relate to his circumstances and disability outweigh his income…and definitely are significantly over the DLA* [disability living allowance] *he receives".*

My investigation

40. In response to my enquires, the Council said its view was Mr D had not engaged with opportunities it had offered for him to review his budgeting and receive debt advice. It said:

> *"It is recognised that Mr [D] has limited income, and is benefit dependant, but the Policy has been applied by [Officer 4] to ensure fairness and consistency*

for all service users who are also expected to contribute toward their care and support. [Officer 4] therefore is not in agreement to apply a further waiver for Mr [D].”

- It noted Mr D had not provided a complete record of his income and expenditure. Without this, it had not been able to carry out a full assessment of his disability related expenses.
- The hours were rearranged at the care plan review *“to meet his need in line with the Adult social care strategy and the strengths-based approach”.* The review found that Mr D wanted more support in the morning. It noted: *“Many service users want more hours, but this does not always promote their independence. [Mr D] is active and goes out without the support of a PA. He goes independently to his support groups, so his inclusion needs in the community are quite rightly met by himself.”*
- The personal budget had not changed, and the support plan addressed Mr D’s needs adequately.
- *“[Mr D] showed the worker an increased level of anxiety at the prospect of having less hours of care and his focus was on this and therefore it was difficult for him to accept the positive support offered to him, to support him to live a better life.”*
- *“[Mr D] would need to provide evidence of his I&E* [income and expenditure]*, so we can demonstrate if he can meet this* [an internet connection to address Mr D’s risk of social isolation] *outcome his self before it could be considered as a DP. [Officer 3] has reminded [Mr D] and his support worker to fill in the I&E form.”*
- Officer 3 had asked Mr D to send her details of every item of DRE he had, so she could re-present his case. Mr D had not sent this information. The Council sent me records of a meeting in September (and follow up email to Mr D) about this issue.

41. In response to my draft decision both the Council and Mr D advised they had carried out a review of Mr D’s care needs. Mr D advised this had taken three lengthy meetings and involved an advocate.

42. The Council also:

- accepted it could have recorded in the relevant section, for its September 2018 review, areas where Mr D and it disagreed about his care needs.
- explained more about the reallocation of hours in September (some of which it says, were before, not being used for an eligible need). And repeated its view there was no evidence of an increased need.
- Noted numerous emails and telephone conversations during the review process.
- Advised it was still working with Mr D to assess his DRE. It would continue with this.

Was there fault by the Council?

The care and support plan review

43. In its last review of Mr D’s care and support needs, the Council changed Mr D’s eligible care needs. Its view is that its documentation about this is acceptable, because Mr D’s personal budget was unchanged. And the support plan addressed Mr D’s needs. The Guidance says the key aim of an adult’s care and

support is to meet their needs. So I would have expected to see an explanation about the assessor's reasoning for removing some support and increasing others; linking this to Mr D's needs.

44. The Council's response to my enquiries and draft decision does provide some reasons. But I would have expected to see those reasons in the running record. Having considered the Council's response to my draft decision, my view remains that the lack of a contemporaneous record is fault.

45. The Council says it has sought to offer Mr D support to help him to regain some independence. That is a key aim of the Care Act. So for the Council to seek to promote that aim with Mr D is not something the Ombudsman would normally criticise.

46. The Council was in contact with Mr D about the review and offered him support. He was clearly anxious about the outcome. And he declined the offers of support in engaging in the process. But the expectation is the assessor should seek to share with the service user what the review would cover before it began. I can see no record of the Council having done that here. Or, alternatively, a note about why that was not appropriate in this instance.

47. And the Care Act and its Guidance advises assessors they should seek, where possible, to agree the plan with service users. Here Officer 1 noted she completed the review with Mr D. But his recorded communications, both before and after the review, note he was concerned that his needs had increased. My view is the Council's records do not provide sufficient record of trying to reach agreement with Mr D. My view remains, at the least, there was a misunderstanding about what Officer 1 would be recommending after her meeting with Mr D. My view is the inadequate record was fault.

The financial assessment

48. The Council is entitled to expect Mr D to meet his assessed financial contribution. And we have no role in criticising the policy decision the Council has made about its charges, as its new policy still falls within what the Care Act and Guidance allow. So the Ombudsman cannot fault the Council's starting point assessment of what Mr D's charges for his care and support should be.

49. We have also not criticised the Council's decision to end the waiver. And I see no reason to question the Council's decision to not agree to a new waiver.

50. But the assessment of Mr D's DRE is an outstanding issue. I can see Officer 3's view, from meeting Mr D, was his DRE was more than the Council's standard allowance and above the DLA he receives (the care part of which is £58.70 per week). Officer 3 visited Mr D most recently in September, to explain to him he needed to provide details of all his DRE. But the Council says Mr D has not provided that information. The Council is entitled to seek evidence to support claims from Mr D that his DRE is above its standard allowance.

51. But, from the records I have seen, my view is the Council does not seem to have given the issue the attention it needs until Officer 3's visit. The Council says it was earlier hampered in assessing Mr D's DRE because he did not return an income and expenditure form. I find that explanation lacking for the following reasons:

- The income and expenditure forms it sent earlier were from its Debt Recovery Team. I can see nothing in the Council's records to suggest it advised Mr D it wanted him to complete the form so it could consider his DRE. The records suggest receiving the forms had worried Mr D.
- The Council's own records note Mr D's vulnerability.

- The Council has been aware since the end of its waiver that Mr D says he does not have enough income to meet his assessed contribution. Part of the explanation of this may be that the Council is not allowing enough DRE.

52. I am not saying the Council should have allowed more DRE. That is a decision for it to make, while following the Statutory Guidance. But the fact it did not earlier turn its mind to this question is fault.

Recommended action

53. In my draft decision my provisional recommendation was that, within a month of my decision, the Council contacts Mr D to offer him a further review of his care and support plan. And that review should seek to agree with Mr D what his support needs are. If the assessor could reach agreement, they needed to set this out in the records.

54. While my investigation has been ongoing the Council has carried out a review. It is not the place of this investigation to look at the recommendations of this review. But the record of one of the meetings the Council has sent me satisfy me that it sought to engage more with Mr D to discuss his concerns. So my view is it has met that recommendation.

55. I also recommended that the Council accept any information Mr D sends it in support of his request for DRE. If it agrees to allow increased DRE, I recommend it backdate this increased amount to January 2019 (except for any expenditure that began after that date).

56. The Council says it continues to work with Mr D to meet this recommendation. I ask it to report back to me within the next two months of the further actions it has taken to work with Mr D to consider his DRE.

Final decision

57. I uphold the complaint. The Council has taken some action and agreed to take other. So I have completed my investigation.

Parts of the complaint that I did not investigate

58. I have not investigated the Council's change to its charging policy. The old policy was more generous than the minimum scheme set out in the Guidance. The new policy more closely follows the Guidance's minimum provisions. As the policy is still within what the law allows, there is no role for the Ombudsman to consider the changes.

Investigator's decision on behalf of the Ombudsman

20 January 2020

Complaint reference:
19 003 401

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr X complained about the way the Council completed his and his wife's financial assessments. Mr X said this meant they paid too much towards the costs of their care. The Council was not at fault in the way it calculated Mr and Mrs X's financial contributions to their care costs.

The complaint

1. Mr X complained the Council:

a) incorrectly calculated the financial contribution he must make towards his home care;

b) has either failed to carry out, or delayed in carrying out, financial assessments since 2017;

c) took joint benefits into account claimed by his wife without carrying out a financial assessment with her; and

d) does not take working people's income into account when calculating financial contributions to care.

What I have investigated

2. I have investigated complaints a) to c) in paragraph 1. I have explained why I will not look at complaint d) at the end of this decision statement.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. ***(Local Government Act 1974, section 34(3), 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 Mr X's view of his complaint and considered the information he provided. I also spoke to Mrs X.

6. I spoke to the Council and made enquiries and considered the information it provided.
7. I considered the Care Act 2014, the Care and Support Statutory Guidance 2014 (the Guidance) and the Care and Support (Charging and Assessment of Resources) Regulations.
8. I wrote to Mr X and the Council with my draft decision and took the comments they made into account before I made my final decision.

What I found

Legal background

9. The Care Act 2014 is the overarching legislation which sets out what councils can charge people who have an assessed need for care.
10. The Care and Support Statutory Guidance sets out in detail how councils must apply the requirements of the Care Act.
11. Councils have discretion to choose whether or not to charge for care which people receive at home. Where a council decides to charge it must do so in line with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the Care and Support Statutory Guidance.
12. The overarching tenet of the Guidance is that councils should take reasonable steps to ensure that any charge is affordable for the person concerned. The council determines this by carrying out a financial assessment of what a person can afford to pay.
13. Councils can take most benefits into account in a financial assessment, including employment and support allowance (ESA), attendance allowance and the care component of disability living allowance (DLA). The law says some benefits and other income must not be taken into account. This includes income earned from employment and the mobility component of DLA.
14. Councils may exercise discretion to disregard some sources of income even if the law says they are allowed to take them into account when calculating a person's contribution to their care.
15. Councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. This is called the minimum income guarantee (MIG). The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations. However, this is only a minimum and councils have discretion to set a higher level if they wish.
16. Annex C of the Guidance states *"Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income."*

Council's policy on charging for care

17. The Council's policy on calculating the contribution to a person's care included the following:
    - if a person received disability living allowance (around £85 a week), it disregarded £28.30 of this as income; and
    - all people, regardless of their age, had a MIG of £189.

18. In July 2018 the Council's Adult Social Care and Public Health Committee recommended proposals to change the Council's policy so that it would:

- include the full amount of a person's disability living allowance as income; and
- reduce the MIG for people under pension age to £170.23 from April 2019 with a further reduction to £151.45 from November 2019.

19. These changes were designed to bring the Council's policy more into line with national guidance.

20. The Council held an eight week public consultation on the proposals.

21. It sent letters about the consultation to all people who received adult social care from the Council. The Council also set up an online survey on its website and shared the link with relevant local groups and placed copies of the consultation in its libraries.

22. The consultation finished at the end of September 2018. 1,425 people responded. The majority of people who responded were not in favour of the changes.

23. On 8 October, the Adult Social Care and Public Health Committee considered the results of the consultation. It recommended the Council's Policy Committee approve its recommendation that the Council introduce the new proposals.

24. Later in October 2018, the Adult Social Care and Public Health Committee brought its report and recommendation to the Council's Policy Committee.

25. The report included details of the proposals, the reasons for introducing them, the consultation and its results, comments made by consultees, the number of people affected and the increased contributions some would have to pay.

26. The Policy Committee recommended the proposals were adopted by the Council.

27. In February 2019, the Policy Committee considered the matter further and gave its approval to implement the changes in two stages:

- from April 2019, a partial decrease in the MIG would be introduced so that people between the ages of 18 and pensionable age would have a MIG of £170.23; and
- from November 2019, people between 18 and pensionable age would have a MIG of £151.45.

Background

28. Mr X has a number of disabilities which means he needs home care. He receives single person's ESA and the mobility and care components of DLA.

29. On 26 July 2016, Mr X emailed the Council and advised his partner, Mrs X, had moved in. Mr X said he did not want to complete a new financial assessment form and so the Council checked the DWP's benefits system. This recorded Mr X was receiving single person's ESA a week and Mrs X was receiving couple's ESA. When the Council calculated Mr X's and Mrs X's finances it allocated the single ESA to Mr X and the total amount of the couple's ESA to Mrs X. This meant the income for both of them fell below the MIG and they did not have to contribute to the costs of their care.

30. In April 2017, the Council apportioned Mr and Mrs X's ESA on a 50:50 split of the total ESA amount. Again, their incomes fell below the MIG and so they did not have to contribute towards the costs of their care.

31. In April 2018, the Council's policy on how it treated couples for financial assessments changed. This said *"Only income and capital held in the service user's name and half of any income or capital held in joint names will be taken into account".*

32. The Council says it notified all couples of the change but missed Mr X because he was not recorded on it system as part of a couple. Therefore, the Council continued to assign the total household ESA to Mr and Mrs X on a 50:50 split.

33. The Council contacted Mr X in November 2018 after noticing it had not recorded him and Mrs X as a couple. Mr X responded on 5 November 2018 stating he was still receiving single person's ESA. The Council carried out a check with the DWP which showed Mrs X also had a couple's claim in place for both herself and Mr X. The Council apportioned the couple's joint benefit on a 50:50 split in line with its policy and the regulations.

34. In April 2019, the Council carried out new financial assessments for Mr and Mrs X. By this stage, some of the Council's new policy changes had been brought in. These meant it had reduced the MIG to £170.23.

35. Once the Council had taken into account all of Mr X's benefits and his disability related expenditure, his income was £49 above the MIG. This meant Mr X had to contribute £49 to the costs of his care. This was the first time the Council had assessed Mr X as able to contribute towards the cost of his care.

36. Mrs X's income minus her disability related expenditure fell below the MIG. This meant Mrs X did not have to contribute to the costs of her care.

37. Mr X was unhappy the Council had begun to charge him for the costs of his care and he complained to the Council and subsequently the Ombudsman.

My findings

38. The Council followed the correct procedures when it made changes to its policy on charging for care. The consultation was not a binding referendum and the Council had no duty to act in line with the majority who opposed the changes. The relevant Council committee submitted a report which contained appropriate information to the Policy Committee for its consideration and subsequent approval. This was in line with the Council's Constitution and the proposals are in line with the national Regulations. There was no fault in the Council's actions.

39. The statutory guidance states "*Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income."*

40. This means that the Council should have allocated Mr X's single person's ESA to him alone and split the couple's ESA 50:50. However, prior to April 2019, the Council divided Mr and Mrs X's total ESA equally between them. This meant the income for each of them fell below the MIG and neither had to contribute towards the costs of their care. Mr and Mrs X, therefore, benefitted from the way the Council split the total ESA between them.

41. From April 2019, the Council allocated the ESA received by Mr and Mrs X in line with the statutory guidance; namely, it allocated to Mr X the single ESA awarded in his name and 50% of the joint ESA award. It allocated to Mrs X 50% of the joint ESA the couple was awarded only. This meant that although Mrs X's income remained below the MIG, Mr X's went above the threshold and he had to

contribute to the costs of his care. However, the Council acted in line with the statutory guidance and its own policy and was not at fault.

Final decision

42. There was no fault in the Council's actions. Therefore, I have completed my investigation.

Parts of the complaint that I did not investigate

43. I have not investigated complaint d) in paragraph 1. This is because the law states that councils must not take work related earnings into account when calculating the amount a person can afford to contribute to their care. The Ombudsman does not have the authority to either change or interpret the law or statutory guidance. Only government and the courts can do this.

Investigator's decision on behalf of the Ombudsman

Nottinghamshire County Council

Report to Governance & Ethics Committee

4 March 2020

Agenda Item: 5

REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, EMPLOYEES AND GOVERNANCE

INFORMATION GOVERNANCE - PROGRESS UPDATE

Purpose of the Report

1. To provide Governance and Ethics Committee with an information governance progress update focussed upon delivery of:

    - the Council's Information Governance Action Plan for 2019/20; and
    - the second phase of the Information Governance Improvement Programme (IGIP) which aims to improve the Council's approach to electronic document and records management.

Information

Information Governance Action Plan for 2019/20

2. In May 2019 Governance and Ethics Committee approved the Information Governance Action Plan (IG Action Pan) for 2019/20.

3. The IG Action Plan gives on-going visibility and momentum to the work of improving the Council's approach to information governance. It followed the successful conclusion of the first phase of the IGIP which had focused upon compliance with new data protection law which came into force in May 2018.

4. Some of the actions contained in the IG Action Plan arose from identified gaps in the Council's self-assessment against the Data Security and Protection (DSP) Toolkit. The Toolkit provides assurance that health and social care organisations are practising good data security and that personal information is handled correctly.

5. The table at Appendix A gives an overview of progress in delivering the IG Action Plan for 2019/20 as at the end of Quarter Three (the end of December 2019). The actions that also form part of the Toolkit Action Plan agreed with NHS Digital are marked with an asterisk (*).

6. Positive progress has been made, with most tasks completed. A review has indicated that it is very rare for organisations to issue detailed performance reports on information governance

because they can expose organisational vulnerabilities and thus increase risk. Rather scrutiny and assurance of performance is usually attained through reports detailing the results of self-assessments against national or local standards frameworks.

7. This is the approach taken on the Council's approach to cyber security, with Committee being periodically updated on performance against advice published by the National Audit Office for Audit Committees. If there is not a national framework, the intention is to use the information governance audit framework used by Essex County Council to audit the Council in 2017. Progress on this will be reported to June's Committee as part of the quarter four update on the IG Action Plan. The performance report itself will then be brought to a subsequent meeting.

8. Aside from delivering the Action Plan, the Information Governance Team continues to undertake core business such as providing advice and support to departments; supporting the completion of Data Protection Impact Assessments (DPIAs); and coordinating the management of the Council's personal data breaches.

Information Governance Improvement Programme (IGIP): Document and Records Management

9. Phase two of the IGIP is focused on improving the Council's approach to electronic document and records management (EDRM), predominantly through exploiting advances in technology. The capabilities in Microsoft Office 365 (O365) should mean that documents and records will be retained only for as long as necessary; are reliable and retrievable but only by the people who are authorised to access them; are secured and protected according to their sensitivity; with maximum automation to achieve these ends.

10. In December 2019, an external consultancy was engaged to deliver two proof of concept SharePoint sites (specific document storages areas within O365) for sharing information with external partners. The brief was to automatically deliver controlled and governed sites and to build in EDRM capabilities, with a view to ultimately applying these across the whole of the Council's O365 estate (email, SharePoint, personal drives etc).

11. The work was helpful in generating active engagement from the business about specific requirements of external data sharing and in getting a better understanding of governance needs and EDRM capabilities. However, Microsoft had made some of the EDRM tools unavailable at that time and so they could not be tested as part of the proof of concept. These have since been restored, but the variety of computer operating systems across the Council means that some EDRM tools cannot currently be used consistently. ICT will be looking to update systems over the Spring / Summer 2020 to address this situation.

12. Legal Services currently practices robust EDRM but with a lot of manual intervention from their staff and they are unable to locally control access to their documents. Their management team is keen to put in place a cutting-edge, automated approach to EDRM built on O365. This would be an excellent test case for the Council since a lot of the building blocks of success are already in place (management commitment, structured records management, culture etc). However, ICT does not have the capacity or capability to support the service to achieve this ambition given the on-going demands of Cloud migration and the developing experience with this new technology. External expertise to support this work is therefore needed.

13. As originally scheduled, the IGIP will end in March 2020. Whilst the GDPR compliance phase of the Programme achieved all of its objectives, the EDRM phase has proved more

problematic for a number of reasons, many of which are also being experienced by the other Councils that are trying to progress this agenda. There is no facility to carry forward £150,000 which was unspent under the originally approved IGIP budget however it is possible to request an amount from contingency for next year in order to secure additional external support for some specific project work to make some tangible progress as part of the Programme. Members are therefore asked to approve that a request for £60,000 be sought as an allocation from contingency to fund a project for a pilot document management site in Legal Services and at least one further targeted project relating to document management in order to progress the objectives of the Programme.

14. In light of the difficulties in progressing the broader objectives of the Programme outlined above, it is also proposed that a review should be undertaken to revisit the scope of EDRM requirements for the Council and determine how and when they should be taken forward. This work should also identify risks as well as potential costs and the longer term funding requirements to progress this important work, taking a balanced and proportionate approach. It will be important to ensure that EDRM plans complement other Council technology led transformation (e.g. the Improving Customer Experience through Digital Development Programme); take account of the status of EDRM technology in O365 and its compatibility with the Council's IT infrastructure; and, if possible, are informed by the experiences other County Councils are having in implementing EDRM within O365.

Other Options Considered

15. None. The Committee previously agreed that it would receive progress update reports.

Reason/s for Recommendation/s

16. The Information Governance Action Plan contains those actions that improve the Council's compliance and performance on information governance and enable it to meet external standards for data security and protection as set out in the DSP Toolkit. The Committee previously agreed that it would receive progress update reports on the Action Plan.

17. The document management phase of the IGIP has been delayed. The ability to draw on contingency funding is necessary to fund the work as set out in paragraph 13 which will be linked with a review to determine the scope, scale and costs of further work.

Statutory and Policy Implications

18. 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/S

1) It is recommended that Governance and Ethics Committee:

a. Agree that approval for an allocation of £60,000 from contingency in 2020/21 be sought from Finance and Major Contracts Management Committee to fund a project for a pilot document management site in Legal Services and at least one further targeted project relating to document management in order to progress the objectives of the Programme.
b. Authorise a cross cutting review be undertaken with input from colleagues in ICT, Information Governance and the Digital Development Programme as set out in paragraph 14 with the options reported to a future meeting of this Committee.
c. Agree to receive a follow up/update report in June on the Information Governance Action Plan and that this be included in the work programme.

Marjorie Toward
Service Director for Customers, Employees and Governance

For any enquiries about this report please contact: Caroline Agnew (ext. 73760)

Constitutional Comments (HD 12/2/2020)

1. The proposals within the report fall within the remit of the Committee

Financial Comments (RWK 13/02/2020)

2. The report is seeking an allocation of £60,000 from contingency in 2020/21 to fund a project for a pilot document management site in Legal Services and at least one further targeted project relating to document management in order to progress the objectives of the information governance programme.

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

Progress in delivering IG Action Plan (2019/20) to Q3 (December 2019)

Ref:	Action	Deadline	Status	Comments, Progress & Result Update
1.1	**Governance - Revise NCC Information Strategy** to align with the delivery of the Council Plan (2017 – 2021). Subject to confirmation of fit with Business Intelligence Strategy & Enhancing Customer Experience by Digital Development Programme.	June 19	Deferred	As explained to Committee in November 2019, deferred to take account of / align with the Improving Customer Experience through Digital Development Programme.
1.2	**Governance - Review key policies** in line with organisational learning, enforcement action, case law and good practice.	June 19	Complete	Review complete, sign-off by Monitoring Officer under delegated authority from Policy Committee.
1.3	**Audit and Quality assurance**			
1.3.1	Design and populate a single register of information systems used by NCC*	July 19	Complete	Apps Catalogue expanded to include IG information.
1.3.2	Design and implement 2019/20 data security and protection spot check inspection programme*	July 19	Complete	Methodology agreed by IGB Sept 19. First spot check completed.
1.4	**Training & Awareness**			
1.4.1	Data Security and Protection training needs analysis & training plan*	June 2019	Complete	Approved by IGB June 19.
1.4.2	Design and deliver induction training on information governance	July 19	Revised Approach Complete	Standard training to continue to be done at induction supported by fuller, up-to-date IG information on intranet.
1.4.3	Design and release initial One Minute Guide (short guides making policies and procedures more accessible for staff).	July 19	Complete	OMG on information rights issued and posted on new IG intranet hub.
1.5	**Governance, Audit and Quality assurance**			
1.5.1	Complete and validate register of Surveillance Cameras / CCTV systems	April 2019	Complete	Register designed and populated.

1.5.2	Undertake an exercise with Information Asset Owners / Managers (IAOs/IAMs) to validate the Council's Information Asset Register	June 19	Complete	Validation questionnaire released in July. Current position is known. Designing training for IAOs/IAMs to help them meet role requirements.
2.1	**Governance, Audit and Quality assurance**			
2.1.1	Data Protection by Design and Default Procedure (to include pseudonymisation requirements) to be developed and approved*	Sept 2019	Complete	Subject to IGB Sub-Group approval.
2.1.2	Design methodology pseudonymisation / anonymization / de-identification controls audit and undertake audit*	Sept 2019	Complete	Subject to IGB Sub-Group approval.
2.1.3	Data Quality Procedure to be developed and approved. Data quality audit(s) undertaken*	Sept 19	Complete	Subject to IGB Sub-Group approval.
2.2	**Training** - design and deliver Surveillance Cameras / CCTV training for systems owners.	Sept 19	Complete	Materials drafted. Training held Sept / Oct 2019.
2.3	**Performance** – design Information Governance performance dashboard	Sept 19	Complete	Released to IGB Aug 19.
2.4	**Compliance** – to design more proactive means for imparting privacy information to individuals	July 2019	Complete	Short form privacy notice issued and adopted.
3.1	**External Standards** - gather evidence and submit response to the Surveillance Camera Commissioner (SCC) survey of local authorities on CCTV use and protection of privacy.	Oct 2019 [Est]	Delayed by SCC, expected Q4	Significant compliance improvements in this area will make the Commissioner's Survey easier to respond to.
3.2	**Training and awareness** – participate in Health & Safety Week 2018 to raise the profile and importance of data security and protection.	Oct 2019	Complete	International Data Protection Day (28 January) marked instead. Release of new IG intranet and staff survey.
3.3	**Suppliers** – review arrangements for assuring the data protection compliance of NCC suppliers	Dec 2019	Complete	Process reviewed and amended to make incremental improvements.
3.4	**Performance** – determine metrics and method for reporting information governance performance to Committee (with a view to commencing reporting from January 2020)	Oct 2019	Partially complete	Exploring whether there is a self-assessment framework for IG which could complement the NAO Cyber Security benchmark updates received periodically by Committee.

4.1	**Training & Awareness** - Design and deliver a staff survey (akin the National NHS Data Security Awareness training survey) to establish views on NCC approach to data security and protection.	Feb 2020	Complete	Survey issued 28/1/2020. Analysis will be reported to IGB in March.
4.2.1	Secure Public Services Network (PSN) IA Certification	Mar 2020	Partially complete	Work underway to build evidence portfolio.
4.2.2	Gather evidence and submit response to the Data Security and Protection Toolkit 2020/21	Mar 2020	Partially complete	

* Required as part of the DSP Toolkit Action Plan agreed by NHS England.

Nottinghamshire County Council

Report to GOVERNANCE AND ETHICS COMMITTEE

4 March 2020

Agenda Item: 6

REPORT OF SERVICE DIRECTOR – FINANCE, INFRASTRUCTURE AND IMPROVEMENT

GRANT THORNTON – EXTERNAL AUDIT PLAN 2019/20

Purpose of the Report

1. To inform Members of the External Auditors' Audit Plan for their 2019/20 Audit.

2. To consider the proposed increase to the 2019/20 audit fees resulting from the revised expectations from the Financial Reporting Council (FRC).

Information

3. The attached report from our external auditors, Grant Thornton, sets out the proposed Audit Plan for the 2019/20 audit, including their approach, significant risks, fees, key staff and timelines for the audit. The report is presented to Members for their information. John Gregory, Engagement Lead - Grant Thornton) and Lorraine Noak, the Audit Manager (Grant Thornton), will be in attendance at the meeting to introduce the report and respond to Members' questions.

4. The report also highlights that the FRC has set out an expectation of improved financial reporting from organisations and the need for the auditors to demonstrate increased scepticism and challenge. The cost implications of this are set out from page 15 of the report.

Other Options Considered

5. The report is for comment only.

Reason/s for Recommendation/s

6. To provide information to Members on the External Audit Plan 2019/20.

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 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 anticipated total fees, excluding the indicative fee for grant claim certification, are £90,624 for Nottinghamshire County Council and £27,293 for the Nottinghamshire Pension Fund. This is in line with the initial proposal and budget provision is in place.

RECOMMENDATION/S

1) That Members receive, and comment upon, the External Auditor's Audit Plan for 2019/20.

2) That Members accept the increase to the 2019/20 audit fees in acknowledgement of the revised expectations from the FRC.

Nigel Stevenson
Service Director – Finance, Infrastructure and Improvement

For any enquiries about this report please contact:
Glen Bicknell, Senior Finance Business Partner, Financial Strategy and Compliance.

Constitutional Comments (12/02/2020 KK)

9. The proposal in this report is within the remit of the Governance and Ethics Committee

Financial Comments (12/02/2020 GB)

10. The financial implications are set out in 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

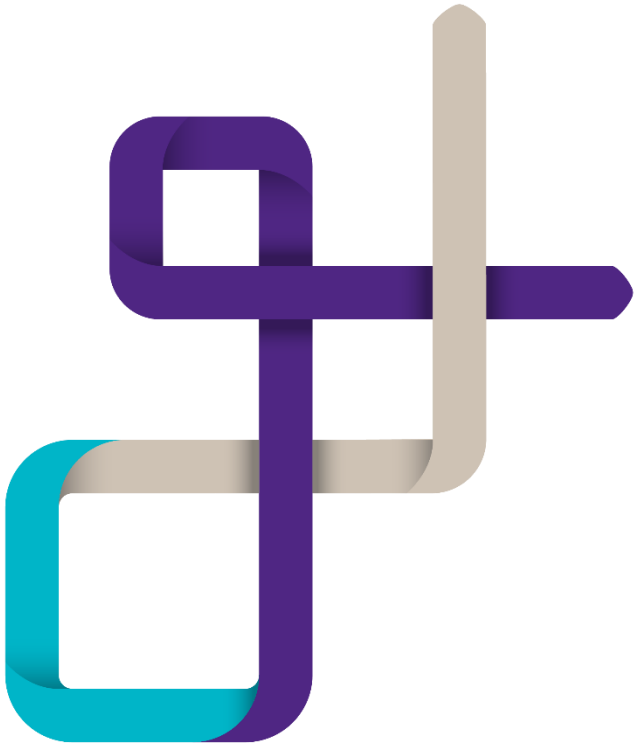
External Audit Plan

Year ending 31 March 2019

Nottinghamshire County Council

Nottinghamshire Pension Fund

March 2020



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The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit planning process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Authority or all weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Introduction

Our Audit Team

John Gregory, Engagement Lead

John's role will be to lead our relationship with you. He will take overall responsibility for the delivery of a high quality audit, meeting the highest professional standards and adding value to the Authority. He will be the main point of contact for the Chair, Chief Executive and Committee members. He will share his wealth of knowledge and experience across the sector providing challenge and sharing good practice

Lorraine Noak, Audit Manager

Lorraine will work with senior members of the finance team ensuring testing is delivered and any accounting issues are addressed on a timely basis. She will attend Audit Committees with John, and supervise Hamze in leading the on-site team. Lorraine will undertake reviews of the team's work and draft clear, concise and understandable reports

Hamze Samatar , In-charge auditor - NCC

Hamze's role will be to be the day to day contact for the Council finance staff. He will take responsibility for ensuring there is effective communication and understanding by the finance team of audit requirements. He will lead the on-site team and will monitor deliverables, manage our query log ensuring that any significant issues and adjustments are highlighted to management as soon as possible. A separate in-charge auditor, Kerry Sharma, will be the day to day contact in relation to the Fund

Purpose

This document provides an overview of the planned scope and timing of the statutory audits of Nottinghamshire County Council ('the Authority') and Nottinghamshire Pension Fund ('the Fund') for those charged with governance.

Respective responsibilities

The National Audit Office ('the NAO') has issued a document entitled Code of Audit Practice ('the Code'). This summarises where the responsibilities of auditors begin and end and what is expected from the audited body. Our respective responsibilities are also set out *in the Terms of Appointment and Statement of Responsibilities* issued by Public Sector Audit Appointments (PSAA), the body responsible for appointing us as auditor of the Authority and the Fund. We draw your attention to both of these documents on the PSAA website.

Scope of our audits

The scope of our audit is set in accordance with the Code and International Standards on Auditing (ISAs) (UK). We are responsible for forming and expressing an opinion on the :

- Authority and Fund's financial statements that have been prepared by management with the oversight of those charged with governance (the Governance and Ethics Committee); and
- Value for Money arrangements in place at the Authority for securing economy, efficiency and effectiveness in your use of resources.

The audit of the financial statements does not relieve management or the Governance and Ethics Committee of your responsibilities.. It is the responsibility of the Authority and the Pension Fund to ensure that proper arrangements are in place for the conduct of its business, and that public money is safeguarded and properly accounted for. We have considered how the Authority and Fund is fulfilling these responsibilities

Our audit approach is based on a thorough understanding of the Authority and Fund's business and is risk based.

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Headlines

Significant risks	Those risks requiring special audit consideration and procedures to address the likelihood of a material financial statement error have been identified as: **Nottinghamshire County Council** • Management override of controls • Net pension liability • Valuation of Land & Buildings **Nottinghamshire Pension Fund** • Management override of controls • Valuation of Level 3 (hard to value) Investment Assets We will communicate significant findings on these areas as well as any other significant matters arising from the audit to you in our Audit Findings (ISA 260) Report.
Materiality - Authority	We have determined planning materiality to be £16m for the Authority, which equates to approximately 1.5% of your prior year gross expenditure (cost of services) for the year. We are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. Clearly trivial has been set at £841k.
Materiality – Pension Fund	We have determined materiality at the planning stage of our audit to be £54m for the Fund, which equates to 1% of your prior year net assets. We are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. Clearly trivial has been set at £2.7m.
Value for Money arrangements (Authority Only)	We are currently undertaking our Value for Money risk assessment and will report to you in our progress reports any areas that require significant consideration. Based on our consideration to date, it is likely that the following will be identified as a significant risk: • Financial Sustainability
Audit logistics	Our interim audit visits will take place in January and March 2020. Our final audit visit will take place from June through to July. Our key deliverables are this Audit Plan and our Audit Findings Report to be issued upon completion of our audit work. Our fee for the audit will be £90,624 for the Authority and £27,293 for the Fund, subject to management meeting our requirements set out on page 15.
Independence	We have complied with the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements.

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Key matters impacting on our audit of the Authority

Factors		
The wider economy and political uncertainty Local Government funding continues to be stretched, with most councils experiencing increasing cost pressures and demand from residents. Nottinghamshire County Council faces a similar economic environment, characterised by period of constrained external funding coinciding with demand pressures in adult and children's social care services. The Council is therefore currently forecasting a financial gap of £28.3m over the next three years, as set out in its medium term financial plan. A range of options are being explored to address this. At a national level, the government continues its negotiation with the EU over Brexit, and future arrangements remain clouded in uncertainty. The Authority will need to ensure that it is prepared for all outcomes, including in terms of any impact on contracts, on service delivery and on its support for local people and businesses.	**Financial reporting and audit – raising the bar** The Financial Reporting Council (FRC) has set out its expectation of improved financial reporting from organisations and the need for auditors to demonstrate increased scepticism and challenge, and to undertake more robust testing as detailed in Appendix 1. Our work in 2018/19 has highlighted areas where local government financial reporting, in particular, property, plant and equipment and pensions, needs to be improved, with a corresponding increase in audit procedures. We have also identified an increase in the complexity of local government financial transactions which require greater audit scrutiny.	**Implementation of IFRS 16 - Leases** Implementation of IFRS 16 – Leases in the 2020/21 financial year will require disclosure notes in the 2019/20 financial statements. These notes must provide sufficient accurate information in order that the user of the financial statements would arrive at the appropriate conclusion when making economic decisions.
Our response		
• We will consider your arrangements for managing and reporting your financial resources as part of our work in reaching our Value for Money conclusion. • We will consider whether your financial position leads to material uncertainty about the going concern of the Authority and will review related disclosures in the financial statements.	• As a firm, we are absolutely committed to meeting the expectations of the FRC with regard to audit quality and local government financial reporting. Our proposed work and fee, as set further in our Audit Plan, has been discussed with the Service Director: Finance, Infrastructure and Improvement, and is subject to PSAA agreement.	• We will assess the adequacy of your disclosure about the financial impact of implementing IFRS 16 – Leases from 1 April 2020.

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Key matters impacting on our audit of the Fund

Factors

The wider picture and political uncertainty

- Local Government funding continues to be stretched with increasing cost pressures.
- The market value of LGPS funds at end of March 2019 was £287.2 billion (an increase of £16.3 billion or 6.0%) but for the first time, the LGPS in England & Wales is now cashflow negative, with benefit payments rising to £10.4bn while contributions fell to £9.3bn. There are now over 18,000 employers. Local authorities represent around 18.3% of these but have 74% of the members.
- The UK left the EU on 31 January 2020. The economic impact of this remains uncertain as is the wider global economic picture. The Pension Fund will need to ensure that its investment strategy has considered potential outcomes.

Governance

- The Scheme Advisory Board (SAB) has published the *Good Governance – Phase II Report*. Proposals include having a single named officer responsible for the delivery of LGPS related activity for a fund, an enhanced annual governance compliance statement and establishing a set of key performance indicators.
- SAB is also consulting on Responsible Investment guidance to assist and help investment decision makers.
- tPR continues to apply pressure on pension schemes to improve the quality of scheme member data. The 2019 valuation process will likely have thrown up some data issues (large or small) that need addressing.

Financial reporting and audit – raising the bar

The Financial Reporting Council (FRC) has set out its expectation of improved financial reporting from organisations and the need for auditors to demonstrate increased scepticism and challenge, and to undertake more robust testing as detailed in Appendix 1.

Our work in 2018/19 has highlighted areas where financial reporting, in particular Level 3 and Financial Instrument investment valuations and disclosures, needs to be improved, with a corresponding increase in audit procedures.

Our response

- We will consider whether your financial position leads to material uncertainty about the going concern of the Pension Fund and will review related disclosures in the financial statements.

- We will consider the Pension Fund's responses to the SAB initiatives and whether they impact upon our risk assessment.
- We will consider the impact of the data issues raised as part of the 2018/19 audit on the risks identified as part of our 2019/20 audit.

- As a firm, we are absolutely committed to meeting the expectations of the FRC with regard to audit quality and financial reporting. Our proposed work and fee, as set further in our Audit Plan, has been discussed with the Director of Finance and is subject to PSAA agreement.

Significant risks identified

Significant risks are defined by ISAs (UK) as risks that, in the judgement of the auditor, require special audit consideration. In identifying risks, audit teams consider the nature of the risk, the potential magnitude of misstatement, and its likelihood. Significant risks are those risks that have a higher risk of material misstatement.

Risk	Risk relates to	Reason for risk identification	Key aspects of our proposed response to the risk
Fraudulent revenue recognition	**Authority and Pension Fund**	Under ISA (UK) 240 there is a rebuttable presumed risk that revenue may be misstated due to the improper recognition of revenue. This presumption can be rebutted if the auditor concludes that there is no risk of material misstatement due to fraud relating to revenue recognition. .	Having considered the risk factors set out in ISA240 and the nature of the revenue streams at the Authority and the Fund, we have determined that the risk of fraud arising from revenue recognition can be rebutted, because: • there is little incentive to manipulate revenue recognition • opportunities to manipulate revenue recognition are very limited • the culture and ethical frameworks of local authorities, including Nottinghamshire County Council and Nottinghamshire Pension Fund, mean that all forms of fraud are seen as unacceptable Therefore we do not consider this to be a significant risk for Nottinghamshire County Council and Nottinghamshire Pension Fund
Management over-ride of controls	**Authority and Pension Fund**	Under ISA (UK) 240 there is a non-rebuttable presumed risk that the risk of management over-ride of controls is present in all entities. . The Authority and Fund faces external scrutiny of its spending and this could potentially place management under undue pressure in terms of how they report performance. We therefore identified management override of control, in particular journals, management estimates and transactions outside the course of business as a significant risk for both the Authority and Fund, which was one of the most significant assessed risks of material misstatement.	We will: • evaluate the design effectiveness of management controls over journals • analyse the journals listing and determine the criteria for selecting high risk unusual journals • test unusual journals recorded during the year and after the draft accounts stage for appropriateness and corroboration • gain an understanding of the accounting estimates and critical judgements applied made by management and consider their reasonableness with regard to corroborative evidence • evaluate the rationale for any changes in accounting policies, estimates or significant unusual transactions.

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Significant risks identified

Risk	Risk relates to	Reason for risk identification	Key aspects of our proposed response to the risk
Valuation of Land and Buildings	**Authority**	The Authority revalues its land and buildings on a five-yearly basis. In the intervening years, such as 2019/20, to ensure the carrying value in the Authority financial statements is not materially different from the current value or the fair value (for surplus assets) at the financial statements date, the Authority carries out a desktop revaluation or requests a desktop valuation from its valuation expert to ensure that there is no material difference. This valuation represents a significant estimate by management in the financial statements due to the size of the numbers involved (£683 million) and the sensitivity of this estimate to changes in key assumptions. We therefore identified valuation of land and buildings as a significant risk, which was one of the most significant assessed risks of material misstatement.	We will: • evaluate management's processes and assumptions for the calculation of the estimate, the instructions issued to valuation experts and the scope of their work • evaluate the competence, capabilities and objectivity of the valuation expert • write to the valuer to confirm the basis on which the valuation was carried out to ensure that the requirements of the Code are met • challenge the information and assumptions used by the valuer to assess completeness and consistency with our understanding and. engage our own valuer to assess the instructions to the Authority's valuer, the Authority's valuer's report and the assumptions that underpin the valuation. • test revaluations made during the year to see if they had been input correctly into the Authority's asset register • evaluate the assumptions made by management for those assets not revalued during the year and how management has satisfied themselves that these are not materially different to current value at year end.

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Significant risks identified

Risk	Risk relates to	Reason for risk identification	Key aspects of our proposed response to the risk
Valuation of the pension fund net liability	**Authority**	The Authority's pension fund net liability, as reflected in its balance sheet as the net defined benefit liability, represents a significant estimate in the financial statements. The pension fund net liability is considered a significant estimate due to the size of the numbers involved (£1bn in the Authority's balance sheet) and the sensitivity of the estimate to changes in key assumptions. Some elements of the valuation may also be affected this year by late changes associated with Brexit, leading to increased audit risk. We therefore identified valuation of the Authority's pension fund net liability as a significant risk, which was one of the most significant assessed risks of material misstatement.	We will: • update our understanding of the processes and controls put in place by management to ensure that the Authority's pension fund net liability is not materially misstated and evaluate the design of the associated controls; • evaluate the instructions issued by management to their management expert (an actuary) for this estimate and the scope of the actuary's work; • assess the competence, capabilities and objectivity of the actuary who carried out the Authority's pension fund valuation; • assess the accuracy and completeness of the information provided by the Authority to the actuary to estimate the liability; • test the consistency of the pension fund asset and liability and disclosures in the notes to the core financial statements with the actuarial report from the actuary; • undertake procedures to confirm the reasonableness of the actuarial assumptions made by reviewing the report of the consulting actuary (as auditor's expert) and performing any additional procedures suggested within the report; and • agree the advance payment made to the pension fund for future years to the expected accounting treatment and relevant financial disclosures. • obtain assurances as the auditor of Nottinghamshire Pension Fund as to the controls surrounding the validity and accuracy of membership data; contributions data and benefits data sent to the actuary by the pension fund and the fund assets valuation in the pension fund financial statements.

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Nottinghamshire Pension Fund - Significant risks identified

Risk	Risk relates to	Reason for risk identification	Key aspects of our proposed response to the risk
Valuation of Level 3 (hard to value) Investment Assets	**Pension Fund**	The Fund revalues its investments on an annual basis to ensure that the carrying value is not materially different from the fair value at the financial statements date. By their nature Level 3 investment valuations lack observable inputs. These valuations therefore represent a significant estimate by management in the financial statements due to the size of the numbers involved (£839 m) and the sensitivity of this estimate to changes in key assumptions Under ISA 315 significant risks often relate to significant non-routine transactions and judgemental matters. Level 3 investments by their very nature require a significant degree of judgement to reach an appropriate valuation at year end. Management utilise the services of investment managers and custodians as valuation experts to estimate the fair value as at 31 March 2020. We therefore identified valuation of Level 3 investments, including property investmeents, as a significant risk, which was one of the most significant assessed risks of material misstatement.	We will: • gain an understanding of the Fund's process for valuing level 3 investments and evaluate the design of the associated controls; • review the nature and basis of estimated values and consider what assurance management has over the year end valuations provided for these types of investments to ensure the requirements of the code are met • for a sample of non-property investments, test the valuation by obtaining and reviewing the audited accounts, (where available) at the latest date for individual investments and agreeing these to the fund manager reports at that date. Reconcile those values to the values at 31 March 2020 with reference to known movements in the intervening period and • in the absence of available audited accounts, we will evaluate the competence, capabilities and objectivity of the valuation expert • test revaluations made during the year to see if they had been input correctly into the Pension Fund's asset register • where available review investment manager service auditor reports on design effectiveness of internal controls • for property investments, review the arrangements under which such investments are valued and the assumptions used.

We will communicate significant findings on these areas as well as any other significant matters arising from the audit to you in our Audit Findings Report in July 2019

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Other matters

Other work

The Fund is administered by the Authority, and the Fund's financial statements form part of the Authority's financial statements.

Therefore, in addition to our responsibilities under the Code of Practice, we have a number of other audit responsibilities in respect of the Authority and the Fund, as follows:

- We read the Authority's Narrative Report and Annual Governance Statement and any other information published alongside the Authority's financial statements to check that they are consistent with the financial statements of the Authority and the Fund on which we give an opinion, and consistent with our knowledge of the Authority.
- We carry out work to satisfy ourselves that disclosures made in the Authority's Annual Governance Statement are in line with the guidance issued by CIPFA.
- We carry out work on the Authority's consolidation schedules for the Whole of Government Accounts process in accordance with NAO group audit instructions.
- We carry out work to satisfy ourselves on the consistency of the pension fund financial statements included in the pension fund annual report with the audited Fund accounts.
- We consider our other duties under legislation and the Code, as and when required, including:
    - Giving electors the opportunity to raise questions about the Authority or Fund's 2019/20 financial statements, consider and decide upon any objections received in relation to the 2019/20 financial statements;
    - issue of a report in the public interest or written recommendations to the Authority or Fund under section 24 of the Act, copied to the Secretary of State.
    - Application to the court for a declaration that an item of account is contrary to law under Section 28 or for a judicial review under Section 31 of the Act; or
    - Issuing an advisory notice under Section 29 of the Act.
- We certify completion of our audit of the Authority.

Other material balances and transactions

Under International Standards on Auditing, "irrespective of the assessed risks of material misstatement, the auditor shall design and perform substantive procedures for each material class of transactions, account balance and disclosure". All other material balances and transaction streams will therefore be audited. For the pension fund this will include specific audit procedures relating to the Actuarial Present Value of Promised Retirement Benefits *and* Valuation of Level 2 Investments. However, the procedures will not be as extensive as the procedures adopted for the risks identified in this report.

Going concern

As auditors, we are required to "obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements and to conclude whether there is a material uncertainty about the Authority or the Fund's 's ability to continue as a going concern" (ISA (UK) 570). We will review management's assessment of the going concern assumption and evaluate the disclosures in the financial statements.

Other accounting transactions

We are currently considering the following areas (where deemed to be material and transactions occur in the 2019/20 financial year):

- The nature, disclosure and recognition of pension guarantees made to subsidiaries and joint ventures
- The accounting treatment and recognition of PFI schemes, finance leases and related liabilities
- All other significant judgements and estimates

Accounting policies

- We will review the Authority and Fund's responses to IFRS 16, and disclosures relating to standards issued but not yet applied.

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Materiality

The concept of materiality is fundamental to the preparation of the financial statements and the audit process and applies not only to the monetary misstatements but also to disclosure requirements and adherence to acceptable accounting practice and applicable law. Misstatements, including omissions, are considered to be material if they, individually or in the aggregate, could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

Matter	Description	Planned audit response
1	**Calculation and determination** We have determined planning materiality (financial statement materiality determined at the planning stage of the audit) based on professional judgment in the context of our knowledge of the Authority and the Fund, including consideration of factors such as stakeholder expectations, financial stability and reporting requirements for the financial statements. We determine planning materiality in order to: – estimate the tolerable level of misstatement in the financial statements – assist in establishing the scope of our audit engagement and audit tests – calculate sample sizes and – assist in evaluating the effect of known and likely misstatements in the financial statements	• For the Authority, we have determined financial statement materiality based on a proportion of the gross expenditure of the Authority for the financial year. In the prior year we used the same benchmark. Materiality at the planning stage of our audit is £16m for the Authority, which equates to 1.5% of your prior year gross expenditure for the year (cost of services). • For the Fund, we have determined financial statement materiality based on a proportion of the Fund's net assets for the financial year. In the prior year we used the same benchmark. Our materiality at the planning stage is £54m which equates to 1% of your actual net assets for the year ended 31 March 2019.
2	**Other factors** An item does not necessarily have to be large to be considered to have a material effect on the financial statements. We design our procedures to detect errors in specific accounts at a lower level of precision which we deem to be relevant to stakeholders.	• For the Authority, we have determined a lower specific materiality level of £100K for Senior officer remuneration disclosures.
3	**Reassessment of materiality** Our assessment of materiality is kept under review throughout the audit process.	• We reconsider planning materiality if, during the course of our audit engagement, we become aware of facts and circumstances that would have caused us to make a different determination of materiality
4	**Matters we will report to the Governance and Ethics Committee** Whilst our audit procedures are designed to identify misstatements which are material to our opinion on the financial statements as a whole, we nevertheless report to the Governance and Ethics Committee any unadjusted misstatements of lesser amounts, other than those which are 'clearly trivial', to those charged with governance. ISA 260 (UK) defines 'clearly trivial' as matters that are clearly inconsequential, whether taken individually or in aggregate and whether judged by any quantitative or qualitative criteria.	• In the context of the Authority, we propose that an individual difference could normally be considered to be clearly trivial if it is less than £841k. • In the context of the Fund, we propose that an individual difference could normally be considered to be clearly trivial if it is less than £2.7m. • If management have corrected material misstatements identified during the course of the audit, we will consider whether those corrections should be communicated to the Governance and Ethics Committee to assist it in fulfilling its governance responsibilities.

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Value for Money arrangements

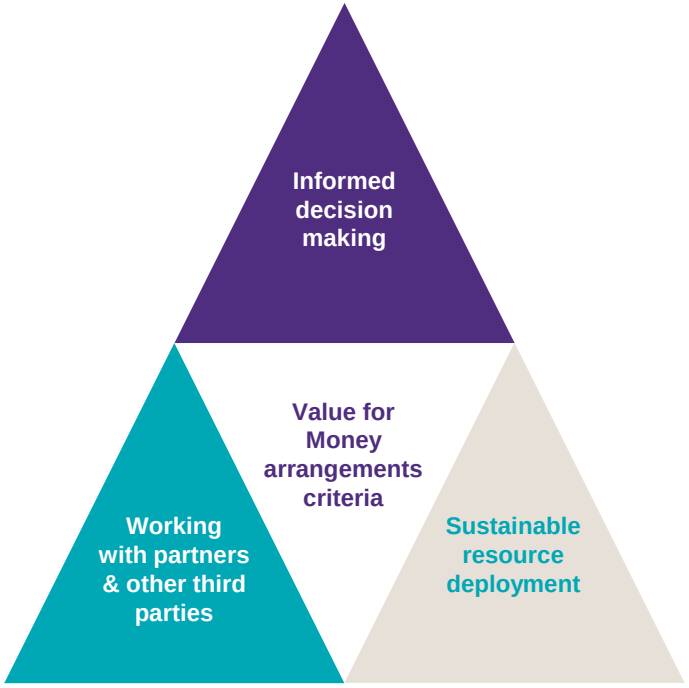
Background to our VFM approach

The NAO issued its guidance for auditors on Value for Money work in November 2017. The guidance states that for Local Government bodies, excluding Pension Funds, auditors are required to give a conclusion on whether the Authority has proper arrangements in place to secure value for money.

The guidance identifies one single criterion for auditors to evaluate:

"In all significant respects, the audited body takes properly informed decisions and deploys resources to achieve planned and sustainable outcomes for taxpayers and local people."

This is supported by three sub-criteria, as set out below:



We are currently undertaking our initial risk assessment based on the NAO's auditor's guidance note (AGN03). In our initial risk assessment, we are considering:

- knowledge gained on the Authority from our initial planning procedures.
- the findings of other inspectorates and review agencies, including Ofsted.
- any illustrative significant risks identified and communicated by the NAO in its Supporting Information.
- any other evidence which we consider necessary to conclude on your arrangements.

While our risk assessment is still in progress, it is likely that we will identify the following as a significant risk:

Financial Sustainability

This risk relates to the sub-criteria of Sustainable Resource Deployment.

The council continues to face similar financial pressures to those experienced by others in the Local Government sector. The council's latest financial monitoring report (M09) presented to the Finance and Major Contracts Management Committee indicates a net minor underspend of £35k forecast for the current financial year. However this mass the substantial overspend in Children & young peoples with a forecast overspend of £9.6m.

Furthermore the council faces significant financial challenges over the medium term to achieve its statutory break even budget duty.

The latest report shows a £28.3m gap for the medium term.

We will communicate to the Governance and Ethics Committee once we have completed our risk assessment, and confirm whether there are any additional significant risks. We will continue our review of your arrangements, including reviewing your Annual Governance Statement, before we issue our auditor's report.

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Audit logistics, team & fees

Client responsibilities

Where clients do not deliver to the timetable agreed, we need to ensure that this does not impact on audit quality or absorb a disproportionate amount of time, thereby disadvantaging other clients. Where the elapsed time to complete an audit exceeds that agreed due to a client not meeting its obligations we will not be able to maintain a team on site. Similarly, where additional resources are needed to complete the audit due to a client not meeting their obligations we are not able to guarantee the delivery of the audit to the agreed timescales. In addition, delayed audits will incur additional audit fees.

Our requirements

To minimise the risk of a delayed audit, you need to ensure that you:

- produce draft financial statements of good quality by the deadline you have agreed with us, including all notes, the narrative report and the Annual Governance Statement
- ensure that good quality working papers are available at the start of the audit, in accordance with the working paper requirements schedule that we have shared with you
- ensure that the agreed data reports are available to us at the start of the audit and are reconciled to the values in the accounts, in order to facilitate our selection of samples
- ensure that all appropriate staff are available on site throughout (or as otherwise agreed) the planned period of the audit
- respond promptly and adequately to audit queries.

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Audit fees

Planned audit fees 2019/20

Across all sectors and firms, the FRC has set out its expectation of improved financial reporting from organisations and the need for auditors to demonstrate increased scepticism and challenge and to undertake additional and more robust testing. Within the public sector, where the FRC has recently assumed responsibility for the inspection of local government audit, the regulator requires that all audits achieve a 2A (few improvements needed) rating.

Our work across the sector in 2018/19 has highlighted areas where local government financial reporting, in particular, property, plant and equipment and pensions, needs to be improved. We have also identified an increase in the complexity of local government financial transactions. Combined with the FRC requirement that 100% of audits achieve a 2A rating this means that additional audit work is required. We have set out below the expected impact on our audit fee. The table overleaf provides more details about the areas where we will be undertaking further testing.

As a firm, we are absolutely committed to meeting the expectations of the FRC with regard to audit quality and local government financial reporting. Our proposed work and fee for 2019/20 at the planning stage, as set out below and with further analysis overleaf, has been discussed with the Service Director – Finance, Infrastructure and Improvement, and is subject to PSAA agreement.

	Actual Fee 2017/18	Actual Fee 2018/19	Proposed fee 2019/20
Council Audit	£98,213	£81,624	£90,624
Pension Fund	£29,926	£23,043	£27,293

Assumptions:
In setting the above fees, we have assumed that the Authority will:
- prepare a good quality set of accounts, supported by comprehensive and well presented working papers which are ready at the start of the audit
- provide appropriate analysis, support and evidence to support all critical judgements and significant judgements made during the course of preparing the financial statements
- provide early notice of proposed complex or unusual transactions which could have a material impact on the financial statements.

Relevant professional standards:
In preparing our fee estimate, we have had regard to all relevant professional standards, including paragraphs 4.1 and 4.2 of the FRC's Ethical Standard which stipulate that the Engagement Lead (Key Audit Partner) must set a fee sufficient to enable the resourcing of the audit with staff of appropriate skills, time and abilities to deliver an audit to the required professional standard.

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Audit fee variations Authority – Further analysis

Planned audit fees

The table below shows the planned variations to the original scale fee for 2019/20 based on our best estimate at the audit planning stage. Further issues identified during the course of the audit may incur additional fees. In agreement with PSAA (where applicable) we will be seeking approval to secure these additional fees for the remainder of the contract via a formal rebasing of your scale fee to reflect the increased level of audit work required to enable us to discharge our responsibilities. Should any further issues arise during the course of the audit that necessitate further audit work additional fees will be incurred, subject to PSAA approval.

Audit area	£	Rationale for fee variation
Scale fee	75,624	
Raising the bar	4,000	The Financial Reporting Council (FRC) has highlighted that the quality of work by all audit firms needs to improve across local audit. This will require additional supervision and leadership, as well as additional challenge and scepticism in areas such as journals, estimates, financial resilience and information provided by the entity. For major audits – as outlined earlier in the Plan, we have also reduced the materiality level, reflecting the higher profile of local audit. This will entail increased scoping and sampling
Pensions – valuation of net pension liabilities under International Auditing Standard (IAS) 19	2,500	We have increased the granularity, depth and scope of coverage, with increased levels of sampling, additional levels of challenge and explanation sought, and heightened levels of documentation and reporting.
PPE Valuation – work of experts	7,500	We have therefore engaged our own audit expert – Wilkes Head and Eve and increased the volume and scope of our audit work to ensure an adequate level of audit scrutiny and challenge over the assumptions that underpin PPE valuations. The increase includes an estimate for the fee payable to the auditor's expert
New Standards and developments	1,000	PSAA's original scale fee for this contract was set in March 2018, so any new developments since that time need to be priced in, additional work will be required for IFRS16 implementation and corresponding disclosure required in 19/20 under IAS8
Revised scale fee to be approved by PSAA	**90,624**	

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Audit fee variations Fund – Further analysis

Planned audit fees

The table below shows the planned variations to the original scale fee for 2019/20 based on our best estimate at the audit planning stage. Further issues identified during the course of the audit may incur additional fees.

Audit area	£	Rationale for fee variation
Scale fee	23,043	
Raising the bar	2,500	The Financial Reporting Council (FRC) has highlighted that the quality of work by all audit firms needs to improve across local audit. This will require additional supervision and leadership, as well as additional challenge and scepticism in areas such as journals, estimates, financial resilience and information provided by the entity.
Valuation of level 3 investments	1,750	The Financial Reporting Council (FRC) has highlighted that the quality of work by all audit firms in respect of valuations of hard to value investments needs to improve across the sector. Accordingly, we plan to enhance the scope and coverage of our work to ensure an adequate level of audit scrutiny and challenge over the assumptions and evidence that underpin the valuations of level 3 investments this year to reflect the expectations of the FRC and ensure we issue a safe audit opinion.
Revised scale fee (to be approved by PSAA)	**27,293**	

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Independence & non-audit services

Auditor independence

Ethical Standards and ISA (UK) 260 require us to give you timely disclosure of all significant facts and matters that may bear upon the integrity, objectivity and independence of the firm or covered persons relating to our independence. We encourage you to contact us to discuss these or any other independence issues with us. We will also discuss with you if we make additional significant judgements surrounding independence matters.

We confirm that there are no significant facts or matters that impact on our independence as auditors that we are required or wish to draw to your attention. We have complied with the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements.

We confirm that we have implemented policies and procedures to meet the requirements of the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements. Further, we have complied with the requirements of the National Audit Office's Auditor Guidance Note 01 issued in December 2017 and PSAA's Terms of Appointment which set out supplementary guidance on ethical requirements for auditors of local public bodies.

Other services provided by Grant Thornton

For the purposes of our audit we have made enquiries of all Grant Thornton UK LLP teams providing services to the Authority. The following other services were identified

Service	£	Threats	Safeguards
Audit related: Authority			
Certification of Teachers Pension Claim	3,500	Self-Interest because this is a recurring fee	The level of this recurring fee taken on its own is not considered a significant threat to independence as the fee for this work is £3,500 in comparison to the total fee for the audit of £90,624 and in particular relative to Grant Thornton UK LLP's turnover overall. Further, it is a fixed fee and there is no contingent element to it. These factors all mitigate the perceived self-interest threat to an acceptable level.
Non-audit related: Pension Fund			
Provision of IAS 19 Assurances to Scheme Employer auditors	£6,000	None	We are required to respond to requests received from other auditors of admitted bodies for assurance in respect of information held by the Fund and provided to the actuary to support their individual IAS 19 calculations. Our estimate is that the fee for this will be £3,000 plus an additional £500 for each local government body which requests a letter of assurance. `

The amounts detailed are fees agreed to-date for audit related and non-audit services to be undertaken by Grant Thornton UK LLP in the current financial year. These services are consistent with the Authority's policy on the allotment of non-audit work to your auditors All services have been approved by the Governance and Ethics Committee Any changes and full details of all fees charged for audit related and non-audit related services by Grant Thornton UK LLP and by Grant Thornton International Limited network member Firms will be included in our Audit Findings report at the conclusion of the audit.

None of the services provided are subject to contingent fees. The firm is committed to improving our audit quality – please see our transparency report - https://www.grantthornton.ie/about/transparency-report/

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Appendices

A. Audit Quality – national context

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Appendix A: Audit Quality – national context

What has the FRC said about Audit Quality?

The Financial Reporting Council (FRC) publishes an annual Quality Inspection of our firm, alongside our competitors. The Annual Quality Review (AQR) monitors the quality of UK Public Interest Entity audits to promote continuous improvement in audit quality.

All of the major audit firms are subject to an annual review process in which the FRC inspects a small sample of audits performed from each of the firms to see if they fully conform to required standards.

The most recent report, published in July 2019, shows that the results of commercial audits taken across all the firms have worsened this year. The FRC has identified the need for auditors to:

- improve the extent and rigour of challenge of management in areas of judgement
- improve the consistency of audit teams' application of professional scepticism
- strengthen the effectiveness of the audit of revenue
- improve the audit of going concern
- improve the audit of the completeness and evaluation of prior year adjustments.

The FRC has also set all firms the target of achieving a grading of '2a' (limited improvements required) or better on all FTSE 350 audits. We have set ourselves the same target for public sector audits from 2019/20.

Other sector wide reviews

Alongside the FRC, other key stakeholders including the Department for Business, energy and Industrial Strategy (BEIS) have expressed concern about the quality of audit work and the need for improvement. A number of key reviews into the profession have been undertaken or are in progress. These include the review by Sir John Kingman of the Financial Reporting Council (Dec 2018), the review by the Competition and Markets authority of competition within the audit market, the ongoing review by Sir Donald Brydon of external audit, and specifically for public services, the Review by Sir Tony Redmond of local authority financial reporting and external audit. As a firm, we are contributing to all these reviews and keen to be at the forefront of developments and improvements in public audit.

What are we doing to address FRC findings?

In response to the FRC's findings, the firm is responding vigorously and with purpose. As part of our Audit Investment Programme (AIP), we are establishing a new Quality Board, commissioning an independent review of our audit function, and strengthening our senior leadership at the highest levels of the firm, for example through the appointment of Fiona Baldwin as Head of Audit. We are confident these investments will make a real difference.

We have also undertaken a root cause analysis and put in place processes to address the issues raised by the FRC. We have already implemented new training material that will reinforce the need for our engagement teams to challenge management and demonstrate how they have applied professional scepticism as part of the audit. Further guidance on auditing areas such as revenue has also been disseminated to all audit teams and we will continue to evolve our training and review processes on an ongoing basis.

What will be different in this audit?

We will continue working collaboratively with you to deliver the audit to the agreed timetable whilst improving our audit quality. In achieving this you may see, for example, an increased expectation for management to develop properly articulated papers for any new accounting standard, or unusual or complex transactions. In addition, you should expect engagement teams to exercise even greater challenge management in areas that are complex, significant or highly judgmental which may be the case for accounting estimates, going concern, related parties and similar areas. As a result you may find the audit process even more challenging than previous audits. These changes will give the audit committee – which has overall responsibility for governance - and senior management greater confidence that we have delivered a high quality audit and that the financial statements are not materially misstated. Even greater challenge of management will also enable us to provide greater insights into the quality of your finance function and internal control environment and provide those charged with governance confidence that a material misstatement due to fraud will have been detected.

We will still plan for a smooth audit and ensure this is completed to the timetable agreed. However, there may be instances where we may require additional time for both the audit work to be completed to the standard required and to ensure management have appropriate time to consider any matters raised. This may require us to agree with you a delay in signing the announcement and financial statements. To minimise this risk, we will keep you informed of progress and risks to the timetable as the audit progresses.

We are absolutely committed to delivering audit of the highest quality and we should be happy to provide further detail about our improvement plans should you require it.

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Nottinghamshire County Council

Report to Governance and Ethics Committee

4 March 2020

Agenda Item: 7

REPORT OF THE SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE AND IMPROVEMENT

OBJECTION TO THE ACCOUNTS

Purpose of the Report

1. To inform the Governance and Ethics Committee of the results of the external audit investigation into an objection to the accounts for the year ended 31 March 2016.

Background

2. The objection relates to the sale of County Council land at Sutton-cum-Lound in March 2016. The land was sold by informal tender / private treaty and there were a number of issues relating to overage calculations, escalating and late bids. Full details are set out in the decision letter from KPMG, Appendix A.

3. There were 2 bidders for the land and the objection was submitted by the unsuccessful bidder.

4. The sale process has also been subject to a corporate complaint to NCC, a complaint to the Local Government Ombudsman and a complaint to Nottinghamshire Police. All of these reviews concluded that, whilst there were issues with the process followed, the sale should not be overturned.

Decision

5. The full decision letter from KPMG is attached to this report Appendix A.

6. The objector requested that the auditors make an application to the courts to declare an item of account is contrary to law and / or for the auditors to issue a public interest report.

7. The decision as set out on page 2 of the attached letter is that KPMG have declined to make an application to the courts and have declined to issue a public interest report.

8. The auditor's letter provides a number of recommendations for the lessons of this case to be learned in terms of the proper handling of sales into the future. Property Services is progressing through a transformation programme the progress of which has been reported through Policy Committee with the latest report having been provided to that committees

meeting on 16th October 2019. This programme of activities has led to significant change in the function with a new fit for purpose staffing structure being introduced on 1st July 2019. In addition, the transformation programme has introduced new processes and procedures, notably new operational processes with Legal Services, and governance for strategic thinking across the property asset estate.

9. One of the weaknesses expressed has been the temporary nature of staffing in the service with reliance on contract workers. It is to be noted that in August 2019 a permanent Group Manager Property Asset Management was taken on to provide stable leadership of the service following a period of temporary occupants of the post and since the turn of the year a further two experienced chartered surveyors have been appointed on permanent contracts thereby negating the need for temporary staff in the Estates Practice section. The correct handover of cases is to be included in the developing induction pack for new starters within Property.

10. A review of the Council's Constitution relating to Land and Property Financial Regulations is to take place to enable the lessons of this case to be embedded in a modernised governance document with a particular focus on circumstances where tenders are received by agents and not the Council directly, the recording of tenders and the clarity of any varying factors and their analysis.

11. Officers are also mindful of the need for the proper file recording of advice received and actions taken during the progression of cases and the continued development of the P2 asset management system will continue to be an enabler for this. The second phase of the transformation programme also includes an improved case management system to give greater control over the progression of cases, very much ensuring the lessons from this case are embedded in every day process.

12. It should be noted that the ongoing objection and investigation has meant that the Statutory Accounts for 2015/16, 2016/17 2017/18 and 2018/19 could not be formally signed off. The conclusion of the investigation means this can now take place.

Financial Implications

13. The cost of the investigation undertaken by KPMG is £55,000. In addition, there are external legal costs incurred by KPMG of £9,500. Provision has been made in previous years of £45,000. The balance will be funded in 2019/20. The Council has also incurred considerable internal staff time in dealing with the various complaints and investigations, but this has not been costed.

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 where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATIONS

15. That

a) The contents of the KPMG letter are commented upon.

b) Committee identify any further information they require in respect of this issue.

Nigel Stevenson
Service Director (Finance, Infrastructure and Improvement)

For any enquiries about this report please contact:
Nigel Stevenson
Service Director (Finance, Infrastructure and Improvement)

Constitutional Comments (SS 13/02/2020)

16. The proposals in this report are within the remit of the Governance and Ethics Committee.

Financial Comments (KRP 13/02/2020)

17. As noted in the report the external costs in respect of the KPMG investigation are £64,500.

Background Papers

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

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Private & confidential

[redacted]

Our ref PJ/SH/121

18 December 2019

Dear [redacted]

Nottinghamshire County Council: Audit of accounts for the year ended 31 March 2016 – decision and statement of reasons

We are writing to advise you of our decision on your objection to the accounts of Nottinghamshire County Council for the year ended 31 March 2016.

Your objection

Your objection to the accounts for the year ended 31 March 2016 was set out in your letter dated 2 August 2016 and relates to the sale of land by Nottinghamshire County Council (the 'Council') at Sutton Cum Lound. It specifically asked us to:

- Apply to the court under section 28 of the Local Audit and Accountability Act 2014 for a declaration that the following is an unlawful item of account:

  - Income in relation to the disposal of land at Sutton Cum Lound; and

- Issue a public interest report under section 27 of the Local Audit and Accountability Act 2014 in relation to the sale of the land at Sutton Cum Lound.

Your letter sets out a number of points in supports of the above elements of the objection that we have accepted, including that:

- The Council have allowed this land to be undersold and failed to achieve the best possible consideration, primarily because the additional overage offered had not been included properly in the assessment of the bids.
- It has not been open or transparent in its dealings in relation to this matter, including the bidding process; related communications from the Council about the sale of the land; and that one of the bidders was in your view, a 'connected person' to the Council.
- Part of the land being sold was on the edge of Sutton Village and was being considered for inclusion in the 'Village Plan' as a potential site for additional housing, and that this information would have been known to the Council and its agent being in the land sale.

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Summary of decision

Decision not to make an application to the court for a declaration that an item of account is contrary to law

Section 28 of the Local Audit and Accountability Act 2014 gives auditors the discretion to decide whether or not to apply to the Court for an Order in relation to unlawful items of account. That discretion takes into account the proportionality of the matter under consideration.

As we have set out in this letter, there were failings in the Council's arrangements in respect of the process to sell the holding. It is arguable that those failings resulted in the Council over time receiving a smaller capital receipt for the land than may otherwise have been the case. However, the loss, if any, was dependent on the uncertainties of overage and the subjective nature of its value.

As we have set out in this decision and statement of reasons, our legal advice (obtained in 2019) is that, on balance there may be an unlawful item of account in the Council's 2015/16 financial statements relating to not obtaining 'best consideration' for the sale of the holding (as defined by s123(2) of the LGA 1972). However, we also note that the legal advice obtained by the Council (at the time of the decision in 2016) came to a contrary view ie that the decision was lawful. We further note that the Council does accept that it needed to improve its arrangements relating to property sales and has taken steps to address these matters (see Attachment 2 for some further details).

Looking at the factors that we may consider when exercising our discretion relating to an item of account being contrary to law (set out on page 3 of this decision and statement of reasons) we consider that none of them apply here. Consequently, in the circumstances of our audit for the year ending 31 March 2016 we have decided that further to our discretion under Section 28 we will not apply to the Court for a declaration. We also do not think that any potential benefit that might be achieved by seeking a declaration would justify the likely costs involved, which would have to be borne by the public purse.

Decision not to issue a public interest report

We have identified failings in the Council's arrangements when dealing with the sale of the land at Sutton-Cum-Lound (the holding). In coming to our decision on whether to issue a public interest report, we have taken into account the NAO's guidance, including the sale value of the land in the context of the Council (for reference, audit materiality for 2015/16 was £18.6 million), and the Council's acceptance in discussions with us that its arrangements in relation to the sale of the holding fell short of the required standard in a number of respects, and has commissioned an external review of its Property Services in order to address the shortcomings. We have also taken into account that the Council has provided written assurances that it will include our report in the public domain on the agenda of its Governance and Ethics Committee meeting, and so the report will be publicly available on the Council's website.

Our decision is not to issue a public interest report. In our view, a report of our findings and recommendations that is presented and considered in the public domain is a proportionate outcome for this matter.

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Recommendations

Whilst carrying out our review, we have identified areas for improvement in the Council's arrangements, particularly in relation to procedures and practices in the Property Function. Our written recommendations to address these areas, are made under section 27(6) of the Local Audit and Accountability Act 2014, and are set out in Attachment 2.

Legal background and relevant guidance

The Local Audit and Accountability Act 2014 is relevant for auditors when considering objections. Guidance is provided by the National Audit Office (NAO) in Auditor Guidance Notes 04 and 07 for auditors to assist in their consideration of matters brought to their attention by local government electors. The key elements are set out below.

Local Audit and Accountability Act 2014

Action under Section 28 – unlawful item of account

An item of account may be contrary to law if, amongst other grounds, it is an illegal accounting entry and/or expenditure that:

- The audited body had no power to incur;
- Has been incurred where the audited body failed to exercise its discretion reasonably and the level of expenditure is unreasonable;
- The audited body incurred without authority; and/or
- The audited body incurred where it failed to comply with a mandatory procedural requirement.

We have a discretionary power to apply to the Court for a declaration that an item of account is contrary to law. Factors that we may consider when exercising our discretion include whether:

- An audited body acknowledges that it has an item of account which is contrary to law;
- The issue involved is one of national significance;
- The issue involved is one of local importance;
- The sums of money involved are large;
- An important legal point or principle is at stake; or
- The unlawful expenditure is continuing.

Action under Section 27 – report in the public interest

We have discretion whether to make a report in the public interest where we consider there is a matter that should be considered by the audited body or brought to the attention of the public. Factors that we may take into account when considering making a report in the public interest include whether it is necessary to:

- Ensure a matter is considered by the audited body;

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- Ensure a matter is brought to the attention of the public;
- Encourage the audited body to take appropriate action;
- Highlight an audited body's failure to take action or respond; or
- Express our view as an impartial person.

The following are reasons why we might consider not making a report in the public interest:

- The audited body has already taken action to remedy the deficiencies;
- It would unnecessarily undermine public confidence in the audited body;
- No actual or only small losses have been incurred; or
- The matter involves a technical failing with no real consequences.

Other considerations and possible outcomes

Other factors that we need to consider when deciding what action (if any) to take include:

- The cost, against the benefits, of taking a particular course of action;
- The significance of the issue;
- What the proportionate response would be;
- Whether there are issues of principle or legal interpretation that need to be determined;
- Which action would be in the public interest;
- Whether the issue is likely to reoccur; and
- What course of action (if any) would make a difference for the future.

Possible outcomes from deciding on an issue or objection, which are not all mutually exclusive, include:

- Taking no action;
- Referring the issue to the audited body to consider;
- Writing a letter or report to the audited body, setting out matters that we want to draw to the attention of its officers and elected Members;
- Including matters in our Annual Audit Letter;
- Making statutory recommendations under Section 27 or paragraph 2 of Schedule 7 of the Act;
- Issuing a public interest report;
- Applying to the court for a declaration;
- Serving an advisory notice (schedule 8 of the Local Audit and Accountability Act 2014); or

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- Seeking judicial review of a decision of the authority (section 31 of the Local Audit and Accountability Act 2014)[1].

Work carried out

We accepted your objection on 17 April 2017, following the Local Government Ombudsman (LGO) issuing its final report on this matter.

In terms of your objection, whether specifically referred to in this letter or not, we have considered the written submissions of both you and the Council, reviewed documentation provided by the Council and by third parties, and where appropriate, sought professional and legal advice.

An index to the material documents considered is listed in Attachment 1. We have not provided the material documents with this decision as they were provided previously with our provisional views and there have been no changes to them since then. We have however left the references to the various material documents in this decision letter.

Approach

We have taken into account all of the information available to us and considered it in relation to our responsibilities. Also, both the LGO and Nottinghamshire Police have considered the concerns that you raised with them in relation to their respective responsibilities, and we have liaised with them as necessary in relation to our responsibilities.

As part of these discussions we noted that neither Nottinghamshire Police nor the LGO had identified any concerns in the relationship between one of the bidders (referred to as Bidder A throughout this letter) and the Council. More specifically Nottinghamshire Police decided not to take forward any case, including any charges under the 'misuse of public office' route. We also noted that the LGO concluded that there were faults in the Council's decision making, but that these were not sufficient for the LGO to conclude that the sale should have been made to bidder B.

As a result of our discussions with both Nottinghamshire Police and the LGO and what we have noted above, we determined that we should keep in mind the possibility that the relationship between the Council and Bidder A was inappropriate and had unduly influenced the Council's decision whilst undertaking our work on considering the objection. However, as no specific instances of an improper relationship between bidder A and the Council had been identified by the other parties referred to above, we did not to take forward any specific matters when considering this objection.

Having completed our review of the sale and not having identified any concerns regarding the nature of the relationship between the Council and Bidder A we determined that there was no need to seek a specific legal opinion on this particular matter.

We have set out our findings from considering the overall objection in the next section.

[1] Under section 31 of the Local Audit and Accountability Act 2014, auditors can apply for judicial review of a decision of that authority, or of a failure by that authority to act, which it is reasonable to believe would have an effect on the accounts of that body.

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We have identified a number of areas where the Council's arrangements should be improved. We have set out our recommendations based on our findings (set out in Attachment 2), and included the Council's responses.

When coming to our decision on the lawfulness of the sale of land at Sutton Cum Lound ('the holding' in this report), and whether a public interest report is appropriate, we have considered the legal background and guidance as set out above.

We have also taken into account that the Council has provided a written commitment to take our report on our findings to its Governance and Ethics Committee in public session.

Findings

We have set our findings out below in chronological order.

Committee consideration of the Council's Farm and Smallholdings Portfolio

Officers provided a paper to the Finance and Property Committee (the "Committee") titled "*Nottinghamshire County Council Farm and Smallholdings Portfolio*" (**Document A and Exempt Document A1**) at its meeting on 12 October 2015. The paper set out options for the future management of the Council's rural portfolio of holdings and made recommendations for consolidation of the Estate. The paper contained general information about the portfolio, including the current use of the holdings, estimated capital value and rental income. It also summarised the holdings into two categories, being;

Category A – Holdings considered to have '*short to medium term significant development potential*'; and

Category B – Holdings considered to have '*limited or no potential for significant development*'.

All five holdings in Category B were recommended for disposal, and the Committee approved the recommendation. The holding was included in Category B, described as '*Cross Roads Farm, Sutton Cum Lound*'.

We note that the paper did not refer to the fact that the existing tenant of the holding had a rental agreement that required the Council to give 12 months' notice on 1 October. In our view this was a relevant factor for the Committee's overall considerations, as it meant that if the holding were to be marketed in the near future, any buyer other than the existing tenant would need to wait until 1 October 2016 to give notice, and would only be able to gain access to the land from 1 October 2017. Whilst this may not be relevant for the Committee's strategic decision to sell the holding, we consider that it is relevant for any resulting decision on the timing of the sale. This is because following Committee approval of the sale, the timing of the marketing of the holding was in the officers' gift.

Arranging for the disposal of the holding

Following the Committee's approval, officers commenced the disposal process for the holding. Officers documented the operational decision (**Document B**) for approval to dispose of the holding, and the appointment of a land agent. The operational decision was approved by the Service Director – Transport, Property and Environment on 3 November 2015. We note that the operational decision states that an overage percentage of 30% was to be applied to the holding over 25 years, which is different to the percentage (25%) and number of years (50) in the subsequent marketing material (**Document C**) of the holding. These inconsistencies appear to have been administrative errors in the operational decision document – there is no repeat of the operational decision figures in any other documentation that we have seen.

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The operational decision includes an observation that the Council '*should get Vacant Possession price or near it as new owner can have access from October 17 (12 month notice can be given on 1 October, so first opportunity is 1 October 2016.)*'

Officers engaged a land agent. In an email dated 19 October 2015 (**Document D**) to the Council the land agent has referred to '*your requirements to dispose of this land swiftly*'.

We have been unable to establish why officers wanted to move '*swiftly'.* The Service Director for Finance, Procurement & Improvement, the Council's S151 officer now and at the time, has told us that he is not aware of any reason for this motivation.

Officers were aware that by proceeding with the sale soon after the Committee approval that any potential non-tenant buyer would face a delay in obtaining vacant possession, but as noted above they did not consider that this would affect the Council's ability to '*obtain Vacant Possession price or near to it'*. We note that subsequently the land agent commented in the email dated 19 October 2015 that '*matters working against value on this property include lack of vacant possession potential until October 2017*'. We calculate that any potential buyers would be due to receive gross rent of £6,750 per annum from the existing tenant, which would have equated to a gross rate of return of 0.675% per annum on the expected purchase price for the holding of £1 million.

In our view, the disposal timetable did not maximise the potential interest from non-tenants. The land agent's comments relating to both the potential impact of the tenant being in situ until 1 October 2017, alongside the relatively low rental level, offered the opportunity for officers to pause and reflect. However, officers chose to proceed.

Marketing the holding

Officers discussed the most appropriate method to sell the holding with the appointed land agent. Officers accepted the land agent's recommendation to offer the holding under informal tender (officers' description) /private treaty (the land agent's description). One consequence of this decision was that there could be negotiation up to the point of the sale contract being signed, rather than for example an open auction, where there is a binding contract 'at the fall of the hammer'. The land agent marketed the holding in November 2015, and the marketing material states that a 25% overage applies to the land for 50 years after the sale.

The land agent received several expressions of interest in the disposal of the holding. Officers and the land agent agreed to set a 'best and final offer' deadline of 18 December 2015.

Parish Clerk comments on the holding

The Parish Clerk Sutton ('the Parish Clerk') wrote to the Council on 10 November 2015 and 9 December 2015 regarding the proposed sale (**Document E**). The email of 9 December 2015 stated that the Parish Council was developing a Neighbourhood Plan, and one of their '*favoured sites'* was a piece of land within the holding. Officers have subsequently stated that their view was that the possibility of the strip of land being developed remained remote (**Document I – points 7, 9 and 14**). There is no documentation available of any such consideration by officers at the time of the Parish Clerk's observations.

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As noted above, in the paper to the Committee on 12 October 2015, the holding had been placed in Category B, described as *'Holdings considered to have limited or no potential for significant development'.* In our view officers should have at least considered if the Parish Clerk's comments meant that the element of the holding referred to - the *'favoured site'* - should be considered for re-allocation to Category A, '*Holdings with short to medium term significant development potential'.*

Bids received

The land agent reported (**Document F**) to officers that there were two bids received by the deadline of 18 December 2015. One bid ('Bid A') offered a lower amount than the other, but with an escalating element that increased the final offer to £1,000 above any other bid, up to a set ceiling amount. The other bid ('Bid B') was for a set amount (higher than Bid A's starting point, but below its ceiling amount), but offered a higher overage of 35%.

We noted that the letter from the land agent to the Council setting out the details of the two bids did not correctly report the ceiling amount of the escalating element of Bid A. The ceiling amount that they reported was £4,000 higher than the amount actually offered in Bid A (**Document G**). In addition, the written description of the maximum amount in Bid A was different to both the actual bid and the incorrectly reported number in that letter. The land agent is not able to provide an explanation for what appear to be administrative errors.

Whilst we accept that officers had no way of knowing that the incorrect figure had been reported by the land agent, careful scrutiny of the letter would have afforded the opportunity to challenge why the numerical figure in the letter was different to the written description of it, and may have enabled a correction to be made.

The nature of the respective bids meant that there were two complicating factors that officers needed to consider. These were the escalating element in Bid A (see (i) below), and the higher percentage overage bid in Bid B (see (ii) below).

(i) Escalating element

There is no documentation of officers' consideration of the escalating element of Bid A. Officers have confirmed to us that the Council had no policy relating to escalating bids. In addition, the Service Director Environment, Transport and Property confirmed that neither he nor any of the Property team had ever encountered an escalating bid in their professional careers. The marketing material made no reference to the acceptability or otherwise of escalating bids (**Document C**).

(ii) Higher percentage overage

There is no documentation available of officers' consideration prior to the Committee on 25 January 2016 (which approved the recommendation to accept Bid A) of the higher overage offered in Bid B.

Officers have stated (**Document I**) to us that overage is a complicated matter as each agreement is subject to many factors, and so is difficult to quantify. They consequently did not attribute any additional value to Bid B in respect of the higher percentage overage when evaluating the bids. We consider the overage matter later in relation to events after the Committee's approval of Bid A.

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The land agent has confirmed to us (**Document J**) that in the agricultural sector in their view '*while escalating bids are not unheard of they are rare and in my experience it has been up to the vendor whether to accept them or not.'* In our view, the absence of either a Council policy on or officer experience of escalating bids, together with there being no reference in the marketing material, meant that officers should have sought advice/guidance as to the acceptability of the escalating bid before proceeding. This could have encompassed consultation with Council colleagues specialising in legal and governance matters, and potentially Members (especially if a policy were to be needed). Officers decided that the escalating element of Bid A was acceptable, but did not document their reasoning.

Officers' decision on which bid to propose to Committee for acceptance

Officers considered the two bids notified by the land agent. Bid B was lower than the maximum of Bid A's escalating ceiling amount. Officers did not attribute any value to the additional overage offered by Bidder B. The result was that officers assessed that Bid A was of a higher value.

Officers informed the land agent that they intended to recommend to the Committee at its meeting on 25 January 2016 that it should accept Bid A. The land agent informed the winning bidder on 23 December 2015 of the proposed outcome (**Document K**). The land agent confirmed the proposed sale price with Bidder A, being the amount offered in Bid B plus Bid A's escalating element of £1,000 (the 'proposed sale price').

Revised bid received

On 18 January 2016, Bidder B offered a revised bid via the land agent. The revision was an additional £50,000 (**Document L**), whilst retaining the 35% overage as part of the offer. As the sale was being conducted under informal tender/private treaty, our understanding is that the Council had discretion to accept the bid, despite having asked for best and final offers by 18 December 2015.

Officers considered that the revised Bid B still did not exceed the ceiling amount of Bid A (there is no documentation of this evaluation). Officers confirmed to us that their evaluation of the revised Bid B did not attribute any value to the additional overage.

The Council needed to decide if the revised bid was to be treated as valid. If the Council treated the revised bid as valid, then the proposed sale price in the land agent's letter of 23 December 2015 no longer constituted 'the highest other bid plus £1,000' – it was £49,000 lower than the revised Bid B. If the Council decided that it wished to honour the 'best and final' bids received on 18 December 2015, then the revised bid would be rejected.

On 21 January 2016 (**Document M**) the Estates Surveyor emailed the land agent to instruct them to revert to Bidder A to request their best and final offer, to be received by 25 January 2016. This was the date of the Committee meeting that was to consider officers' recommendation for acceptance of Bid A. This email appears to indicate that officers regarded the revised Bid B as being valid in this process. This is in contrast to other statements made by officers to the effect that the Council should regard the 18 December bids as final. We have considered this apparent contradiction later in this report.

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There is no further documentation available at the Council nor the land agent in relation to any further discussions in relation to any further revision to Bid A prior to the Committee on 25 January 2016. Officers made a reference to the land agent emailing the Council to the effect that the winning bidder complained that a late bid had been forwarded to the Council. Whatever discussions took place, there was no uplift to the amount of Bid A, as the amount of Bid A presented to the Committee was as the same as the proposed sale price in the land agent's letter of 23 December 2015.

We have reviewed the offers made, including the effect of the escalating element. We calculate that the revised Bid B was £1,396 lower than the ceiling amount of Bid A. Applying the £1,000 escalating element means that there is £396 headroom between the revised Bid B and Bid A's ceiling amount. Using the erroneous figure supplied by the land agent, that headroom would have been £4,396. In line with officers' approach at this stage these calculations do not attribute any value to the additional overage offered by Bidder B.

Finance and Property Committee, 25 January 2016

Officers submitted a paper (**Document N and Exempt document N1**) to the Committee meeting on 25 January 2016, setting out the background to the proposed land sale. The paper included a recommendation that '*approval is given to the highest bid for the sale, subject to contract….as set out in the exempt appendix*'. The exempt appendix contained '*information and advice'*. This included the '*best and final offers'*, and lists the two bids received on 18 December 2015. Officers included a note explaining that the £1,000 difference between the bids was as a result of the escalating bid element.

There is a further note in the exempt appendix that states that '*the sale will be subject to an uplift clause. It is thought that there may be limited future development potential to the West of Sutton Lane which would mirror the properties to the East of Sutton Lane, effectively squaring off the village. This would however be subject to a policy change by the Local Planning Authority.*' This is the strip of land that the Parish Clerk was referring to in his emails to the Council, but there is no reference to the Parish Clerk's comments (eg relating to *'favoured site'*) within the report, and officers have confirmed that the Committee was not made aware of them.

In addition, the paper and the appendix make no reference to the revised Bid B or the Council's subsequent instruction to the land agent to approach Bidder A for a further '*best and final offer*'. Officers did not include any evaluation of the additional overage offered by Bidder B.

We accept that officers have to make judgements regarding the amount of information to be provided to Members when compiling reports, and that it is important not to provide too much detail. However, in our view officers should have made the Committee aware of the revised Bid B, including that it was higher than the amount of the proposed winning Bid A as presented in the exempt appendix, and why they had decided not to accept it. Additionally we consider that officers should have reported the Parish Clerk's comments to the Committee, and that the Committee should have been invited to consider if it wished to revisit its approval of the whole of the holding being classified as '*Holdings considered to have limited or no potential for significant development'.*

The Committee agreed to the officers' proposal to accept Bid A based on the information provided, and the land agent informed the two bidders of the outcome.

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Challenge by the failed bidder

In a letter dated 5 February 2016 (**Document O**) to the Service Director – Environment Transport and Property, Bidder B raised a number of concerns in relation to the proposed land sale, including whether full consideration had been given to his bid, in particular the offer of additional overage and an acre of the land for Community Benefit.

The Service Director – Environment Transport and Property responded on 18 February 2016 (**Document P**). He stated that the additional overage and the offer of land for the community '*were not conditions under which offers were invited. It is thus the Council's privilege as to whether these are taken into account.'*

In respect of the additional overage, the letter states that '*No planning consent exists for any alternative use and therefore there was no uplift to quantify.'*

Bidder B emailed the Service Director – Environment Transport and Property on 18 March 2016 (**Document Q**) and stated his view that the value of the increased overage offer '*should not have been cast aside*.' He referred to the Village Plan highlighting an area of the land as having building potential. He also referred to the case of '*London Jewish High School v Barnet Council*' which he stated '*held that whilst overage payments were only 'perceived benefits' the Council was right to accept them as part of the price, even though they were based on some future planning application'.* He expressed concern that the Council had not met its responsibility to obtain best value under S123 of the Local Government Act 1972. He also stated that he was considering a judicial review.

Value of additional overage

On 22 March 2016 the Estates Surveyor documented his calculation that Bid B's additional overage bid had a value of £8,769 (**Document R**). We note that Bidder B's view that the value was considerably higher.

We calculate that if £8,769 is added to the revised Bid B received on 18 January 2016 then the resulting total of the revised Bid B exceeds the ceiling amount of Bid A. This would indicate that there is in theory at least an arguable case that Bid B could now be regarded as the highest bid. Any such evaluation of the respective bids would need to take into account the uncertainty factor associated with the overage, and would also require a clear decision as to the acceptability of the revised bid made on 18 January 2016, and indeed the escalating bid itself. However, there is no evidence that officers sought to review their overall bid evaluation in the light of the Estates Surveyor's calculation of the value of the additional overage. In our view officers' evaluation of the potential impact of the additional overage was inadequate.

We also calculate that the £4,000 error in the land agent's letter regarding the ceiling amount of Bid A does not have any impact on our observations or conclusions (**Attachment 3**).

We have noted that you consider that the value of the additional overage as calculated by the Council is an under-estimate. In your response to our provisional views you have provided a calculation estimate that the additional overage is more likely to be in excess of £60,000. It may be that this estimate is more accurate than the estimate originally put forward by the Council, due to it being based on the development that has been given planning permission by Bassetlaw District Council in May 2019. However, for the reasons set out in this letter (even with the updated information using your estimate of the overage), we do not consider that we would change our decision regarding the objection before us.

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Internal consultation

On 23 March 2016 (**Document S**) the Estates Surveyor sought legal advice internally via email on the Council's position in relation to the potential judicial review, and stated that the aim was '*to complete the sale before the 31/3/2016 year end.'*

The Team Manager – Property and Strategy was copied in to Estate Surveyor's email and provided comments, including that at this stage '*contracts are not exchanged, so if it was felt that it was unsafe to proceed, then we are not yet contractually committed and could pull back'* (**Document T**). He noted that this would mean remarketing the land. He had '*little doubt that it WILL sell'*, but noted that the proceeds would be in the following financial year. He also commented that the revised Bid B was '*an unsolicited offer'* that '*was made a MONTH after the 'best and final bids' deadline*', and stated his view that it would not be appropriate for the Council to proceed with a bid so long after the '*clearly stated bid deadline*'.

There is an apparent contradiction between the Team Manager – Property and Strategy's observation that it was not appropriate to proceed with the revised bid, and the Estate Surveyor's instruction on 21 January 2016 that Bidder A be asked for their best and final offer following receipt of it. There is no evidence that officers identified or reviewed this contradiction, nor of any consideration of the Team Manager – Property and Strategy's observation that there was an option to '*pull back*'. In our view this is indicative of the lack of a coherent strategy for selling the holding.

External legal consultation

Officers referred the issues raised by the failed bidder to external legal advisors on 23 March 2016. Following various additional communications between the Council and its legal advisors, to clarify a number of issues, the Council received the final legal advice on 30 March 2016. In summary, the Council's legal advice concluded that a decision to accept Bid A would, on balance, be lawful. The legal advice did also refer to improvements to documentation that would help to support the decision making of the Council for the sale of the holding.

As part of our discussions with the Council we set out that we considered that the legal advice sought and received by the Council would be considered as material evidence that we would use to reach a decision on the objection, and thus share with you. However, the Council has declined to waive its legal privilege for that advice to be shared with you.

Consequently, we determined that we would need to seek our own legal advice, in order to assist us to reach a decision on the objection, and be able to share that advice with you to assist in understanding the decision we have come to.

We received the final legal advice from our legal advisors, Bates Wells & Braithwaite (BWB), on 26 March 2019 (**Document U**). In overall terms BWB consider that the situation is not clear cut, with arguments on both sides regarding the reasonableness of the Council's decision. However, BWB have concluded, on balance, that the Council may have acted unlawfully in its decision to complete the sale of the holding as described in this decision and statement of reasons in terms of meeting the duty under s123(2) of the Local Government Act 1972 (LGA Act 1972)[2].

[2] We have used the term 'may' because ultimately it is only a court that can determine whether there is an actual unlawful item of account.

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We have repeated the BWB main conclusions below, but note that BWB's advice is confidential and privileged and providing this extract does not amount to a waiver of privilege. No other person is entitled to rely on this advice.

> *The Council had the power (or vires) to dispose of the Holding under section 123(1) LGA 1972, provided that it met the requirements of section 123 and otherwise complied with public law principles.*
>
> *However, in our view it is arguable that the Council acted in breach of its duty under section 123(2) LGA 1972 to achieve the best consideration for the Holding, by failing to consider relevant considerations. Although there are arguments both ways, in our view the better argument is that the Council (acting through its Committee) acted unlawfully in failing to consider the revised bid and whether it could obtain a better price for the Holding than had been provisionally accepted on 23 December 2015. This is on the basis that no reasonable authority would have failed to consider whether it could have obtained a better price for the Holding further to its duty under section 123 LGA 1972 by entertaining the late bid (notwithstanding that it may have been entitled to reject the late bid for ethical reasons, had it considered it).*
>
> *It is arguable that the Council failed to take into account other factors (the escalating element of Bidder A's bid, the additional overage element of Bidder B's original bid, and the Parish Clerk's comments about potential development of the Holding), but we do not think that any of these on their own render the Council's disposal of the land unlawful. They could however have a cumulative impact along with the failure to take into account Bidder B's higher bid.*
>
> *We do not think the failure to implement a formal bidding process had a material impact on the Council's ability to achieve best consideration in this case.*
>
> *For the avoidance of doubt, we are not suggesting that Bidder B should have won the bid, but that the Council may have acted in breach of section 123(2) by failing to consider whether it could have achieved better consideration in light of Bidder B's revised bid. Moreover, it is important to note that even if Bidder B had brought a successful judicial review on the above grounds (or others), there is no guarantee that the Court would have granted Bidder B any remedy.*

Sale of the holding and the sale contract

The sale to Bidder A went ahead on 31 March 2016. We note that the objector has correctly pointed out to officers that the Council's standard bribery and corruption clauses were omitted from the contract. The Council has obtained confirmation from its legal advisors that in their view the absence of the clauses did not affect the legality of the transaction itself, nor has it jeopardised the Council's position unduly should evidence of inducement, reward or other bribery emerge. Whilst the omission of the clauses was regrettable, we are satisfied that this did not remove the legal obligations on both parties in respect of bribery and corruption. We note that the contract included the overage term of 50 years at the 25% rate.

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Response to Bidder B

On 8 April 2016 the Service Director – Environment, Transport and Property responded (**Document V**) to the Bidder B's email of 18 March 2016. He stated that he was '*satisfied that the County Council has undertaken a proper and lawful approach to the marketing and ultimately sale'* of the holding. He also stated that '*the two bids were evaluated in respect of both the purchase price offered and also the overage proposal advanced. It is accepted that an offer of overage should be considered in the context of the financial value of a bid and in this case such consideration occurred.'*

We note that the Council's response states that the overage proposal was evaluated in respect of both Bid B and revised Bid B. However, we consider that the response is confusing. It does not make clear that the evaluation attributed no value to the additional overage when the bids were presented to the Committee.

In relation to the revised Bid B, the Service Director – Environment, Transport and Property's letter dated 8 April 2016 stated that '*in our view, it would have been wrong for the County Council to entertain the submission of late bids…..I am satisfied that this is, ethically, the appropriate approach to adopt.'*

We consider that this stance contradicts the Estates Surveyor's instruction to the land agent on 21 January 2016 (**Document M**) to revert to Bidder A to request their best and final offer.

As noted above, we have no evidence that the financial value of the additional overage as documented on 22 March 2016 (£8,769) was at any stage factored into the total financial value of the revised Bid B for comparative purposes. Our calculation is that the total of the revised Bid B plus the £8,769 is higher than the ceiling amount offered by Bid A. We note that the relevance of this calculation is dependent on whether the revised Bid B is regarded as valid.

In our view, officers' decision processes in response to revised Bid B were poorly co-ordinated and documented, and inconsistent.

Failure to pause and reflect

There were a number of opportunities throughout the sale process for the officers involved to pause and reflect, and to consult on the way forward. An overriding aim to complete the sale by 31 March 2016 appears to have been a significant barrier to doing this. We have not been provided with any reasoning for this, and the Council's S151 officer is similarly unclear as to why the officers involved considered this to be so important.

In terms of interactions with Members, we have already stated our view that officers should have made the Committee aware of the tenancy notice terms, of the Parish Clerk's comments, that there was no policy on or no officer experience of escalating bids, and that there had been a revised Bid B and that Bidder A had been approached in relation to it. In addition, officers do not appear to have considered the option to consult with the Committee regarding the complexities and challenges that arose after its meeting on 25 January 2016. In our view officers should have at least considered the need to revert to Committee to enable it to consider the option of re-running the process to sell the holding. We recognise that there is no way of determining what the Committee would have decided had it had all of the facts and issues available to it.

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Subsequent events noted for information

Whilst we have been carrying out our review we have been notified of two matters that we consider to be of interest.

Firstly, the Council has commissioned an external review of the Property Services in recognition that transformation of its practices is required. The review is on-going. Officers have confirmed to us that the results of the review will be reported at Committee in open session.

Secondly, we understand that an outline planning application for building residential properties was made in 2018, developing the land highlighted by the Parish Clerk as being a '*favoured site'*. Whilst we note that the application was refused, we understand that a second application has been submitted. (We have also noted that the area referred to by the Parish Clerk is included as a potential site for development in the Sutton Cum Lound Neighbourhood Plan.[3]) We consider that it highlights the failure to report the Parish Clerk's comments to the Committee regarding the potential for developing an element of the holding.

Consideration of other observations in your letter of objection

Your letter of objection dated 2 August 2016 refers to other matters which we do not consider to be formally part of our consideration as to the lawfulness of the Council's disposal of land at Sutton Cum Lound, or do not accept as valid. We have included comments on them below for completeness.

You have questioned why the Council did not serve notice to the existing tenant prior to 1 October 2015, which would have allowed vacant possession by 1 October 2016. We accept the officers' view that it would not have been appropriate to serve notice to the existing tenant prior to 1 October 2015, before the Committee decision, as this would have meant that officers were effectively pre-judging the Committee – there would also be a risk that there would be no tenant and no approval to sell. We have commented on the timing of the sale being a potential barrier to non-tenants as we consider that the issue was the timing of the marketing and sale.

You have expressed concern that the Council allowed the holding to be undersold, and that it failed to achieve the best possible consideration, and you refer to as its legal and fiduciary duty to obtain the best price reasonably obtainable. You have referred to Section 123 of the Local Government Act 1972 which states '*except with the consent of The Secretary of State, a council shall not dispose of land under this section otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained*.' Officers have stated that they did not seek Secretary of State approval as they sought to achieve best value (Councils also have discretion up to an undervalue of £2 million where they decide not to obtain best value under certain circumstances). We have noted that the acceptance of an escalating bid builds in an inherent expectation that the price to be paid will be less than the full amount that the bidder is prepared to pay. However, in this case, the difference is small in the context of the Council. In terms of achieving best value, in the event, the Council obtained near to its target price for the land.

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[3] The Sutton-cum-Lound Neighbourhood Plan has been formally 'made' by Bassetlaw District Council following the Referendum held on 15 February 2018. The Neighbourhood Plan now forms part of the existing statutory Local Development Plan for Bassetlaw and shall be used when either applying for planning permission or determining planning applications within the Neighbourhood Plan Area.

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In your letter of objection you challenged the Council's historical management of the holding, in particular in relation to the level of rent charged to the tenant. As set out in my letter to you on 12 April 2017, objections must relate to an item in the year of account for which the audit is still open, and I did not accept this element of your objection. I note that in a letter to you dated 5 May 2016 the Council acknowledged that it had failed to carry out a rent review of the holding in 2009, and that the review should have been carried out by a Council officer. The letter clarified that rents were looked at across the portfolio in 2014 and a rolling process of rent review was begun using external agents.

Right of appeal

You have the right to appeal our decision not to apply for a declaration under section 28(3) of the Local Audit and Accountability Act 2014. Please note that there is no right to appeal against a decision not to issue a public interest report. Should you wish to do so, you must issue your appeal within the period of 21 days beginning with the day after you receive this statement of written reasons.

Should you wish to appeal this decision, we recommend that you seek legal advice.

We have copied this decision to the Council.

Yours sincerely

Phil Johnstone
Director

For and on behalf of KPMG LLP

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Attachment 1

Index to material evidence to support our decision

Ref	Document details
A	*Nottinghamshire County Council Farm and Smallholdings Portfolio*" - Finance and Property Committee - 12 October 2015 – publicly available report
A1	*Nottinghamshire County Council Farm and Smallholdings Portfolio*" - Finance and Property Committee - 12 October 2015 - Exempt appendix
B	Operational decision to approve the disposal of the holding – 3 November 2015
C	Marketing material for the holding
D	Land agent email to the Council - 19 October 2015
E	Parish Clerk Sutton emails to the Council - 10 November and 9 December 2015
F	Land agent's letter to the Council – 18 December 2015
G	Bid A – 18 December 2015
H	Copy of the original objection addressed to KPMG LLP – this version has been date stamped by the Council (3 August 2016) and has been annotated with numbers to reflect the separate points made, which are used in material evidence Document I.
I	Officer comments to KPMG LLP in response to the objection, including comments on overage
J	Correspondence between KPMG LLP and the land agent - various
K	Land agent's confirmation to the winning bidder – 23 December 2015
L	Revised Bid B submitted to the land agent – 18 January 2016
M	Email from Estates Surveyor to the land agent requesting best and final offer – 21 January 2016
N	*Sale of 49.52 Hectares (122.3 acres) agricultural land at Sutton Cum Lound DN22 8PY* - Finance and Performance Committee - 25 January 2016 - publicly available report
N1	*Sale of 49.52 Hectares (122.3 acres) agricultural land at Sutton Cum Lound DN22 8PY* - Finance and Performance Committee - 25 January 2016 - exempt appendix
O	Bidder B letter to the Service Director – Environment Transport and Property - 5 February 2016
P	Service Director – Environment Transport and Property letter to Bidder B - 18 February 2016
Q	Bidder B email to the Service Director – Environment Transport and Property - 18 March 2016
R	Estates surveyor documentation of the calculation of the higher overage bid – 22 March 2016
S	Estates surveyor email seeking legal guidance - 23 March 2016
T	Team Manager – Property and Strategy email - 23 March 2016
U	Bates Wells and Braithwaite LLP legal advice to KPMG LLP – 26 March 2019
V	Service Director – Environment Transport and Property letter to Bidder B - 8 April 2016

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Attachment 2

Recommendations

Issue	**Recommendation**	**Response**:
1) Insufficient information was provided to the Finance and Property Committee in relation to the sale of the land at Sutton-Cum-Lound (the holding). This included not informing the Committee of the vacant possession date, the observations provided by the Parish Clerk, the revised bid received on 18 January 2016 and subsequent discussions prior to the 25 January 2016 Committee meeting.	The Council should review the procedures and guidance available to officers when considering the information to be provided to Committees in respect of property disposals.	The Council recognises that practice and procedure can always be improved upon and its commitment to achieving such improvements is demonstrated by the work of the Property Transformation Programme which has now been underway for some time and included an external review, the findings of which have been reported to the Council's Policy Committee in open session and where periodic progress reports have been taken over the course of the past 18 months. Alongside the ongoing work of that Transformation Programme, the Council has also made a commitment to report the outcome of the auditor's findings in respect of this matter to a public meeting of its Governance and Ethics Committee following receipt of the final report. The Council's response in respect of the recommendations made should be viewed in that overall context and against the backdrop of that commitment. The effective preparation of committee reports requires an author and challenge process. The authority has a report preparation process in place, so its preparation is logged and then undertaken. A professional officer's report is reviewed by an appropriately qualified senior manager and then finally reviewed by the Service Director prior to presentation. This enables a qualitative assessment process to be undertaken. In addition, all Committee reports are seen by both legal and finance colleagues as part of a sign off process. As part of the authority's property service restructure additional supervisory management levels have been introduced to ensure a more effective process for production and review of draft reports and reflection and challenge of draft documentation.

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Issue	**Recommendation**	**Response**:
2) The Council's Constitution requires the achievement of the best price reasonably obtainable on the open market. There was an apparent desire within the Property Team to ensure that the land sale of the holding was completed within the financial year, but it is not clear why this was the case. Officers were able to decide when the holding was marketed and sold. It is arguable that potential buyers other than the existing tenant would be discouraged by not being able to obtain vacant possession until October 2017.	The Council should have a clear process for documenting the strategy to achieve the best price reasonably obtainable on the open market for each property disposal, taking into account all relevant factors (eg social or other policy factors may not result in the highest price option being chosen).	The Council's capital programme arrangements are set out on a rolling basis which should alleviate any pressure to achieve a particular disposal by a specific date. In operational terms the approach to transactions falls into whether a sale will be achieved by informal tender/ private treaty, formal tender or auction. Each approach has strengths and weaknesses. A transparent process indicating what approach has been taken and why will be developed within the transformation programme and consideration will be given to whether any additional wording is required in the Council's Constitution.
3) The Constitution provides options for the method of asset sales, including public auction, formal tender and informal tender/ private treaty. However, the Council did not have a policy for deciding on which method of sale to use when selling the holding. In addition, having chosen the informal tender/private treaty route for the holding, there was no process on how to deal with the revised bid received after the date set for receipt of the 'best and final' offers.	The Council should have a policy for deciding which method of sale is to be used for property disposals, and clear procedures for each methodology. This is particularly important for methods such as informal tender where there is more flexibility for both the Council and potential purchasers.	The Council will review the provisions in the Constitution alongside the work of the transformation programme in light of this recommendation but would be wary of introducing something too prescriptive which may reduce flexibility and potentially impact on the price and public value/outcomes achieved.
4) One of the bids for the holding included an escalating element. There was no policy in relation to escalating bids, and the Property team had no experience of dealing with them. There was no reference to the acceptability or otherwise of escalating bids in the marketing of the holding.	The Council should have clear procedures setting out how to deal with unusual/'non-standard' bids and what senior officer/Member review and approval is needed.	The Council will review the provisions in the Constitution alongside the work of the transformation programme in light of this recommendation but would be wary of introducing something too prescriptive which may reduce flexibility and potentially impact on the price and public value/outcomes achieved.

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Issue	**Recommendation**	**Response**:
5) One of the bids received in December 2015 included an overage percentage higher than the level stipulated in the marketing material. Officers did not document their consideration of the higher amount when evaluating the bids. Officers' estimation of the potential financial value of the higher overage was not documented until 22 March 2016, following challenge from the losing bidder. There was no documentation of the impact of the estimate of the financial value of the higher overage amount on the overall financial offer.	The Council should ensure that there is a policy on overage that includes evaluation criteria for bids received. The Council should also ensure that the evaluation of all aspects of all bids received is appropriately documented.	The Council will be reviewing the section of the Council's Constitution relating to Land and Property Financial Regulations and will consider whether any changes are required, particularly where tenders are received by agents and not the Council directly. As with the previous recommendation, a key consideration will be ensuring that any changes are not too prescriptive. It is envisaged that as part of the process of recording tenders received, varying factors such as overages will be set out and analysed accordingly.
6) The Council commissioned external legal advice following challenge from the losing bidder. The external legal advisors made three recommendations, but there is no documented consideration of them, and two were not actioned.	The Council should ensure that there is documented consideration of any recommendations made by external advisors to determine if they are to be accepted. If the recommendations are accepted then there should be a process to ensure that they are actioned.	The Council will consider how best to document consideration of advice received and how it has been taken into account as part of good case management practice, particularly if that consideration does not form part of a report to Committee.
7) The Property Team commented that the pressures caused by a senior member being on secondment had contributed to the failings in arrangements.	The Council needs to ensure that appropriate arrangements are in place when considering the viability of internal secondments, particularly in relation to ensuring that the secondee's existing role will be covered adequately.	The Council will consider whether any changes to existing procedures around secondments to ensure that the Property function remains properly resourced. Resourcing issues will be monitored to ensure that cases are progressed effectively and efficiently. In particular where handovers or changes of officer takes place an effective handover process will take place. An appropriately managed and resourced team will have secondary roles to minimise disruption in the event of absence.

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Issue	**Recommendation**	**Response**:
8) The review of the sale of the holding has highlighted numerous instances of poor documentation of evaluation processes and decision-making, the absence of coherent strategy for sale and a lack of consistent collective thought in officers' approach. We note that the Council has commissioned a review of the Property Services.	The Council should ensure that the issues raised in this report are considered as a part of the transformation of its Property Services, and that the lessons arising from it are learnt and resolved.	The transformation programme includes areas covering strategy and also roles responsibilities and governance. The issues arising from this case and lessons learnt will be incorporated into the appropriate areas.

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Attachment 3

Calculation of bids received

	Bid A				**Bid B**	
Original Bid	**£1,051,105**	(A)		Original Bid	**£1,050,105**	(D)
Ceiling amount (reported by land agent to Council)	**£1,105,501**	(B)		Revised Bid	**£1,100,105**	(E)
Ceiling amount (actual amount in the bid)	**£1,101,501**	(C)		Revised Bid (plus overage)	**£1,108,874**	(F)

Notes

Original Bids

- the bids received by the original deadline of 18 December 2016 resulted in Bid A (A) being higher than Bid B (D) by £1,000 due to the £1,000 escalating element of Bid A.

Revised Bid (no amount attributed to the additional overage)

- the revised Bid B (E) made on 18 January 2016 was lower than the ceiling amount of bid A (for both the amounts reported to the Council by the land agent (B) and the actual level (C)).
- if the escalating element of £1,000 were to be added to Revised bid (E), the amount payable by bidder A would be £1,101,105. This is £396 lower than the actual ceiling amount of Bid A (C), indicating that Bid A would remain the highest, regardless of the error in the ceiling amount reported to the Council. Note that this is on the basis of no value being attributed to the additional overage offer.

Revised Bid (adding in the amount attributed by officers to the additional overage)

- if the officer's valuation dated 22 March 2016 of £8,769 for the additional overage is added to the revised bid, the total value of the revised Bid B (F) is greater than the actual ceiling amount of Bid A (C) and the amount reported to the Council by the land agent.

Impact of the wrong ceiling amount being reported to the Council

- The above calculations indicate that the wrong ceiling amount being reported to the Council did not have any impact on the evaluation of the bids.

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Nottinghamshire County Council

Report to Governance & Ethics Committee

4 March 2020

Agenda Item: 8

REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE & IMPROVEMENT

INTERNAL AUDIT 2019-20 TERM 2 REPORT & 2020-21 TERM 1 PLAN

Purpose of the Report

1. To inform Members of the Head of Internal Audit's report on the work carried out by Internal Audit in Term 2 of 2019/20, to allow Members to consider whether they wish to receive any further follow-up reports.

2. To consult with Members on the Internal Audit Plan for Term 1 of 2020/21.

Information

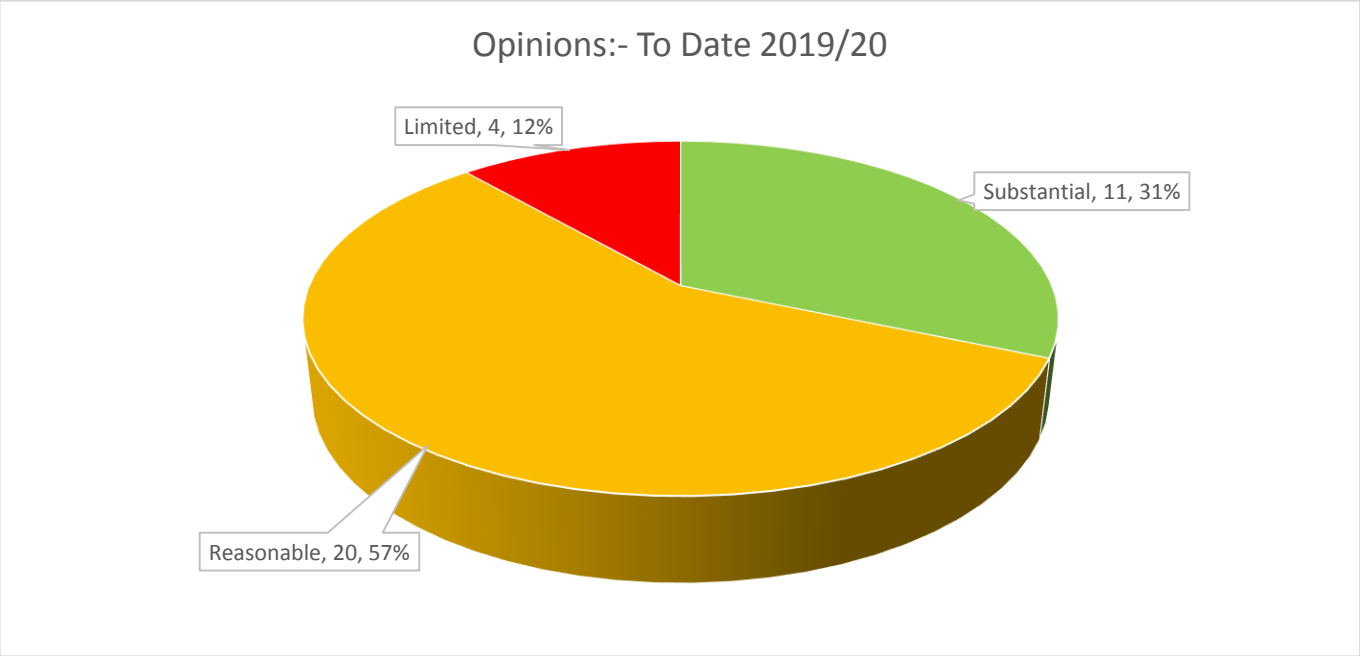
Internal Audit's work in Term 2 2019/20 – August 2019 to November 2019

3. In Term 2, a range of work was completed across the Council, covering the following key types of Internal Audit input:
   - Assurance audits, for which an audit opinion is issued
   - Advice and consultancy – often relating to key developments and initiatives
   - Counter-fraud – including the investigation of suspected fraud and whistle-blower reports
   - Certification audits – generally small jobs to sign off grant returns and accounts.

Audit assurance

4. The opinion-based assurance work is a key contributor to the Head of Internal Audit's year-end opinion on the adequacy of the Council's system of internal control. ***Chart 1*** shows the distribution of opinions issued in 2019/20 so far.

Chart 1- Opinions to Date



5. In terms of the work completed on the County Council's services and systems, ***Chart 2*** analyses the opinions issued in this term by service area and level of assurance.

Chart 2- Opinions in this Term

	LIMITED ASSURANCE	REASONABLE ASSURANCE	SUBSTANTIAL ASSURANCE
COUNCIL-WIDE		Strategic Commissioning	Pensions Investments Accounting Clearing House
ASCH		External Day Care Provision	
C&F			
PLACE		Central Processing Unit - Car Parking	
CHIEF EXEC'S			Networks

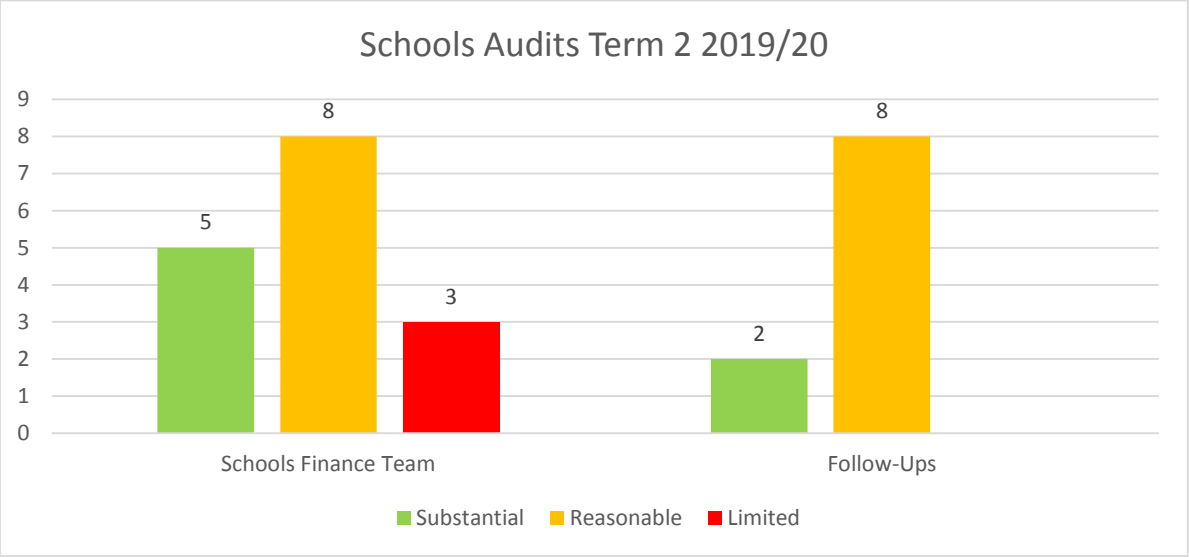
6. Internal Audit have undertaken significant pieces of assurance work during Term 2 and these have provided positive levels of assurance, particularly in relation to council wide strategic commissioning and key financial systems.

7. The most recent report to the Governance & Ethics Committee in January 2020 on the follow-up of agreed audit recommendations presented a positive picture overall. However, the report noted a decline in implementation rates for Priority 1 actions when compared to the previous

two years. Several officers attended the meeting to update the Committee on progress in specific areas. The next update to Committee is scheduled for July 2020.

8. ***Chart 1*** incorporates opinions relating to school visits. Since April 2019, these are now undertaken by the Children's & Families' Finance Team, with Internal Audit completing follow-up work required from the visits in 2018/19. ***Chart 3***, below, summarises the spread of assurance and follow-up opinions for reviews completed in Term 2.

Chart 3 – Schools Audits



Advisory input

9. Internal Audit continues to provide advisory input to developments in the Council. In Term 2, the following summarises the key areas of activity:
   - Cloud project – ongoing input to the project in relation to contracting and contract monitoring arrangements, and around the design of controls for continued service delivery and security
   - Mosaic system review – ongoing input to the review to ensure an appropriate focus on control and audit trails
   - My Notts App – review of procurement processes for development work.
   - Floods Hardship Fund – provided an overview of the internal controls implemented to control emergency payments following recent flooding across the county.
   - Homebased Care Solutions – advice on interim solutions for payment of providers.
   - LGPS – Pensions Advisory – advice has been provided over the governance arrangements and audit requirements following the formation of the pool.
   - Via EM Financial Control Advice – advice on internal controls within the Finance Policy and Procedure Manual.

10. Internal Audit's advisory input ensures that timely advice is delivered by the Section while new and changed systems are being designed and implemented, and it helps to maintain the influence the Section has to retain a proper focus on control issues. Informal feedback from senior officers continues to indicate that this type of input is valued.

Counter-Fraud

11. Internal Audit was active in the following aspects of its pro-active counter-fraud programme in Term 2:

- Counter Fraud Progress Report 2018/19 – the report was presented to the Governance & Ethics Committee in December 2019
- National Fraud Initiative 2018/20 – Internal Audit co-ordinates the cross-Council effort to investigate matches flagged up by the Cabinet Office initiative
- National fraud alerts – screening and distributing to relevant sections alerts publicised by national fraud agencies.

12. The Counter Fraud Progress Report identified other activities that Internal Audit were engaged with during Term 2:
    - Attempted Fraud case – awareness of bank and mandate fraud prevented payments of £1.9m being made from Via East Midlands Ltd
    - National Fraud Initiative – Mortality Re-check exercise undertaken to compare mortality data to pension records
    - International Fraud Awareness Week – dissemination of counter fraud awareness materials to raise awareness
    - Government Agency Intelligence Network (GAIN) – completion of 'data washing' exercise to share intelligence in relation to serious and organised crime risks.

13. In addition, Internal Audit continue to be involved in fraud investigation activities involving nine live cases.

Certification audits

14. Internal Audit have completed the certification of grant returns and accounts in Term 2 that were in relation to Bus Services Operators Grant, Beeston Youth Centre and Platt Lane Playing Fields accounts.

Internal Audit Performance

15. ***Appendix 1*** sets out the following charts to depict progress against the Term 2 Plan, expressed in terms of the following:
    - Inputs – the number of audit days delivered against the Term 2 plan. Each segment in the chart represents ¼ of the Termly Plan.
    - Outputs – the number of jobs completed against the plan. Each segment in the chart represents ¼ of the Termly Plan.
    - Productivity indicator – the target score is 1, indicating that all planned jobs have been completed on time and using the planned allocation of days.

16. The planned input days for Term 2 was impacted by the transition from the previous staffing structure to the new staffing structure. It is anticipated that this transition will also have a bearing on productive days in Term 3. Appendix 1 provides an update on the Section's performance in Term 2 against its key indicators. A reasonable level of performance is presented despite the reduced number of days mentioned above.

Proposed Internal Audit Plan for Term 1 2020-2021

17. Internal Audit has carried out updated consultations with senior managers (through the Corporate Leadership Team and the Departmental Senior Leadership Teams). Regular slots at these meetings are booked in on a rolling basis to coincide with the schedule agreed for the termly plans.

18. Audit plans are determined on a risk basis, as required by the Public Sector Internal Audit Standards (PSIAS). As part of the planning process, account is taken of external sources of assurance, including the work of external inspectorates. Where audits are planned, pre-audit work will also include discussion with managers over sources of assurance that can be relied upon, to prevent duplication. The assurance mapping process is also now providing an important flow of intelligence to inform Internal Audit's planning.

19. Plans are compiled in accordance with PSIAS and they represent the Section's assessment of the key areas that need to be audited in order to satisfy the Authority's statutory responsibility to undertake an adequate and effective internal audit of its accounting records and its system of internal control. The Section's aim is to complete sufficient work to express an overall, annual opinion on the adequacy and effectiveness of the Authority's internal control systems. The annual opinion for 2019/20 will be expressed in the scheduled update report in July 2020 and will take account of assurance delivered from all of Internal Audit's work over the three Terms in 2019/20, along with assurances available from other sources.

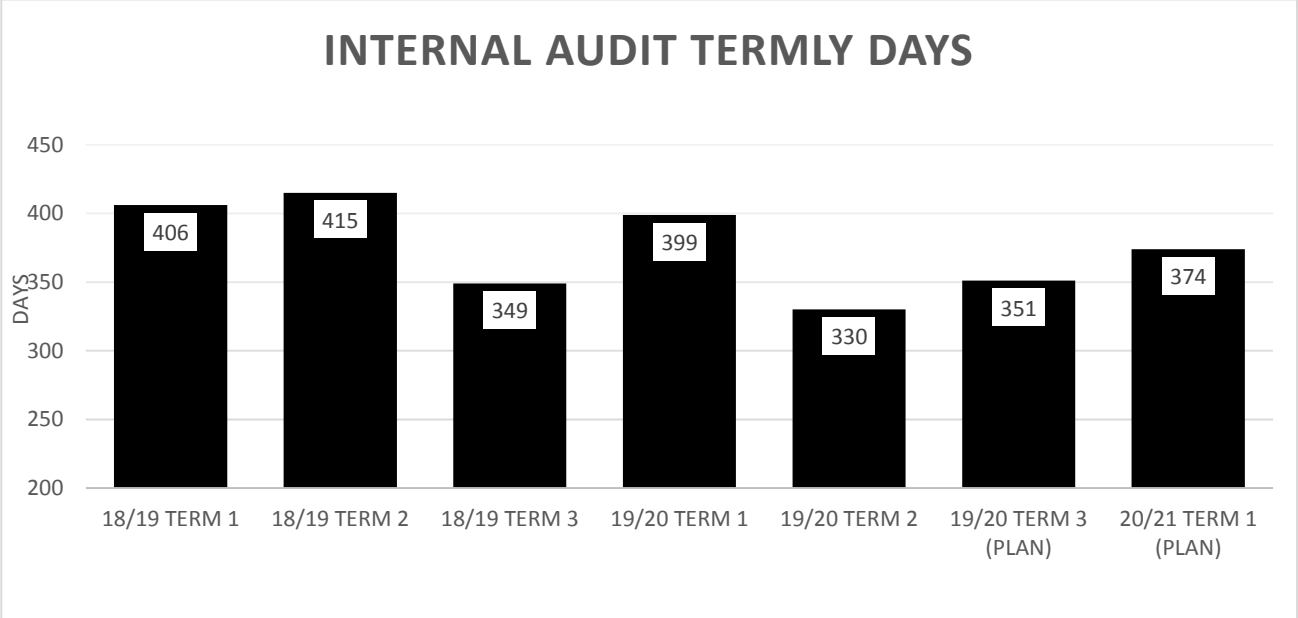
20. The Termly Plan is based on an Audit Risk Assessment to identify the priorities for audit coverage. Each area of activity in the Council is assessed in terms of the following factors:
    - Value and volume of transactions involved with the activity
    - The known level of internal control in place (from previous audits)
    - The exposure to fraud risk
    - The relative complexity of the activity
    - Whether the activity is stable or subject to change
    - How sensitive the activity is for the Council among its key stakeholders
    - The number of sites where the activity is carried out.

    Using an established system of scoring and weighting the above factors, the Needs Assessment arrives at a high/medium/low risk-rating for each area of activity.

21. ***Appendix 2*** sets out details of the draft coverage by Internal Audit for Term 1, and it is summarised in the following table.

Department	Days	Number of Audits			
		High Priority	Med Priority	Other	Total
Council-wide	131	3	3	3	9
Children & Families	58	0	3	0	3
Adult Social Care & Health	48	1	0	0	1
Place	32	0	1	1	2
Chief Executive's	105	1	4	4	9
Total	374	5	11	8	24
External Clients (Notts Fire & Rescue Service)	30				
Grand Total	404				

22. The chart below shows the trend in the number of actual days delivered in recent terms, excluding the External Clients.



23. Term 1 will continue to be a period of transition as it embeds the appointments made in November 2019 to the new staffing structure approved by Committee. It will also be a period in which the recruitment of its first apprentices will be completed following the appointment of approved providers. Time is being built in to the plan for the design and delivery of a training and development programme for the new entrants, and it is expected that this will necessarily be resource-heavy in the early months.

24. In the current Term our agency resource has resigned to take up an alternative engagement earlier than planned. Strategically it has been decided not to recruit a short-term agency replacement because this would not provide value for money when considering the associated overheads of engaging such a short-term solution. Our efforts will be focused on the recruitment of apprentices. This will have an impact on the number of individual jobs completed but with the work undertaken on Assurance Mapping and corporate systems the Head of Internal Audit will still be able to complete the Annual Opinion.

Other Options Considered

25. The Audit Section is working to the Public Sector Internal Audit Standards during 2019/20. This report meets the requirement of the Standards to produce a risk-based plan and to report the outcomes of Internal Audit's work. No other option was considered.

Reason/s for Recommendation/s

26. To set out the Report of the Group Manager – Assurance for Term 2 of 2019/20, and to propose the planned coverage of Internal Audit's work in Term 1 of 2020/21, providing Members with the opportunity to make suggestions for its content.

Statutory and Policy Implications

27. 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.

Individual audits completed and in the proposed Termly Plan may potentially have a positive impact on many of the above considerations.

Financial Implications
The Local Government Act 1972 requires, in Section 151 that the Authority appoint an officer who is responsible for the proper administration of the Council's financial affairs. The Service Director for Finance, Infrastructure & Improvement is the designated Section 151 officer within Nottinghamshire County Council. Section 6 of the Accounts and Audit Regulations 2011 requires Local Authorities to undertake an adequate and effective internal audit of its accounting records and of its system of internal control. The County Council has delegated the responsibility to maintain an internal audit function for the Authority to the Service Director for Finance, Infrastructure & Improvement and Section 151 Officer.

RECOMMENDATION/S

1) Arising from the content of this report, Members determine whether they wish to see any actions put in place or follow-up reports brought to a future meeting.
2) That Members consider whether the planned coverage of Internal Audit's work in Term 1 of 2020/2021 will deliver assurance to the Committee in priority areas.

Nigel Stevenson
Service Director for Finance, Infrastructure & Improvement and Section 151 Officer

For any enquiries about this report please contact:
Rob Disney
Group Manager - Assurance

Constitutional Comments (KK 12/02/2020)

28. The proposals in this report are within the remit of the Governance and Ethics Committee.

Financial Comments (RWK 12/02/2020)

29. There are no specific financial implications arising 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.

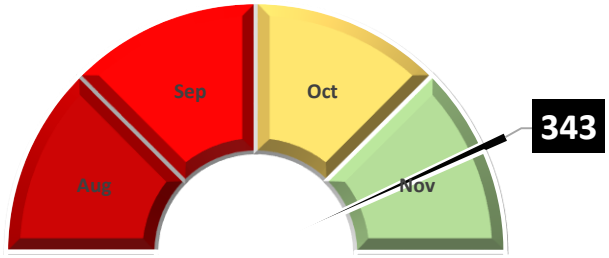
- None

Electoral Division(s) and Member(s) Affected

- All

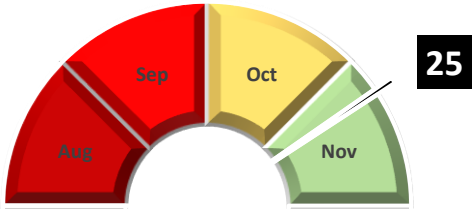
Internal Audit Performance - Term 2 Appendix 1

Term 2 – Inputs – Days Delivered



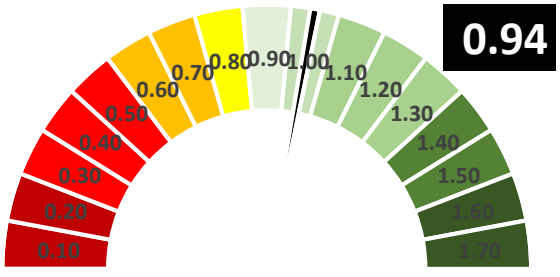
Term 2 Days target - 400
Position as at 30/11/19

Term 2 – Outputs – Jobs Completed



Term 2 Jobs target: 31
Position as at 30/11/19

Term 2 – Productivity Indicator



Productivity 30/11/19

Key Performance Indicators

Performance Measure/Criteria	Target	Outcome in Term 2
1. Risk-aware Council		
Completion of Termly Plan – Days - Jobs	90% 90%	✗86% ✗80%
Regular progress reports to: - Departmental Leadership Teams - Corporate Leadership Team - Governance & Ethics Committee	1 per term 1 per term 1 per term	✓Completed ✓Completed ✓Completed
Publication of periodic fraud/control awareness updates	2 per annum	✓Counter Fraud Progress Report – Dec 2019
2. Influential Audit Section		
Recommendations agreed	95%	✓100%
Engagement with the Transformation agenda	Active in 5 key projects during the year	✗Active in 2 so far in 2019/20
3. Improved internal control & VFM		
Percentage of Priority 1 & Priority 2 recommendations implemented (as at January 2020 update for 2017/18 actions)	75%	✗55% Priority 1 ✓81% Priority 2
4. Quality measures		
Compliance with the Public Sector Internal Audit Standards (PSIAS)	Compliance achieved	✓Head of Internal Audit's self-assessment against PSIAS for 2018/19
Positive customer feedback through Quality Control Questionnaire (QCQ) scores	Feedback good or excellent (where a score of 1 is excellent and a score of 2 is good)	✓1.5

Appendix 2

Internal Audit Plan 2020-21 - Term 1

Council-wide areas

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
Financial resilience (continued)	H	1	5				Self-assessment of NCC position and practice against the key issues identified in the Northamptonshire CC best value inspection report and gain audit assurance over weak areas of assurance.
Service planning and performance management (continued)	H	1	5				Review the council's arrangements for performance management as agreed with CLT.
Systems Review & controls in Mosaic (continued)	H	0		5			Advisory input to Mosaic Systems Review as required, to ensure the preservation of controls and audit trails
Third Party Risks (continuing)	M	1	5				The Council's approach to managing its arrangements for service provision by third parties, based around guidance developed by the Institute of Internal Auditors
Risk management	M	0 (expected T2)	10				A report is being prepared for consideration by CLT which would change how strategic risk is managed by the Council. The likely scope of an audit would embrace this, in light of current standards and frameworks, including from the Institute of Internal Auditors.
Learning, Development & Workforce Planning	M	0 (expected T2)	10				Review completion of EDPR processes used to drive employee and departmental development. Examine how workforce planning is coordinated across the council to determine budgets for workforce requirements.
Already issued drafts awaiting responses and final issue			5				Already issued drafts awaiting responses and final issue
Action tracking		0 (expected T2)	15				Continuous active action tracking and six-monthly reporting
Major transformational projects - as agreed		2		15			As agreed, advisory input on specific projects that have a particularly significant impact on the control environment, or those inviting a gateway review. This could include the Digital Development Programme.
Pro-active counter-fraud – *NFI 2018-20 - Review of Matches*	H	1			5		Review and report on the completion of Recommended matches by the Key Contacts within departments for Cabinet Office
Fraud alerts					1		Review and dissemination of fraud alerts from national counter-fraud agencies
Financial irregularities - investigations and lessons learned		2			20		Responding to being informed about possible or suspected financial irregularities. Advising the client and others as necessary.
Assurance mapping & Statutory Officer updates		1	10				Consultation on assurance mapping for 2019/20 and compilation of outputs to inform the Annual Governance Statement
Governance & Ethics Committee				10			Preparation of reports in accordance with the Governance and Ethics Committee annual work plan and attendance at meetings
Client management				5			Planning and termly progress reports to Corporate Leadership Team
Advice				5			Advice to client on financial and other controls, on request
Sub-Totals			**65**	**40**	**26**	**0**	
Grand Total		**9**	**131**				

Children and Families

Adoption financial support (continued)	M	1	13				Financial controls over adoption allowances and inter-agency payments

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
External Placements (continued)	M	1	5				Operating model; commissioning; placement agreements and contract management; payments; health and education contributions; budgetary control
Early Years Education Funding (continued)	M	1	5				Alignment with national and local requirements; control over capital and revenue expenditure; market management, registration and inspection; data submission and payments
Post 18 Placements - Staying Put policy (continued)	M	0 (expected T2)	10				Of concern to C&F leadership is the delivery of 'Staying Put' Policy, and the financial impact and opportunity costs arising from it. The likely scope will embrace the control environment in light of that
SEND top-up funding (continued)	M	0 (expected T2)	10				Controls over the devolution to schools and academies of top-up funding for C&YP with SEND, most notably High Level Needs and Additional Family Needs funding
Already issued drafts awaiting responses and final issue			5				Already issued drafts awaiting responses and final issue
Client management				5			Planning with, and termly progress reports to, Senior Leadership Team.
Advice				5			Advice to client on financial and other controls, on request
Sub-Totals			**48**	**10**	**0**	**0**	
Grand Total		**3**	**58**				
Adult Social Care and Health							
Housing With Care (continued)	M			5			Governance and delivery of strategy; business cases for new schemes; commissioning and procurement of providers of approved schemes; commissioning of service users into places; financial control and information
Integrated Care Systems (continued)	H	1	10				Overview that ACSs have been set up and developed in accordance with national guidance and local agreements, and NCC's interests are being protected and served.
Already issued drafts awaiting responses and final issue			5				Already issued drafts awaiting responses and final issue
Short Term Beds	M	0 (expected T2)	15				The department is reporting overspends on short-term care. The consequential scope is how the department is implementing controls; guidance; working to target; and strategy.
Audit meetings with ACFS - financial irregularities					3		Regular liaison to address concerns of misuse of direct payments, and other possible financial abuse involving service users
Client management				5			Planning with, and termly progress reports to, Senior Leadership Team.
Advice				5			Advice to client on financial and other controls, on request
Sub-Totals			**30**	**15**	**3**	**0**	
Grand Total		**1**	**48**				
Place							
Trading Standards - Sanctions & Compliance (continued)	M	1	5				Review processes for the consistent application of sanctions to cases ensuring compliance with established sanction requirements.
Trading Standards Operational Grants	N/A	1				12	Certification of various operational grants.

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
Already issued drafts awaiting responses and final issue			5				Already issued drafts awaiting responses and final issue
Client management				5			Planning with, and termly progress reports to, Senior Leadership Team.
Advice				5			Advice to client on financial and other controls, on request
Sub-Totals			**10**	**10**	**0**	**12**	
Grand Total		**2**	**32**				
Chief Executive's							
Active Directory (continued)	**M**	1	5				Review internal controls in place to ensure that the robustness of the directory is maintained.
Cloud computing / Data Centre	**H**	1		10			Review controls in place for contracting cloud services, contract monitoring arrangements and for continued service delivery and security. This will include the residual data centre provision at County Hall; in particular the physical and environmental control requirements.
Change and release	**M**	1	5	5			To review the controls that will apply to systems and services at the conclusion of the Cloud Computing programme. There are likely to be differences in the arrangements in place for the various delivery models (Software as a Service, Infrastructure as a Service, Co-location and In-house provision)
Profile Tailor Dynamics (continued)		1		5			To finalise the profile of internal controls within the systems to detect exceptions for further review
LGPS Central - Governance	**M**	1		5			Advisory work on the control environment and assurance provided through the LGPS AAF reporting process.
LGPS Central - Partner Auditor Assignments - TBC	**H**	0 - expected T2	15				Working with the LGPS Partner Audit Group to complete audits in line with coverage agreed with LGPS Central Ltd.
Payroll Data Analytics - Additional Payments	**M**	1		5			Complete additional data analytics work as requested by the client to develop previous data analytics work undertaken in relation to schools
Post 16 Funding - exceptional payments	**M**	1		5			To review the internal controls in place for the governance of payments made under the exceptional criteria
Pension Admin (Data Quality)	**M**	1	15				Review of core processes to support compliance and assurance with a focus on the review of work underway to review data quality.
Accounts receivable & Debt Management	**M**	1	15				Review of core processes that ensure compliance for assurance and annual governance statement
Already issued drafts awaiting responses and final issue			5				Already issued drafts awaiting responses and final issue
Client management				5			Planning with, and progress reports to, Senior Leadership Team.
Advice				5			Advice to client on financial and other controls, on request
Sub-Totals			**60**	**45**	**0**	**0**	
Grand Total		**9**	**105**				
Sub-Totals			***213***	***120***	***29***	***12***	
Grand Total		***24***	***374***				

Nottinghamshire County Council

Report to Governance & Ethics Committee

4 March 2019

Agenda Item: 9

REPORT OF SERVICE DIRECTOR FINANCE, INFRASTRUCTURE & IMPROVEMENT

QUARTERLY GOVERNANCE UPDATE

Purpose of the Report

1. To inform Committee of the progress being made with the Governance Action Plan for 2019/20, and to request Members' feedback regarding the most significant governance issues currently facing the Council and whether revised actions are needed to address emerging risks.

Information

2. The Accounts and Audit (England) Regulations 2011 require the Authority to publish an Annual Governance Statement (AGS) along with its Statement of Accounts. The focus of the AGS is to assess the extent to which the Council's Local Code of Corporate Governance has been complied with over the course of a financial year, along with an assessment of the most significant governance issues the Council is dealing with. This gives rise to an annual Governance Action Plan.

3. For the past couple of years, a quarterly review process has been in place to ensure the AGS is used as a live document throughout the year, contributing towards maintaining an appropriate, strategic focus on the Council's ongoing governance arrangements. The quarterly review is also an opportunity to review the progress being made with the agreed actions.

4. The latest quarterly update identifies the following as the most significant governance issues for the Council.

Issue	Comment
Transformation agenda	Following approval by Policy Committee in October 2019 to a revised approach to transformation and change, our strategic partner, Newton Europe, has been appointed and is now on site undertaking an initial discovery phase of the engagement. Newton Europe will be working alongside Council managers on a cross-Council basis to suppot us in developing a new, intelligence and insight-led model of transformation.

Budget forecasting	Effective management of the most volatile elements of the annual budget remains a key area of focus. Concern lies around processes for budget setting, forecasting and the effective use of data.
Retention of local business rates	Preparatory work for this change in the local taxation framework continues to progress.
Pressure on core systems of internal control	The findings of Internal Audit over recent Termly Audit Plans are not identifying a concerning number of areas in which only limited assurance can be provided over the effectiveness of internal controls. However, the Group Manager – Assurance has reported to the Governance & Ethics Committee a decline in implementation rates for agreed actions following audits. This was particularly evident for Priority 1 actions, and a number of officers attended the Committee in June 2019 and January 2020 to provide a verbal update on progress in specific areas.
Vulnerability to fraud	An update on progress against the Annual Fraud Report's action plan was presented to the Governance & Ethics Committee in December 2019. The incidence of internal fraud remains low, but the Council continues to be the target of attacks from external sources, notably in relation to its suppliers' bank details.
Risk of exposure to serious and organised crime	National evidence identifies local government as a prime target for fraudulent activity to fund serious and organised crime. Actions identified following Internal Audit's review against the DCLG/Home Office recommended audit programme have been implemented. A six-monthly data-sharing procedure with the Government Agency Intelligence Network is in place; no matters of concern were identified from the first matching exercise.
Independent Inquiry into Child Sexual Abuse	A comprehensive action plan was agreed by the Children & Young People's Committee in December 2019, and that Committee will perform ongoing scrutiny and monitoring at appropriate intervals. A second phase of public hearings took place in November 2019 for the Accountability & Reparations investigation, and an additional, special sitting-day is scheduled for 5 February. The Council will consider that investigation's findings and recommendations when released, and incorporate further actions in to the Council's response.
Controversial/sensitive decisions	The risk of challenge and demonstrations at Council meetings, at which potentially controversial and sensitive decisions are to be taken, is recognised. The Council continues to be a focus of attention for the Nottingham Extinction Rebellion group, and the Council's stance and approach on this issue remains under active management.
General Data Protection Regulations	The Information Governance Improvement Programme continues to help the Council manage the significant reputational and financial risks of breaches in data protection. The Programme is a two-phase approach, focusing on: compliance with the new data protection law; and a Council-wide approach to document management. Close monitoring of progress against the improvement plan is continuing to mitigate these risks.
Move to the Cloud	The County Council currently stores its software and data within the ICT Data Centre on the County Hall campus. Work continues to provide these services using a 'cloud' based online approach, as part of the plans to use the latest technology to provide more cost-effective ICT Services. Monthly updates on progress continue to be provided relating to migrations of applications, email accounts, SharePoint sites and the roll-out of Office ProPlus.
Brexit implications for the Council	With ratification of the Withdrawal Agreement, the UK left the EU with a deal on 31 January 2020. Central government has confirmed that 'Operation Yellowhammer' no-deal contingency planning activities have been stood down. As of the 31 January 2020, the Department for Exiting the European Union is disbanded. The Government has now moved into a transition / implementation period in which it will be negotiating its future relationship

	with the European Union. The Government's position is that it is expected to have a trade and other relevant agreements in place by December 2020. Further contingency planning work may be required to mitigate the risk that trade negotiations will not be completed in this timescale.
Local Government Association Peer Challenge	The LGA Peer Challenge was conducted in June 2019 and its subsequent report recognised a number of the Council's key attributes that underpin the positive findings of the Review Team. A report to Policy Committee in October 2019 agreed an action plan in response to the report's five recommendations. Progress is being monitored by the appropriate committee for each action.

5. The thoughts and insight of Corporate Leadership Team colleagues are sought on a quarterly basis to assess whether the above list continues to represent the most significant governance issues on which the Council needs to focus. To assist with this, CLT colleagues are asked to consider the following:
   - Colleagues' awareness of significant governance issues being dealt with by senior managers in their departments – to identify whether some issues should be added to, or removed from, the list. Alternatively, colleagues may be aware of a more specific or emerging development within one of the areas listed, which should require a refocus of the Council's response.
   - Reference to the Council's Local Code of Corporate Governance, as an aid to considering whether colleagues are aware of any emerging issues within the areas the Code covers.

6. An important part of the AGS is its Action Plan, and this should also be refreshed following each quarterly update. The Action Plan for 2019/20 is set out in ***Appendix 1***, along with an update on progress that has been identified through consultation with relevant managers.

Other Options Considered

7. None – the Council has a single governance action plan and has determined to receive quarterly updates on progress against it.

Reason/s for Recommendation/s

8. To enable Members of the Committee to contribute to the development and review of the Council's governance framework.

Statutory and Policy Implications

9. 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.

Whilst there are no specific implications arising from the content of this report, the Council's governance framework spans all of these areas and the action plan is targeted at strengthening governance in specific areas where the opportunity for improvement has been identified.

RECOMMENDATION/S

1) That Members determine whether they wish to see additional actions taken, or to receive further reports relating to the governance issues raised in this report.

Nigel Stevenson
Service Director – Finance, Infrastructure & Improvement

For any enquiries about this report please contact:
Rob Disney, Group Manager – Assurance

Constitutional Comments (SS 12/02/2020)

10. The Governance and Ethics Committee is the correct committee to consider this report and comment on the actions taken.

Financial Comments (RWK 06/02/2020)

11. 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

Planned action	Officer responsible	Target date for completion	Q3 Update
1. Equality Impact Assessments (EIA) – identify and share key learning from the initial review of EIAs and review progress in 12 months' time.	Monitoring Officer	Share outcomes from initial review by July 2019	Initial review completed As part of a wider review of corporately sourced and delivered equality training, a series of workshops will be delivered between now and the end of April offering refresher training on completing EIAs. One of the focusses will be on when completion is a requirement as the review undertaken indicated a mixed picture in terms of understanding, compliance and mitigating actions regarding identified impact. In conjunction with these sessions, an online e-learning package is being developed. Like a number of our processes, it is only with frequent completion that officers develop their expertise and one of the areas for development is a series of completed documents which are available as examples of good practice. The dates of the workshops will be circulated across extended leadership team once finalised.
2. Record of Interests – Legal Services Team to conduct a review of the Council's arrangements.	Group Manager – Legal, Democratic & Complaints	September 2019	Progressing Revised process is in development with key officers in Legal and HR which will then require validation with internal stakeholders before proposed changes are approved by Committee/Council as appropriate before awareness raising takes place with officers.
3. Objection to 2015/16 financial accounts: ➢ **Respond to any recommended actions arising from the review of the objection**	Service Director – Finance, Infrastructure & Improvement	March 2020	Progressing – near completion The objection will be reported in detail together with the action plan to the Governance & Ethics Committee in March 2020.
➢ **Review of the property section of financial regulations as part of the Constitution Review**	Group Manager, Legal, Democratic and Complaints	Starting Sep 2019 and due to complete by Mar 2020	Progressing Work is progressing to identify changes required to reflect any necessary best practice improvements and to meet the future needs of the Council. Discussions will then take place with a number of internal officer stakeholders to ensure a range of views is taken into

Planned action	Officer responsible	Target date for completion	Q3 Update
			account and that the revisions safeguard probity whilst supporting the efficient transaction of business.
4. Best practice guidance for governance – consider self-assessments against the CIPFA Financial Management Code	Group Manager – Finance Strategy & Compliance	The code is applicable from 1/4/20, with the planned first full year of compliance being 2021/22	Progressing CIPFA have indicated that that 2020/21 should be considered a shadow year and that by 31 March 2021 local authorities should be able to demonstrate that they are working towards full implementation of the code. The work undertaken on self-assessment against the draft code will be revised and updated and further information will be provided to Governance & Ethics Committee during the course of 2020/21.
5. Planning & Performance Management Framework **a) implement the hierarchy approach to performance measures** **b) implement co-ordinated reporting of finance, performance and transformation to the Corporate Leadership Team**	Group Manager - Assurance	For all performance reporting in 2019/20	a) Completed The Improvement & Change Sub-Committee considered a revised format of Council Plan Progress Report at its meeting on 27/1/2020. This focused on the high-level, place-based measures agreed by Policy Committee. b) Progressing The revised approach to CLT reporting was accepted in June 2019 but this continues to be under development. A revised schedule for implementation will be presented to CLT at the end of February 2020.
6. Service Planning – implement simplified approach to service planning	Group Manager - Assurance	May 2019	Completed Now in operation. Guidance and templates have been issued for completion of 2020/21 Service Plans.
7. Performance reporting in specific departments – **Revised arrangements for monthly performance board reporting in the Place and Chief Executive's Departments**	Group Manager – Assurance	June 2019	Commenced To be developed for the Chief Executive's Department alongside the department's refreshed operating model. Revised format of reporting to Committee against the Place Dept core data set is in place, and engagement with the departmental leadership team is planned to determine regular performance report requirements.

Planned action	Officer responsible	Target date for completion	Q3 Update
8. Benchmarking - Co-ordinate CIPFA benchmarking reports and consider its use within the performance management framework, along with other benchmarking tools (eg CFO Insights)	Group Manager – Assurance	September 2019	Commenced Consultations have started to gauge views around the continued benefits from CIPFA benchmarking clubs in the face of diminishing levels of participation. To be widened to consider the scope for systemised use of CFO Insights.
9. Performance management – carry out an internal audit review of service planning and performance management	Group Manager – Assurance	March 2020	Progressing A draft scope for this internal audit was considered by CLT in December 2019, when it was determined to focus on service planning. Assurance Lincolnshire will carry out the audit in Quarter 4.
10. Transformation Operating Model – agree and implement a revised operating model for transformation in the Council	Group Manager – Transformation and Change	Report to Committee by June 2019	Progressing A paper outlining the future approach to Transformation and Change and recommending the procurement of an external partner to work alongside us was approved at Policy Committee in October 2019. Through the procurement process, Newton have been selected as the external partner. Preparatory work is underway, and it is expected that the initial 3-month phase of diagnostic work will begin in February. Updates will be provided to Improvement and Change Sub-Committee.
11. Monitor implementation of the Annual Fraud Report action plan	Group Manager – Assurance	Update report to Governance & Ethics Committee in December 2019	Completed The Governance & Ethics Committee received a progress report in December 2019, setting out progress against the action plan. Many actions had been completed, and a focus identified for the remainder of the year.
Social care fraud risk - Continue to monitor implementation of the agreed actions from the internal audit review of the Council's response to social care fraud.	Group Manager – Assurance and Service Directors/Group managers with responsibility for social care services	Periodic updates to the Governance & Ethics Committee through Internal Audit's follow-up procedure	Progressing The January 2020 follow-up report to the Governance & Ethics Committee on the implementation of internal audit recommendations confirms the implementation of agreed actions relating to Direct Payments. This update also includes agreed actions

Planned action	Officer responsible	Target date for completion	Q3 Update
			relating to the internal audit of Direct Payment Support Service providers, implementation of which continues to progress.
12. Governance & Ethics Committee self-assessments – implement agreed action plans arising from the review of best practice guidance **a) Training session on risk management** **b) Links with Improvement & Change Sub-Committee**	Group Manager – Assurance, in close liaison with the Chairman of the Governance & Ethics Committee and relevant Group Managers	In accordance with the timelines agreed with the Committee	Yet to start Emergency Planning priorities have prevented progress with this action. In view of the intention to transfer responsibility for corporate risk management to the Risk & Insurance Team, this action will be taken forward by the new Risk & Insurance Manager in the new financial year. Yet to start Self-assessment against the NAO guidance for audit committees on transformation to be reported first to CLT and then to the Sub-Committee. Due to workloads around progressing the revised approach to transformation, this will now be progressed early in the new financial year.
13. Risk appetite - Development of an approach to establishing the Council's risk appetite	Group Manager, Emergency Planning Management and Registration	Next risk management update to Governance & Ethics Committee	Yet to start Emergency Planning priorities have prevented progress with this action. In view of the intention to transfer responsibility for corporate risk management to the Risk & Insurance Team, this action will be taken forward by the new Risk & Insurance Manager in the new financial year.
14. Serious & Organised Crime - Implement the action plan for addressing the threat posed by serious and organised crime.	Group Manager - Assurance and key Service Directors in affected areas of service	Through timelines agreed with the Governance & Ethics Committee	Completed The action outstanding related to the establishment of a data-washing exercise for the Council's supplier data against known targets. Matching against a first tranche of data identified no concerns. A protocol is now in place with the

Planned action	Officer responsible	Target date for completion	Q3 Update
			Government Agency Intelligence Network (GAIN) to undertake further exercises on a six-monthly basis.
15. Independent Inquiry into Child Sexual Abuse (IICSA) - Respond to any recommended actions arising from the report into Nottinghamshire councils. **Update the Council's response for the findings and recommendations of IICSA in its Accountability & Reparations Report.**	Corporate Director - Children, Families and Cultural Services	Comprehensive action plan to be presented to Children & Young People's Committee in December 2019 On publication of IICSA's 2nd phase report	Completed Children & Young People's Committee approved a comprehensive action plan in response to the report of the 1st phase of the inquiry, and the Committee will receive periodic progress reports. A cross-party working group of Members and officers has been established to review the governance of Looked After Children care settings; its findings will be reported to the Children & Young people's Committee in July 2020.
16. LGA Peer Challenge – devise and approve an action plan to implement agreed recommendations from the Peer Challenge.	Chief Executive	Policy Committee October 2019	Policy Committee approved the action plan in October 2019. Progress is being monitored by the relevant Committee for each action.
17. Vacant property management – further progress report to Governance & Ethics Committee on actions to address the risks identified by the internal audit	Corporate Director - Place	Update report to Governance & Ethics Committee in July 2019	Progressing Management assurance on implementation of the actions was delivered to the Governance & Ethics Committee in November 2019. Internal Audit compliance testing is currently in progress and will be reported separately to the Committee.
18. Data quality in Mosaic – greater priority given to addressing issues highlighted by routine reporting	Corporate Director – Adults Social Care and Health	To commence in the first quarter of 2019/20	Progressing Improved reporting/dashboard on data quality have been introduced in Children's and are being looked at for roll out to Adults.
19. Active management of Pension Fund Committee meetings	Service Director – Finance, Infrastructure & Improvement	March 2020	Progressing A report is being prepared for the Pension Fund Committee to consider options around ensuring its meetings continue as now.

Nottinghamshire County Council

Report to Governance and Ethics Committee

4 March 2020

Agenda Item: 10

REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND EMPLOYEES / MONITORING OFFICER

REVIEW OF DEMOCRATIC SERVICES STAFFING STRUCTURE

Purpose of the Report

1. To seek approval for amendments to the staffing structure for Democratic Services to better meet current and future demand.

Information

2. The existing structure for Democratic Services was agreed by Governance and Ethics Committee in July 2017, with a subsequent review in May 2018 agreeing the current staffing establishment of 13.8 full time equivalent (FTE) posts. The initial restructure in 2017 saw a number of experienced officers leaving the team and a significant reduction in the number of posts previously within the team from 20.7 FTE posts. This itself followed a reduction from 22.5 FTE posts agreed in February 2014.

3. The Committee agreed that this new staffing structure be reviewed after twelve months to ensure business needs were being appropriately met, with a further report submitted to this Committee if that review determined that further changes were required.

4. Although the last restructure has proven largely successful the planned review of the team structure has been carried out as agreed and a number of new and ongoing issues have been identified. These include the need for additional resources and management capacity; the need for resources to plan, prepare for and support the County Council Elections; the ongoing requirements for support for Education Appeals and the need to ensure adequate support for elected Members.

Resource requirements

5. Since the current structure was agreed, the Communities and Place Review and Development Committee was established by Full Council on 20 September 2018. The report that proposed the establishment of this Committee recognised that resources within the Governance Team were already stretched and that this Committee would likely bring additional demands on resources. This has proven to be the case.

6. The work of the Governance & Ethics Committee has also continued to increase as this relatively new Committee becomes fully established. This has included the use of time-limited

cross-party working groups (for example, to deal with the Review of Outside Bodies and the Appointment of the Council's Independent Persons) and the introduction of new monitoring and reporting mechanisms (for example around Councillors' Use of Resources and the Councillors' Divisional Fund). It is envisaged that such ways of working will continue and that this will impact upon the workloads of the Governance Team, and the Team Manager.

7. The response to the Local Government Association Peer Review which took place in June 2019 recommended a review of administrative and support processes in relation to the Council's governance arrangements. This will result in a more proactive approach and increased input from Democratic Services staff in relation to supporting officers with the decision-making process, report writing guidance and training, advice to Chief Officers and report authors and an enhanced role in relation to quality assurance of reports.

County Council Elections

8. The outcomes of the internal audit of the 2017 election highlighted a need for greater management capacity within Democratic Services to enable enhanced oversight to be maintained. The 2021 election will not involve additional support from external advisors as in previous elections so a greater capacity at management level will be required to cover the necessary oversight and project management of the election project plan.

9. In light of the Electoral Commission's requirements for enhanced reporting and appropriate assurances to be provided, greater capacity across Democratic Services will be needed in the run-up to the election. Planning for the 2021 elections has now commenced and the Democratic Services Team Manager will take a lead role in organising this and co-ordinating efforts of departmental colleagues as well as the vital liaison required with colleagues at District and Borough Councils across the County area.

Education Appeals

10. A temporary resource to support the education appeals service, governance work and Members has now been in place for over a year, and a review of the demands on this post has identified a permanent need for this support going forwards. Currently this need is met from temporary agency staff. The establishment of an additional Assistant Democratic Services officer post would ensure Appeal panels continue to be properly advised and supported whilst ceasing the existing requirement for agency staff.

11. The temporary annual placements of Nottingham Trent University law undergraduates to assist the education appeals process in the peak first admissions period have proven successful and it is proposed that this should continue in the future. This involves an initial three-month temporary appointment, which has been further extended for between one-three additional months depending on levels of demand.

Support for Members

12. As reported to the Committee on 17 December 2019, the Member Communication and Engagement Programme of work continues to progress, with Democratic Services being expected to take a lead role on the development of an increased comprehensive training offer

for Councillors. This will include providing in-house packages as well as establishing links with external providers and relevant organisations such as East Midlands Councils and the Local Government Association. Other stands of work relating to member support arrangements will also require ongoing input from officers in Democratic Services, particularly in the Governance team.

13. The previous restructure in May 2018 proposed a reduction in the level of support to the Chairman and Vice-Chairman. However, the level of activity by the Chairman and Vice-Chairman has increased as the Council has sought to maximise opportunities for the Chairman's role as First Citizen to be appropriately recognised and supported. This has resulted in an increase in the number and profile of civic events hosted by the County Council.

14. Following the restructure in May 2018 support was provided through a single, part-time post which also provided support to a political group. However, it is now recognised that the degree of resilience and flexibility previously afforded by providing this support from within the Governance Team could not be replicated in this arrangement. It is also felt to be more appropriate for civic support to be provided from outside of the support arrangements to the main political groups, in recognition that the civic heads are essentially non-political roles.

15. Civic support is currently being provided on a temporary basis by a Democratic Services Officer within the Governance Team. It is proposed that the civic support duties continue to be undertaken from within the Governance Team.

Management Capacity

16. In addition to the specific additional management requirements identified above there is an increasing need to build in more management capacity to enable the service to develop more strategically and to share national best practice through organisations such as the Association of Democratic Services Officers. The work undertaken on the Council's Constitution in 2019 highlighted this as an important area of work and area for ongoing development.

17. Experiences over the past year have also highlighted a lack of resilience at management level during periods of planned and unplanned absence and limited capacity to provide mentoring and coaching to develop less experienced staff within the team.

18. The service itself has also recognised the need to ensure sufficient capacity to enable appropriate final quality assurance checks are undertaken in relation to published agenda packs.

Proposals

19. In light of the above overall capacity issues it is proposed that a new Assistant Democratic Services Officer post be established to support work across the Governance Team.

20. It is also proposed that an additional Assistant Democratic Services Officer post be established, focussing particularly on Education Appeals and that this post should report directly to the Education Appeals Manager.

21. It is proposed that the generic Assistant Democratic Services officer post and the new post focussing on Education Appeals should work together to provide cover for each other,

enabling the greater flexibility and resilience lacking in the recent arrangements. These two posts will also provide some additional administrative cover across the political groups. This was previously provided in the past by the Governance Team but has not been possible in the latest structures due to the removal of dedicated business support to the Team.

22. To provide greater experience at a senior level and additional day to day management capacity it is proposed to establish an Additional Advanced Democratic Services Officer post. This new post will enable the Team Manager to focus on oversight, leadership and development of the team and the services it provides to the public, members and officers across the Council. This post will also provide enhanced career progression opportunities within the team.

23. The proposed revised staffing structure for Democratic Services is attached at Appendix 1 with a revised staffing establishment of 16.8 FTE.

Financial Implications

24. In summary, it is proposed that the following new posts be established:-

Job Title / focus	**Salary Scale**	**Overall costs (including on-costs)**
Advanced Democratic Services Officer (FT)	C	£47,976
Assistant Democratic Services Officer / Education Appeals (FT)	NJE 5	£31,053
Assistant Democratic Services Officer / Civic Support (FT)	NJE 5	£31,053
	SUB-TOTAL:	£110,082
Minus estimated full-year costs of existing temporary agency resource		(£23,000)
	TOTAL:	**£87,082**

25. It is anticipated that the costs will be met from the Contingency Budget. If approved, this request for contingency will be reported in the next Financial Monitoring Report submitted to the Finance & Major Contracts Management Committee.

Other Options Considered

26. To retain the existing structure. This is not felt to be an appropriate option in light of the issues identified in the review and the current impact on existing members of staff.

Reason/s for Recommendation/s

27. The proposed new structure will ensure that Democratic Services

- continues to be appropriately staffed in light of the additional work required of the team
- can better respond to the needs of the revised committee structure
- can provide more dedicated support to Members, including Civic Heads

- are able to support improvements in the quality of reports for consideration by Committees

- can prepare, plan and provide appropriate support for the 2021 County Council Elections

- can seek to maintain its offer to external bodies, including the Office of the Police and Crime Commissioner, various Academies for education appeals and other councils in relation to supporting the Nottinghamshire Police and Crime Panel.

Statutory and Policy Implications

28. 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.

Human Resources Implications

29. The posts will be evaluated using the Council's agreed job evaluation scheme and appointed to using the Council's agreed policies and procedures. Staff within the team are aware of the proposals, the additional levels of support and opportunities they provide for staff working within the team.

RECOMMENDATION

1. That the revised staffing structure for Democratic Services, attached at Appendix 1, be approved.

2. To make a request to the Finance & Major Contracts Committee to approve £87,082 to be funded from contingency.

Marjorie Toward
Service Director – Customers, Governance and Employees / Monitoring Officer

For any enquiries about this report please contact:

Heather Dickinson, Head of Legal, Democratic Services and Complaints

Constitutional Comments (SS 19/02/2020)

30. The Governance and Ethics Committee are the appropriate committee to consider this report and effect appropriate staffing changes, where appropriate.

Financial Comments (SES 25/02/2020)

31. The financial implications are set out in paragraph 24 and 25 of the report. This proposed expenditure is over and above the current Democratic Services staffing budget. If approved, it will be requested that the Finance and Major Contracts Management Committee approve that these costs are met from contingency.

Human Resources Comments (JP 20/02/20)

32. The Authority's agreed HR policies and procedures will be used as set out at para 28.

Background Papers and Published Documents

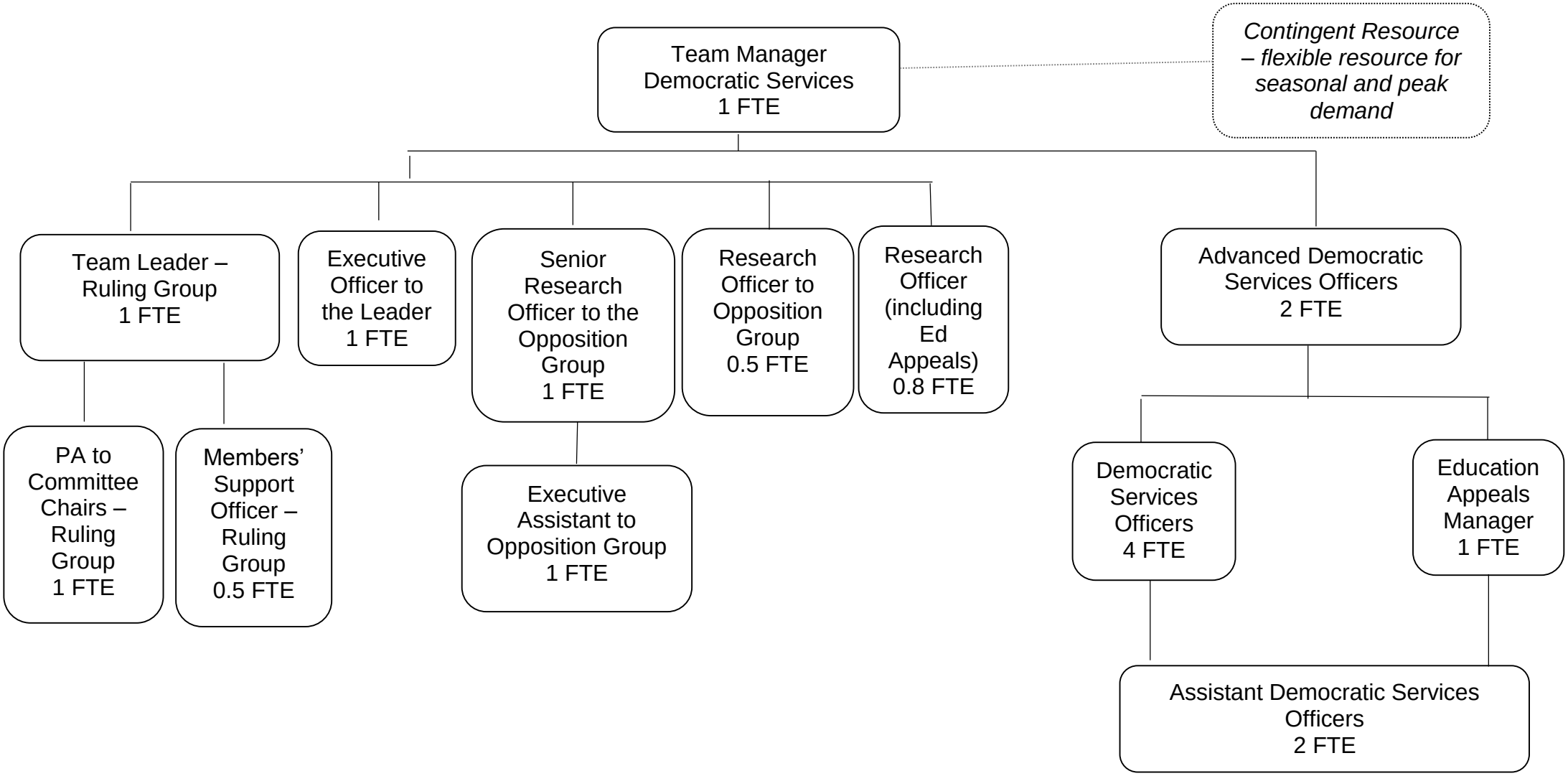
Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Review of Democratic Services Staffing Structure – report to Governance and Ethics Committee on 2nd May 2018.

Electoral Division(s) and Member(s) Affected

- All

APPENDIX 1 - PROPOSED REVISED DEMOCRATIC SERVICES STRUCTURE CHART



Nottinghamshire County Council

Report to Governance & Ethics Committee

4 March 2020

Agenda Item: 11

REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND EMPLOYEES

WORK PROGRAMME

Purpose of the Report

1. To review the Committee's work programme for 2020.

Information and Advice

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 items will be added to the programme as they are identified.

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:
Keith Ford, Team Manager, Democratic Services Tel. 0115 9772590
E-mail: keith.ford@nottscc.gov.uk

Constitutional Comments (EH)

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

Financial Comments (NS)

There are no financial implications arising directly from this report.

Background Papers
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 25 FEBRUARY 2020)

Report Title	Brief summary of agenda item	Lead Officer	Report Author
29 April 2020			
Committee on Standards in Public Life - Model Code of Conduct	To agree the Council's response to the consultation on the new Model Code of Conduct	Marjorie Toward	Heather Dickinson
Member Communication and Engagement Programme	To consider an update report on progress with this Programme.	Marjorie Toward	Heather Dickinson
Governance & Ethics Committee Annual Report	To agree the Committee's annual report for 2019.	Nigel Stevenson	Rob Disney
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law
2019/20 Accounting Policies	To outline proposed changes to the accounting policies used for the Authority's Statement of Accounts for 2019/20 for review and approval.	Nigel Stevenson	Glen Bicknell
Statement of Accounts 2019/20 - Informing the Audit Risk Assessment	To provide information on the external auditors' requirement for the provision of information regarding the Council's approach to dealing with fraud, litigation, laws and regulations as part of their audit.	Nigel Stevenson	Glen Bicknell
Annual Governance Statement 2020-21	To seek approval for the latest Annual Governance Statement.	Rob Disney	Simon Lacey
10 June 2020			
Annual Fraud Report 2019-20	To consider the latest Annual Fraud Report.	Rob Disney	Rob Disney
Assurance Mapping Annual Report 2019-20	To consider the latest Assurance Mapping Annual Report	Rob Disney	Rob Disney
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law
Update on Use of the Councillors' Divisional Fund	To consider the six monthly update.	Marjorie Toward	Keith Ford

Presentation of the 2019/20 Statement of Accounts	To present an overview of the 2019/20 Statement of Accounts.	Nigel Stevenson	Glen Bicknell
21 July 2020			
Follow-up on Internal Audit Recommendations	To consider progress against previously agreed internal audit recommendations.	Rob Disney	Simon Lacey
National Audit Office Cyber Security and Information Risk Guidance for Audit Committees	To consider a six monthly update and any subsequent actions required.	Nigel Stevenson	
Internal Audit Plan2019-20 Annual Report and 2020-21 Term 2 Plan	To consider the Internal Audit Plan Annual Report and an update on internal audit plans.	Rob Disney	Simon Lacey
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law
Update on Use of Resources by Councillors	To consider the six monthly update.	Marjorie Toward	Keith Ford
Approval of the 2019/20 Statement of Accounts	To seek approval for the 2019/20 Statement of Accounts.	Nigel Stevenson	Glen Bicknell
7 September 2020			
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law
Annual Audit Letter and Updated Audit Findings	Grant Thornton summarises the findings from the work carried out by the external auditors over the last financial year (2019/20)	Nigel Stevenson	Glen Bicknell
12 October 2020			
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law

25 November 2020			
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law
Fraud Update	To consider an update on actions taken to address potential fraud.	Nigel Stevenson	Rob Disney
6 January 2021			
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 (item to be confirmed).	Marjorie Toward	Laura Mulvany-Law
Follow-up on Internal Audit Recommendations	To consider progress against previously agreed internal audit recommendations.	Rob Disney	Simon Lacey