

## **Governance and Ethics Committee**

**Tuesday, 06 November 2018 at 13:00**

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

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### **AGENDA**

- |   |                                                                                                                                                                    |         |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1 | Minutes of last meeting held on 26 September 2018                                                                                                                  | 3 - 6   |
| 2 | Apologies for Absence                                                                                                                                              |         |
| 3 | Declarations of Interests by Members and Officers:- (see note below)<br>(a) Disclosable Pecuniary Interests<br>(b) Private Interests (pecuniary and non-pecuniary) |         |
| 4 | Introduction to the new External Auditors – Grant Thornton                                                                                                         |         |
| 5 | Update on Local Government and Social Care Ombudsman Decisions                                                                                                     | 7 - 28  |
| 6 | Internal Audit 2018-19 Term 1 Report and 2018-19 Term 3 Plan                                                                                                       | 29 - 46 |
| 7 | Member Development and Training                                                                                                                                    | 47 - 50 |
| 8 | Discussion about the previously circulated Committee Effectiveness questionnaire and Knowledge and Skills Framework for Members                                    |         |
| 9 | Work Programme                                                                                                                                                     | 51 - 54 |

### **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>

Meeting GOVERNANCE AND ETHICS COMMITTEE

Date Wednesday 26 September 2018 (commencing at 1.00 pm)

**membership**

Persons absent are marked with 'A'

**COUNCILLORS**

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

Nicki Brooks  
Steve Carr **A**  
Kate Foale  
Errol Henry JP  
Rachel Madden

Phil Rostance  
Steve Vickers  
Keith Walker  
Gordon Wheeler

**OFFICERS IN ATTENDANCE**

Cherry Dunk  
Paul Johnson  
Paul McKay

Adult Social Care and Public Health Department

Sara Allmond  
Glen Bicknell  
Heather Dickinson  
Rob Disney  
Nigel Stevenson  
Marjorie Toward

Chief Executive's Department

Marion Clay  
Colin Pettigrew

Children and Families Department

Rob Fisher

Place Department

Tony Crawley

KPMG External Auditors

**1. MINUTES**

The Minutes of the last meeting held on 25 July 2018, having been previously circulated, were confirmed and signed by the Chairman.

**2. APOLOGIES FOR ABSENCE**

An apology for absence was received from Councillor Steve Carr (other reasons).

The following temporary changes of membership, for this meeting only, were reported:-

- Councillor Steve Vickers had replaced Councillor Mike Quigley MBE;
- Councillor Gordon Wheeler had replaced Councillor John Handley.

### **3. DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS**

None

### **4. LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS MAY-AUGUST 2018**

Heather Dickinson introduced the report and responded to questions.

#### **RESOLVED: 2018/048**

- 1) That there were no actions arising from the issues contained within the report.
- 2) That a formal response to the LGSCO be approved confirming that the Council accepted the findings in the public report and that the Council had already complied with the recommendations by making an apology and relevant payments to the affected complainants, and delegates authority to the Service Director for Education, Learning and Skills in consultation with the Chairman, to finalise the content of such letter.

### **5. EXTERNAL AUDIT – ANNUAL AUDIT LETTER 2017/18 AND PROGRESS REPORT**

Tony Crawley introduced the report.

The Chairman and Committee thanked Mr Crawley for his work for the County Council whilst undertaking the external audit role.

#### **RESOLVED: 2018/049**

To receive the Annual Audit Letter 2017/18.

### **6. UPDATE ON CORPORATE RISK MANAGEMENT**

Rob Fisher introduced the report and responded to questions.

#### **RESOLVED: 2018/050**

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

### **7. DIRECT PAYMENT MISUSE, FRAUD AND DEPRIVATION OF ASSETS**

Paul Johnson introduced the report and responded to questions.

A typographical error in the report was highlighted in paragraph 3, where the figure should have stated £41.2 million.

**RESOLVED: 2018/051**

That the outcome of the internal audit into Direct Payments and the response by the Department be welcomed.

**8. REVIEW OF THE PETITIONS SCHEME**

Heather Dickinson introduced the report and responded to questions. Members agreed that the minimum number of signatures required for a petition be set at 10.

**RESOLVED: 2018/052**

To approve the amendments proposed to the petitions scheme, including setting the minimum number of signatures for a valid petition at 10.

**9. WORK PROGRAMME**

**RESOLVED: 2018/053**

That the work programme be agreed.

The meeting closed at 2.01pm.

CHAIRMAN



**6<sup>th</sup> November 2018****Agenda Item: 5****REPORT OF THE MONITORING OFFICER****LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS  
AUGUST- OCTOBER 2018****Purpose of the Report**

1. The purpose of this report is to inform the Committee about the Local Government & Social Care Ombudsman's (LGSCO) decisions relating to the Council in the period 23<sup>rd</sup> August-10<sup>th</sup> October 2018.

**Information**

2. The Committee has asked to see LGSCO decisions regularly and promptly after the decision notice has been received. This report therefore gives details of all the decisions received since the last report to this Committee in September.
3. The LGO 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 LGO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the LGO finds that something has gone wrong, such as poor service, service failure, delay or bad advice and that a person has suffered as a result, the LGO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGO publishes its decisions on its website ([www.lgo.org.uk/](http://www.lgo.org.uk/)). The decisions are anonymous but the website can be searched by Council name or subject area.
5. A total of 5 decisions relating to the actions of this Council have been made by the LGO in this period (attached at annex A). No fault (maladministration) was found in all 5 cases. Three cases related to the school admission appeal process, one concerned an Adult Social Care and Health assessment resulting in the Council requesting repayment of some of a service user's Direct Payment. One case related to a Highways matter and decision to install a barrier on a public bridleway.
6. The Local Government and Social Care Ombudsman was satisfied with the Council's management of the complaint in each case and the response given, meaning that no recommendations were made.

**Statutory and Policy Implications**

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

### **Data Protection and Information Governance**

8. The decisions attached are anonymised and will be publically available on the LGO's website.

### **Financial Implications**

9. None

### **Implications for Service Users**

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

## **RECOMMENDATION/S**

That members consider:-

1. 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 SLB (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 [RWK 24/10/2018]**

**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



23 August 2018

**Complaint reference:**  
18 006 390

**Complaint against:**  
Nottinghamshire County Council

## The Ombudsman's final decision

Summary: there is no fault in the Appeal Panel's decision to refuse Mrs M's appeal for a place for her daughter, D, at School B. The Ombudsman cannot question decisions taken without fault.

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## The complaint

1. Mrs M complains about her unsuccessful appeal for a place for her daughter, D, at School B. Mrs M says the Council gave her incorrect information about the school's catchment area. She complains the Appeal Panel failed to take this into account and based its decision on class sizes instead.

## The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. The Ombudsman cannot question whether a school admission appeal 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 the panel's decision into question, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3)*)
3. The Ombudsman's role is to ensure the Independent Appeal Panel followed the Code of Practice issued by the Department for Education, and the hearing was fair. We do this by examining the notes taken by the Clerk during the hearing. We do not have the power to overturn the Panel's decision, and we cannot give a child a place at the school.
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 have considered:
  - Mrs M's comments;
  - all the information presented to the Appeal Panel, the notes taken by the Clerk during the appeal, and the Panel's decision letter following the appeal; and
  - the School Admissions Appeals Code 2012.
6. I invited Mrs M and the Council to comment on my draft decision.

## What I found

7. School B is a Community School. The Local Authority is the Admission Authority and is responsible for organising the Independent Appeal.
8. Mrs M applied for a place for her daughter in Reception. Her application and appeal were unsuccessful.
9. The School Admission Appeals Code 2012 issued by the Department for Education sets out the process the Independent Appeal Panel must follow when considering an appeal.
10. The Panel must first consider whether the Council has correctly applied the admission criteria to the application. Mrs M's application was unsuccessful because all the places were allocated to children living in the school's catchment area. Mrs M lives just outside the catchment. The Panel decided the Council had correctly applied the admission criteria.
11. The Panel must then consider whether D's need for a place outweighs the problems an extra child would cause to the school.
12. No more than 30 children can be taught by a single teacher in an infant class (Reception and Years 1 and 2). If this is not possible without reorganisation or employing extra staff, and this would harm the education of other pupils, "infant class size prejudice" rules apply to the appeal.
13. When infant class size prejudice rules apply, the Appeal Panel can only legally uphold an appeal if:
  - a) The child would have been offered a place if the admissions arrangements had been implemented properly;
  - b) The child would have been offered a place were it not for some flaw in the admission arrangements; and/or
  - c) The decision to refuse a place was one which no reasonable authority would have made.
14. The threshold for appeals made under c. above is extremely high. The Panel cannot legally uphold appeals which do not fall into the categories above, no matter how persuasive the appeal otherwise is.
15. The Panel considered whether the infant class size prejudice rules applied to Mrs M's appeal. There will be two classes of thirty children in Reception. The Panel established there are six classes, six classrooms and six teachers at the school. The Panel accepted that employing an additional teacher would prejudice the provision of education and efficient use of resources. The Panel decided, therefore, that infant class size prejudice rules did apply to Mrs M's appeal. This is a decision the Panel can take and there are no grounds for the Ombudsman to question it.
16. The Clerk's notes and the decision letter record Mrs M's discussions with the Panel at the hearing. I can see from the Clerk's notes that Mrs M appealed on the following grounds:
  - She already has a child at the school. She relies on grandparents to take the children to school and they will not be able to take the children to two different schools. Mrs M is unable to change her work arrangements;
  - She has recently moved to a new house. She telephoned the Council in March or April 2017 before moving and was told her new house was in the school's catchment area. When she applied for D's place in November 2017, she discovered it was not. She says she would not have moved if she had been given the correct information.

only keeps calls for 6 months; and

- D is very shy and Mrs M would like her to stay with the friends she has made at pre-school.
17. The Panel decided that none of these reasons fall under the circumstances in paragraph 13. Therefore the Panel could not legally take them into account when making its decision.
18. The Panel was aware of Mrs M's complaint that the Council gave her incorrect information about the school's catchment area and her reasons for wanting D to attend the school, but because the school was full and the "infant class size rules" applied, the Panel decided her reasons did not meet the extremely high threshold to admit another child. I am satisfied that the Panel properly considered Mrs Y's appeal. There are no grounds for the Ombudsman to question the Panel's decision.

### **Final decision**

19. There is no fault in the Appeal Panel's decision. The Ombudsman cannot question decisions made without fault, no matter how strongly Mrs M disagrees. I have ended my investigation.

### **Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

Summary: Mrs Y complains about the actions of a school admissions appeal panel. The Ombudsman finds no evidence of fault in the infant class size hearing for Mrs Y's daughter, X, and we do not uphold the complaint.

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## **The complaint**

1. The complainant, whom I will call Mrs Y, complains about the school appeal heard for her daughter, whom I will call X. In particular, she says:
  - twelve children have been allocated places at the school who do not have siblings and are outside of the catchment area;
  - the appeal panel failed to consider the needs of her eldest daughter;
  - the Council's submission to the panel about the places offered contained errors; and
  - the panel failed to act in an independent and fair way.
2. Mrs Y says the alleged fault has caused anxiety and distress, worsened by her existing medical conditions. Mrs Y also claims that X has suffered injustice because she has not been allocated a place at her preferred school.

## **What I have investigated**

3. I have investigated the actions of Nottinghamshire County Council, referred to as 'the Council' in this statement. I have not investigated the actions of Nottingham City Council for the reasons explained at the end of this statement.

## **The Ombudsman's role and powers**

4. 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*)
5. 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*)

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## How I considered this complaint

6. During my investigation, I have:
  - Considered the information provided by Mrs Y;
  - Made enquiries of the Council and considered its response;
  - Consulted the relevant law and guidance around school admissions and infant class size admissions appeals, particularly the School Admissions Code (2014) and the School Admissions Appeal Code (2012); and
  - Issued a draft decision and invited comments from the Council and Mrs Y. I received none.

## What I found

### What should happen

7. Independent appeal panels must follow the law when considering an appeal. The law says the size of an infant class must not be more than 30 pupils per teacher. There are only limited circumstances in which more than 30 children can be admitted. There are special rules governing appeals for Reception and Years 1 and 2. Appeals under these rules are known as “infant class size appeals”. The rules say the panel must consider whether:
  - admitting another child would breach the class size limit
  - the admission arrangements comply with the law
  - the admission arrangements were properly applied to the case
  - the decision to refuse a place was one which a reasonable authority would have made in the circumstances.
8. What is ‘unreasonable’ is a high test. The panel needs to be sure that to refuse a place was “perverse” or “outrageous”. For that reason, panels rarely find an admission authority’s decision to be unreasonable.
9. The Ombudsman does not question the merits of decisions properly taken. The panel is entitled to come to its own judgment about the evidence it hears.
10. The School Admissions Code (2014) states that applicants must submit school applications to their home authority, regardless of the location of the preferred school(s). The home authority is where the applicant pays their council tax to:  
*“Regardless of which schools parents express preferences for, the CAF [common application form] is required to be returned to the local authority in the area that they live (the ‘home’ authority). The home authority must then pass information on applications to other local (‘maintaining’) authorities about applications to schools in their area. The maintaining authority must determine the application and inform the home local authority if a place is available. The offer to parents must be made by the home local authority”.*
11. The home authority – which in this case is Nottingham City Council – processes any applications received in accordance with its published admissions arrangements. The authority may decide to treat any applications received after the published deadline as late.
12. Late applications may be considered after all on-time applications. Therefore, an on-time applicant living outside of a school’s catchment area may receive a place over a late applicant living within the area. The home authority’s arrangements state: “... late applications received after the closing date for places in reception

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*year at infant or primary schools and year 3 at junior schools will be dealt with after 18 April 2017. Under exceptional circumstances the Local Authority may be willing to accept applications which are received late but by no later than ... 5 pm on 17 February 2017 for places in reception year at infant or primary schools and year 3 at junior schools”.*

### **What happened**

13. X is due to start school in September 2018. Mrs Y has an older daughter who already attends a school in the Council’s area. This was Mrs Y’s preferred school for X, as she understandably wanted both siblings attending the same school. I will refer to it as ‘the school’.
14. As a resident of Nottingham City Council, Mrs Y was required – according to the Code – to submit her application to that Council before the published deadline of 15 January 2018.
15. Instead, Mrs Y mistakenly submitted her application to the Council on 15 January 2018. This was wrong because the Council is not Mrs Y’s home authority.
16. The day after receiving her application, the Council tried to call Mrs Y to advise that she had applied to the wrong authority. The Council says it was unable to make contact sooner as Mrs Y’s online application had imported overnight. The Council also emailed and wrote to Mrs Y to provide the relevant contact details for her home authority, Nottingham City Council.
17. Mrs Y then correctly applied to her home authority on 25 January; ten days after the deadline. Mrs Y’s home authority categorised her application as late. It passed the preference to the Council for consideration. The Council categorised X as being outside of catchment, but with a sibling in attendance at the school.
18. Had Mrs Y applied to the correct authority on time, X would have received a place at the school. Unfortunately, due to the lateness of the application, Mrs Y’s home authority decided to process X’s school application after all those who applied before the deadline. This meant that X was refused a place at the school.
19. Mrs Y appealed. The school appeal hearing went ahead in June 2018. Mrs Y and X’s father attended.
20. After considering the case put forward, the panel decided not to uphold Mrs Y’s appeal because it felt that X’s case was not exceptional, and so there were no grounds on which to breach the infant class size limit.
21. Dissatisfied with the outcome, Mrs Y appealed to the Ombudsman.

### **Was there fault in the panel’s actions causing injustice to Mrs Y and X?**

22. Mrs Y’s first complaint is that the Council wrongly allocated places to children within a lower over-subscription criterion than X. This is correct, but only because those applicants applied before the deadline. In line with the Council’s arrangements, on-time applicants will be allocated places ahead of those considered late. Whilst unfortunate for Mrs Y and X, this is not fault.
23. Mrs Y also complains that the Council provided incorrect information to the appeal panel. I have considered the submission in question. This provides a breakdown of the offers made to on-time applicants on national offer day. The break down states that 0 children within X’s criterion were refused places at the school. Mrs Y says this is correct, because X did not receive a place and so the number in that column must be wrong.



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24. The breakdown of offers made and places refused refers to on-time applicants only. So, in that context, it is correct to state that the Council did not refuse any applicants in X's criterion. Further down, the document shows that the Council refused five late applicants because all 30 places at the school had already been allocated to those who applied before the deadline. X's application was one of those five. On-time applicants have priority for places. This is not fault.
25. I am satisfied the Council's submission was correct. The panel could establish that, had Mrs Y applied on time, X would have received a place at the school.
26. In terms of the panel, Mrs Y complains that it failed to consider the needs of her eldest daughter who has complex needs. I have considered both the Clerk's notes and the decision letter issued to Mrs Y. These both show the panel did consider the points made about X's sister: *"Medical needs as stands are [sister's] and not [X's] therefore no except circs". "Panel members took into account the information which you had presented, including that [X's] sister who already attends [the school] has complex special needs and you were both able to explain in detail why it would help both of your daughters for [X] to obtain a place at [the school] with her sister". "The panel heard from you how stressful it would be if your daughter were at 2 different schools and how this would impact on [Mrs Y's] health and well-being; you also eloquently explained how this would impact on both of your daughters".*
27. Mrs Y also makes a general complaint that the panel failed to act in a fair and independent way, as required by the Code. However, Mrs Y does not support this statement with any examples or evidence. Having considered the panel's notes in full, I find no evidence of a lack of fairness or impartiality and so I am unable to uphold this part of Mrs Y's complaint.

## **Final decision**

28. I have completed my investigation with a finding of no fault for the reasons explained in this statement.

## **Parts of the complaint that I did not investigate**

29. I have not investigated the actions of Nottingham City Council, because it is not the authority complained about. Mrs Y complains about the conduct of the school appeal hearing organised by Nottinghamshire County Council, 'the Council'.
30. The decision to categorise Mrs Y's application for X as late was made by Nottingham City Council. Its arrangements state that it can consider whether there are exceptional circumstances to warrant treating a late application as on-time. I do not know if Nottingham City Council considered Mrs Y's circumstances because I have not investigated the actions of that authority. However, I do note that Mrs Y did not present this as an argument at appeal.
31. I have investigated how Nottinghamshire County Council considered Mrs Y's case. The notes of the appeal show the panel asked Mrs Y about the lateness of her application. It considered the evidence put forward, but decided that X's case was not exceptional. There is no evidence of fault by the panel.
32. However if Mrs Y disputes the decision to categorise her application as late, she would need to make a complaint to Nottingham City Council.

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28 August 2018

**Complaint reference:**  
18 002 858

**Complaint against:**  
Nottinghamshire County Council

# Local Government & Social Care **OMBUDSMAN**

## **The Ombudsman's final decision**

Summary: Mr X complains about the Council's handling of his social care assessment in 2016 and its decision to seek repayment of ineligible travel costs and expenses he incurred. It is too late for the Ombudsman to investigate now the Council's handling of the care assessment and as there is no evidence of fault in the way the Council has sought repayment of the costs, the Ombudsman will not investigate this matter any further.

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## **The complaint**

1. Mr X complains about the Council's handling of his social care assessment in February 2016 and its decision to seek repayment of ineligible travel costs and expenses incurred between March and June 2016. As he did not accept the outcome of the first care assessment, and only accepted the reassessment completed three months later, he should not have to pay the money back to the Council.

## **What I have investigated**

2. I have investigated the part of Mr X's complaint about the Council's demand for repayment of the travel costs and expenses. The last paragraph of this statement explains why I have not investigated the part of his complaint about the way the Council carried out his care assessment in February 2016.

## **The Ombudsman's role and powers**

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. 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*)
5. We must also consider whether any fault has had an adverse impact on

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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 or continue with an investigation if we believe:

- it is unlikely we would find fault, or
- the fault has not caused injustice to the person who complained, or
- the injustice is not significant enough to justify our involvement, or
- it is unlikely we could add to any previous investigation by the Council, or
- it is unlikely further investigation will lead to a different outcome, or
- we cannot achieve the outcome someone wants, or
- there is another body better placed to consider this complaint, or
- it would be reasonable for the person to ask for a council review or appeal.

*(Local Government Act 1974, section 24A(6), as amended)*

6. 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**

7. In considering the complaint I spoke to Ms B, Mr X's representative, and reviewed the information she provided, including the Council's responses to her complaint. I also spoke to a Council officer who was involved with the case. Both Ms B and the Council were given the opportunity to comment on my draft decision.

## **What I found**

8. Ms B acts as the representative for her disabled son, Mr X, who is eligible for social care services, and on whose behalf she receives Direct Payments. These are monetary payments made by the Council to meet Mr X's eligible care and support needs.
9. In February 2016, the Council carried out a review of Mr X's care and support needs and as part of this review it looked at his use of Direct Payments. It found Ms B had been using Mr X's Direct Payments to pay for travel costs and expenses which were not eligible to be covered under the Council's Direct Payment policy. The Council says it made its position about the ineligibility of these costs clear to Ms B at this time, during a meeting, in a telephone call and in writing in the Review of Care and Support Assessment for Mr X dated 8 February 2016. Ms B says her recollection is that the matter was only vaguely mentioned in a meeting and that no mention of it was made in the telephone call.
10. Ms B did not accept the outcome of the February assessment which reduced the care provision and direct payment for Mr X. She complained it had not been carried out in accordance with the Care Act 2014.
11. The Council agreed to carry out a re-assessment. This took place in May and while it did result in a reduction in the Direct Payment for Mr X, it did so to a lesser extent than the February assessment. Ms B told the Council she accepted the outcome of the reassessment and the Direct Payment was altered from June 2016.
12. In 2017 the Council sought to recover the travel costs and expenses incurred by Mr X between March and June 2016 for which Direct Payments should not have

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been used. The Council told Ms B it had been made clear to her during the 2016 February review that these costs could not be covered by Mr X's Direct Payments.

13. In 2018 the Council continued to follow up repayment of these outstanding costs which stood at £935. Ms B complained that Mr X should not have to pay the money back because the outcome of the February 2016 assessment had not been agreed or accepted and she had not formally been told of the reduction to his Direct Payment until the re-assessment.
14. The Council responded to her complaint about the matter by explaining that, while it had accepted that in relation to the 2016 February assessment "certain aspects of the review process were not followed correctly", staff had complied with the Care Act 2014, and that Ms B had been advised about the reduction in Mr X's Direct Payment and the reasons for it on a number of occasions from February 2016. It noted that while Ms B acknowledged Mr X owed the money but felt that he should not have to pay it back, it did not share her view and declined to waive the amount owed.

### **Analysis**

15. Prior to the February 2016 care assessment, Ms B, on Mr X's behalf, used Direct Payments to cover ineligible travel costs and expenses. The Council accepted it had failed to make clear to her earlier that the Direct Payments could not be used in this way. However, when carrying out its February review it found out what had been happening and told her these costs could not be covered by Direct Payments. Up until this time, therefore, Mr X had had the benefit of the Council's lack of awareness about the ineligible use of the payments.
16. Had the February 2016 care assessment not been the subject of a review, Mr X would have been in the same position as he still would not have been able to use Direct Payments to cover the ineligible travel costs and expenses. I see no fault by the Council in seeking repayment of the costs and no grounds to propose it waive them.

### **Final decision**

17. There is no evidence of fault in the way the Council has sought repayment of the ineligible travel costs and expenses and the Ombudsman will not investigate this matter any further.

### **Parts of the complaint that I did not investigate**

18. The restriction highlighted at paragraph 3 applies to the part of Ms B's complaint about how the February 2016 assessment was carried out and I see no grounds which warrant exercising discretion to investigate it now.

### **Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's decision to install a barrier to restrict vehicular access to a public bridleway. It is unlikely we would find fault by the Council causing Mr X significant injustice.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr X, complains the Council has installed a barrier across a bridleway leading to his property.

## **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 or continue with an investigation if we believe:
  - it is unlikely we would find fault, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify our involvement, or
  - it is unlikely we could add to any previous investigation by the Council, or
  - it is unlikely further investigation will lead to a different outcome, or
  - we cannot achieve the outcome someone wants.

*(Local Government Act 1974, section 24A(6), as amended)*

## **How I considered this complaint**

3. I reviewed the information provided by Mr X, including the details of his complaint and the Council's responses. I shared my draft decision with Mr X and considered his comments.

## **What I found**

4. Mr X lives on a private road. The road is accessible via narrow lanes to the East and West and by passing along a public bridleway. Bridleways are not open to vehicular traffic and should be used only by pedestrians, cyclists and people on horseback.

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5. Following complaints from bridleway users the Council installed a barrier preventing vehicular access for reasons of highway safety. Mr X complains about this and says that the barrier traps residents and visitors including delivery drivers, tradesmen and taxi drivers. He also complains it has caused issues for emergency services vehicles including ambulances and fire trucks. He believes the Council should reclassify the bridleway and open the road to through-traffic.
  6. The Ombudsman will not investigate this complaint as it is unlikely we would find fault by the Council causing Mr X significant injustice. The Council is under no obligation to reclassify the bridleway at Mr X's request and has taken action to restrict vehicular access for safety reasons as permitted by the Highways Act 1980.
  7. The Council has invited Mr X to provide any evidence to show he has a lawful right of vehicular access over the bridleway but Mr X has not been able to provide this. Without a lawful right of access over the bridleway we cannot say Mr X (or any delivery drivers, tradesmen or taxi drivers, etc) are entitled to drive vehicles over the bridleway or that they have suffered an injustice from the Council's decision to erect the barrier.
  8. Mr X has also raised concerns about access for emergency services vehicles but the Council has explained it has received no correspondence about the issue from the services. It has also changed the barrier to make access easier for these vehicles. If Mr X remains concerned about this issue he may wish to raise the matter with the emergency services who can then contact the Council directly.

### **Final decision**

9. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find fault by the Council causing Mr X significant injustice.

### **Investigator's decision on behalf of the Ombudsman**



20 September 2018

**Complaint reference:**  
18 005 654

**Complaint against:**  
Nottinghamshire County Council

## **The Ombudsman's final decision**

Summary: Mr C complains that an admissions appeal panel unfairly refused his appeal against a school's refusal to grant his son a place. The panel decided the appeal fairly.

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## **The complaint**

1. The complainant, Mr C, says an admissions appeal panel hearing his appeal for his son to attend a school in the Council's area ('the school') did not consider the appeal fairly. He says it bore in mind irrelevant matters and incorrect information.

## **The Ombudsman's role and powers**

2. 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*)
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. I spoke to Mr C and considered the information he provided. I wrote to the Council and asked for further information. I weighed the evidence and made my decision.
5. I sent copies of my draft decision to Mr C and the Council and invited comments.

## **What I found**

### **What should happen**

#### **The School Admissions Code**

6. Every state school in England must publish a Published Admission Number for every year each year. The PAN number is the number of children the school should ideally have in each year and when the PAN is reached, the

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school is at capacity. If a child applies for a place and the PAN has not been reached for the relevant year, the school must offer the child a place.

7. However, many schools are oversubscribed and so must find a way of allocating available places fairly. Schools must, therefore, have an oversubscription policy allowing them to decide who should be awarded available places.
8. From Year 3 upward, even if the PAN would be exceeded, schools must still offer a place to an applicant unless they can show that to do so would result in prejudice to the education of the existing students.

### **The school's oversubscription criteria**

9. Where demand exceeds the total number of places available, the school allocates places in the following priority:
  - a) Children looked after by a local authority and previously looked after children.
  - b) Children from the catchment area with a brother or sister at the school.
  - c) Other children who live in the catchment area.
  - d) Children from outside the catchment area with a brother or sister at the school.
  - e) Other children from outside the catchment area.
10. In the event of over-subscription, preference will normally be given to children who live nearest to the school as the crow flies.

### **Appeal procedure**

11. When a school refuses to offer a child a place, the parents can appeal against the decision to the independent school admissions appeal body.
12. The appeal follows a two-stage procedure. It must first consider whether the admission of further children to the school would prejudice the provision of education to existing students and must uphold the appeal if it finds it would not.
13. If it finds that it would, it must proceed to stage 2 and consider whether the appellant's circumstances justify granting a place. It then allows or dismisses the appeal. This decision is made at the panel's discretion. If

### **What happened**

14. In early 2018, Mr C applied for his child, X, to join the school in Year 3. Mr C said that, for family reasons, it would be helpful if X could join the school.
15. X did not receive a place. The Council said this was because *'there were more applications than places available and other children had higher priority within the admission oversubscription criteria.'*
16. Mr C appealed. At the appeal, the Council said the school's PAN was 45 and the school would have 45 children in Year 3 in September 2018.
17. It said X's admission would prejudice the education of existing pupils because:
  - a) Space was limited;
  - b) There were already excessive student numbers and in Year 3; and
  - c) The school would be losing a further teacher in 2019/20 which would put further pressure on the school's resources.
18. The panel accepted the Council's arguments.
19. Mr C set out his family circumstances which, he said, justified allowing the appeal



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and admitting X. The panel listened to Mr C's submissions. The panel then decided not to allow the appeal because the prejudice to X did not outweigh the prejudice that would be caused to the school.

20. Shortly after the appeal, Mr C met the headteacher of the school and talked with her. He says she told him that she would have been happy to have X at the school and that, so far as she knew, the school would not be losing a teacher.
21. Mr C complained to the Ombudsman. He said:
- a) The Council presenting officer at the appeal had spent a great deal of time talking about the number of students in Year 2, which was irrelevant as his child had applied to Year 3; and
  - b) The Council officer had said that the school would be losing a teacher which, he had learnt, was not true.

### **Was there fault causing injustice?**

22. Mr C has very good reason for wanting X to attend the school which go beyond the fact that it is rated outstanding. For family reasons, he says, it would be helpful for X to do so. I do not doubt that this is the case. However, schools admissions appeals have little room for considering such factors.

### **Conduct of the appeal**

23. The appeal was conducted in accordance with the guidance. Relevant matters were considered. The school is above PAN and the Council believes that to admit more pupils would prejudice the standard of education at the school. It therefore opposed X's admission. The panel accepted this and did not find Mr C's family circumstances were sufficient to justify allowing the appeal.
24. Mr C disagrees with this. He believes that the Council's duties under the Equalities Act mean that the appeal should have been allowed.
25. This was a matter for the panel to consider. It did so fully. Mr C set out his arguments but the panel did not feel they justified allowing the appeal.
26. In the circumstances, therefore, providing the information considered by the panel was correct, the Ombudsman cannot find fault with the decision.
27. Mr C says the Council's representative at the appeal referred to the pupil numbers in Year 2, not Year 3. However, notes taken by the clerk to the appeal show that the representative was referring to Year 2 from the 2017-18 academic year, which would become Year 3 in the 2018-19 academic year and there would impact on the provision in 2019/20 school year as the year group the appeal was for would be part of the mixed age classes. This was, therefore, a relevant consideration. I do not find fault.

### **Headmistress's involvement**

28. Mr C also says that, in the light of his conversation with the headteacher, he believes that the Council presented incorrect information about the loss of a teacher in 2019/20.
29. I asked the Council to make enquiries about this. The Council sent me a letter from the headteacher which says she may have given Mr C a false impression as had not fully understood the admissions criteria. She apologised for any misunderstanding. The Council did, therefore, I find, consider all the relevant information. I do not find fault.

### **Injustice**

30. Mr C says that the impact of his child not joining the school has been '*massive*'.

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This was not a matter for the panel which had to deal with the issue of prejudice to other students. The Ombudsman can only consider injustice where there is fault and, here, there was none.

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### **Draft decision**

31. I have found that the Council was not at fault. The panel correctly considered all the appeal criteria and made a decision open to it on the facts. I have closed my investigation.

Investigator's decision on behalf of the Ombudsman



**6 November 2018****Agenda Item: 6****REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE &  
IMPROVEMENT AND SECTION 151 OFFICER****INTERNAL AUDIT 2018-19 TERM 1 REPORT & 2018-19 TERM 3 PLAN****Purpose of the Report**

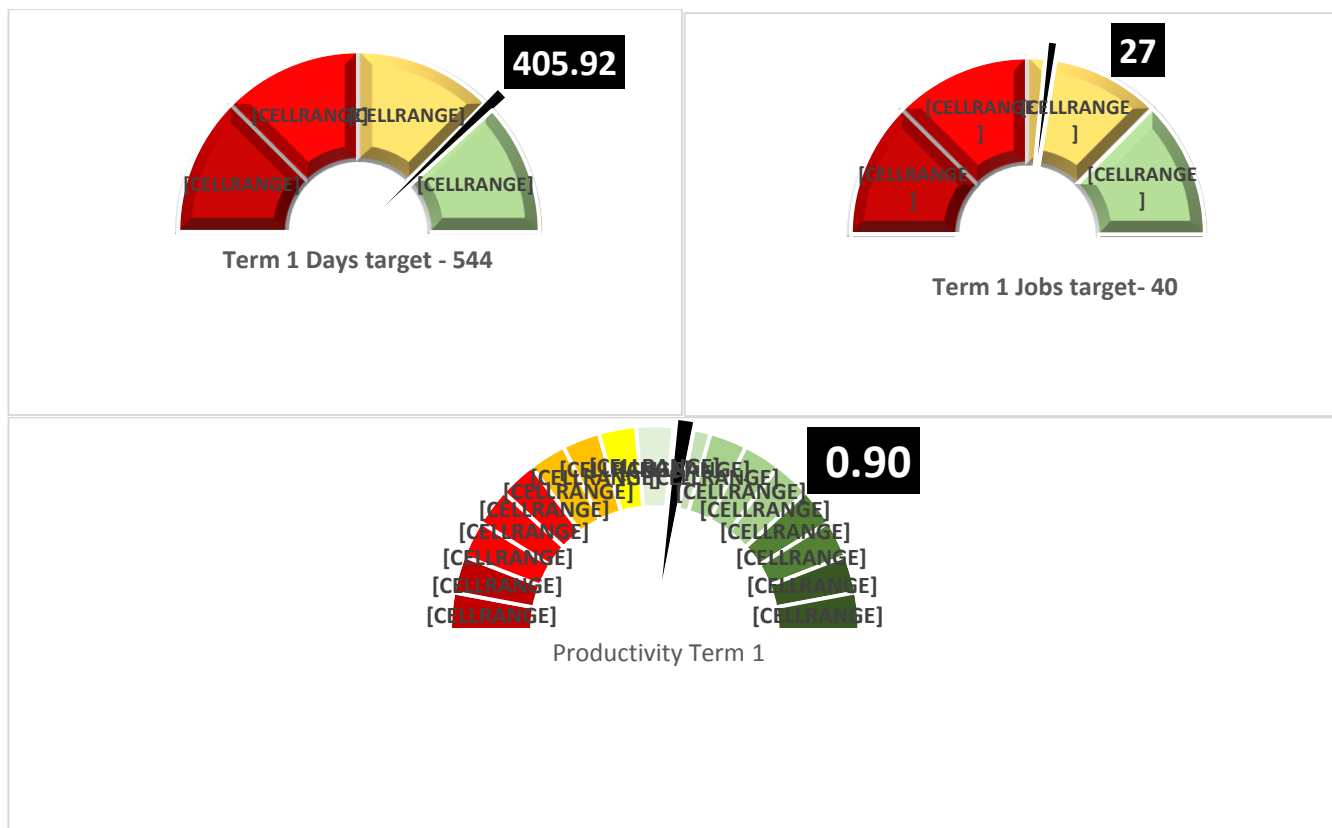
1. To inform Members of the Head of Internal Audit's report on the work carried out by Internal Audit in Term 1 of 2018/19, and to highlight any key issues arising.
2. To consult with Members on the Internal Audit Plan for Term 3 of 2018/19.

**Information**

3. Internal Audit is now operating on the basis of three Termly Plans in each financial year, covering the following periods:
  - Term 1: April to July
  - Term 2: August to November
  - Term 3: December to March
4. As previously agreed with the Committee, Internal Audit reports its updates three times per year. The reports comprise the outcomes from the work carried out in the preceding Term, followed by proposals for the coverage in the forthcoming Term.

***Progress against the Term 1 Audit Plan 2018/19***

5. The change from an annual plan to a termly plan was considered and agreed during the first few months of 2018/19, consequently a Term 1 Plan was not formally and separately established. Internal Audit staff commenced work in this period on the audits agreed in the formerly approved Annual Plan for 2018/19. Nonetheless, it is considered relevant to assess the days and jobs delivered by the service against a notional Term 1 Plan. The following charts depict progress against one-third of the totals for days and jobs agreed in the formerly agreed 2018/19 Annual Plan. The progress is expressed in terms of the following:
  - Inputs – the number of audit days delivered against the notional Term 1 plan. Each segment in the chart represents  $\frac{1}{4}$  of the Termly Plan.
  - Outputs – the number of jobs completed against the plan. Each segment in the chart represents  $\frac{1}{4}$  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.



6. Term 1 represented a transitional period from the former annual approach to audit planning to the current termly basis. As a result, a separate plan with separate targets for days and jobs was not identified for Term 1, pending approval of the amended approach by Committee. An annual plan for 2018/19 had been approved by the Governance & Ethics Committee in March 2018, containing a planned number of days and jobs to be delivered during the full year. For the purpose of providing an indicator of performance in Term 1, 1/3<sup>rd</sup> of these annual targets has been used in the above charts.
7. Fewer resources than planned for at the start of the year were available to the service in the first third of the year. This was largely due to a lengthy period of sickness absence in Term 1, the impact of which reduced the service's capacity to deliver the expected number of school audits in the period.

### **Audit assurance**

8. In Term 1, a range of work was completed across the Council. **Appendix 1** sets out details of all final reports, draft reports and written advice, 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 whistleblower reports
  - Certification audits – generally small jobs to sign off returns and accounts.

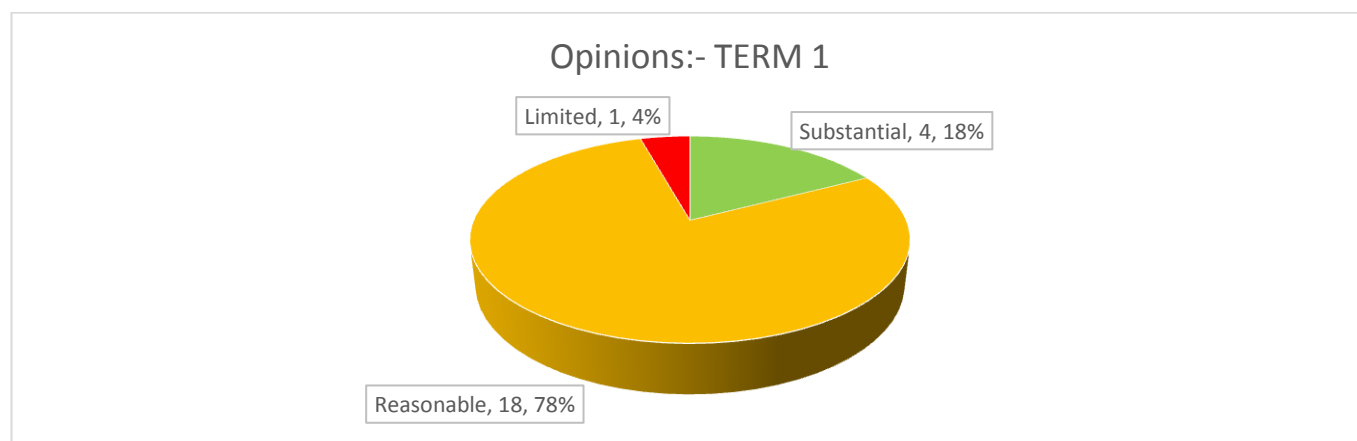
With regard to school audits completed in Term 1, the following summarises the spread of assurance opinions for the 11 completed reports:

+ **Substantial Assurance (1 item)**

+ **Reasonable Assurance (9 items)**

+ **Limited Assurance (1 item)**

9. Analysis of the opinion-based assurance work shows the following distribution of opinions issued in Term 1 (**see chart below**). Based on this, and adding it to the rolling outcomes of Internal Audit's assurance work over the past 12 months, the Head of Internal Audit is able to report that **a satisfactory level of internal control continues to be in operation in the council.**



10. The single limited assurance opinion issued in Term 1 relates to one of the schools visited. The audits in schools cover a broad range of areas including: governance; expenditure; income; assets; and information. Weaknesses were noted in a number of these areas at the school in question.

#### ***Advisory input to developments***

11. Internal Audit continues to provide advisory input to key developments in the Council. In Term 1, this effort focussed on the Information Governance Improvement Programme (IGIP), with the Head of Internal Audit attending meetings of the IGIP Board. Additionally, follow-up work to assess progress with implementing the actions agreed from last year's Internal Audit review of information governance is currently in progress. This will provide independent assurance to the Board, and to the Council as a whole, regarding the extent of the progress being made.
12. Internal Audit has also responded to a number of smaller-scale, ad hoc requests for advice from a range of service areas across the Council.
13. 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**

14. Internal Audit was active in the following aspects of its pro-active counter-fraud programme in Term 1:

- Serious and organised crime – a data-washing exercise with Nottinghamshire Police is in progress to match the Council's supplier file against the Police's records of criminal groups.
- Data-matching hub – a pilot exercise to carry out re-checks of pensions data against up-to-date mortality data has been carried out and the latest matches are under investigation by the Pensions Section. Mortality data will also be shared with other key service areas in which mortality data may identify potential cases of fraud, for example with social care and Blue Badge parking permits.
- Fraud Response Plan – this was refreshed and approved by the Governance & Ethics Committee in July 2018.
- Counter-fraud e-learning – an e-learning package for all staff was finalised and launched in July 2018, following approval of the refreshed Fraud Response Plan.

15. In addition, Internal Audit was engaged to varying degrees in the following enquiries to investigate potential fraud cases. The cases referred to remain in progress, therefore fuller details will be reported to Committee once the outcomes are finalised:

<b>Area of service and nature of irregularity</b>	<b>Extent of Internal Audit's input</b>
Direct Payment Support Service provider - shortfall on service user account balances maintained by an external provider	Support and advice to the departmental staff working with the provider to confirm balances and to monitor the ongoing recovery of the shortfall. Discussion of the case with Nottinghamshire Police - no further Police action is being taken.
Direct Payments - irregularities identified by the Adult Care Financial Services (ACFS) Team through its monitoring and review procedure.	Regular liaison with ACFS to discuss Direct Payment cases. Early discussion of the more significant cases with Nottinghamshire Police. Police action is being taken currently in respect of an alleged theft of a service user's funds by a carer.
Overpayment to a care home in respect of a service user couple	Advice on recovery action to correct a commissioning error which had not been brought to the Council's attention by the provider.
Employee claims for additional hours in a Children's & Families establishment	Analytical contribution to the investigation of claims for additional hours and subsequent submission of evidence to the formal stage of the investigation. Co-ordination of advice from Nottinghamshire Police and subsequent revision of the Council's Fraud Response Plan.
Employee claims for additional hours in a school	Analysis and subsequent report to the Headteacher, along with advice on recovery action
Objection to the financial accounts relating to the sale of land	Assistance with the collection of evidence requested by Nottinghamshire Police. The Police case has been closed, but the final report of the External Auditor is still awaited.

16. In all cases, Internal Audit assesses whether the weaknesses in internal controls are a contributory factor to the issues arising and makes recommendations to management. The Fraud Risk Assessment is updated in light of both the pro-active and reactive fraud work.

### **Key Performance Indicators**



17. The Section's performance in Term 1 against its key indicators is detailed in the following table:

Performance Measure/Criteria	Target	Outcome in Term 1
<b>1. Risk-aware Council</b>		
Completion of Termly Plan - Days - Jobs	90% 90%	✗75% ✗70%
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	✓ E-learning package & Annual Fraud Report
<b>2. Influential Audit Section</b>		
Recommendations agreed	95%	✓ 100%
Engagement with the Transformation agenda	Active in 5 key projects during the year	✗ Active in 1 so far in 2018/19
<b>3. Improved internal control &amp; VFM</b>		
Percentage of Priority 1 & Priority 2 recommendations implemented	75%	✓ 81% Priority 1 ✓ 90% Priority 2 (as at May 2018 update)
<b>4. Quality measures</b>		
Compliance with the Public Sector Internal Audit Standards	Compliance achieved	✓ Action is in progress to address the few issues identified by the External Quality Assessment of Internal Audit
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)	✓ 1.91

18. The table shows a good level of performance by the service in Term 1, although the quantum of work carried out was less than anticipated due to the issues set out above at paragraphs 6 & 7.

#### ***Proposed Internal Audit Plan for Term 3 2018-19***

19. 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 arrangement.

20. 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. Account will also be taken in future Terms of any

significant implications arising from the pilot work on assurance mapping, which continues to progress.

21. 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 2018/19 will be expressed in the scheduled update report in July 2019 and will take account of assurance delivered from all of Internal Audit's work over the three Terms in 2018/19, along with assurances available from other sources.

22. 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 value of cash and bank transactions
- 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.

23. **Appendix 2** sets out details of the proposed coverage by Internal Audit for Term 3, and it is summarised in the following table.

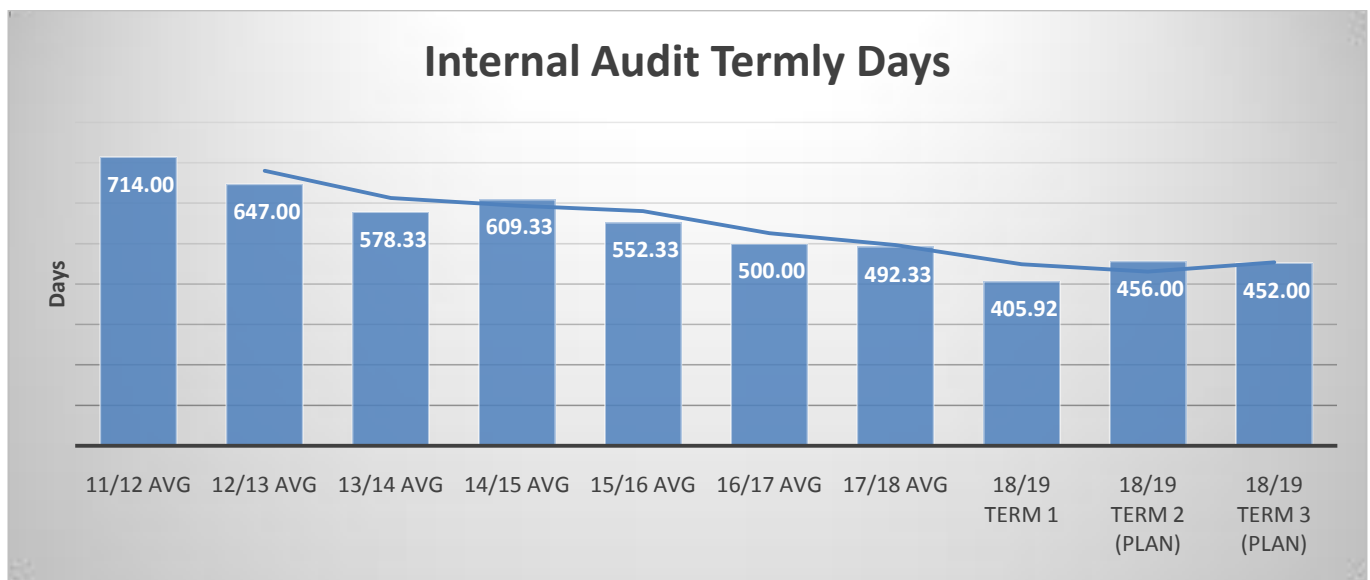
Department	Days	Number of Audits			
		High Priority	Med Priority	Other	Total
Council-wide	132	8	1		9
Children & Families	34		1	1	2
Adult Social Care & Health	77	4	1	1	6
Place	87	1	2	1	4
Chief Executive's	42	3			3
Total County Council (excl. schools)	372	16	5	3	24
Schools	80			18	18
Total County Council	452	16	5	21	42
External Clients (Notts Fire & Rescue Service)	50				
Grand Total	502				

24. As can be seen from the table, a total of 502 days are planned for Term 3 of which 452 (90%) will be spent on the Authority's systems and procedures. The remaining 50 days will be spent on external contracts, providing an internal audit service to Nottinghamshire Fire and Rescue Service. The costs incurred in delivering external contracts are fully recovered.

25. With regard to schools, Nottinghamshire's Scheme for Financing Schools requires all local authority maintained schools to have an internal audit once every five years. The Council's

Internal Audit Service offers to deliver these audits on a buy-back basis; at the time of compiling this report, a total of 41 schools had bought back the service.

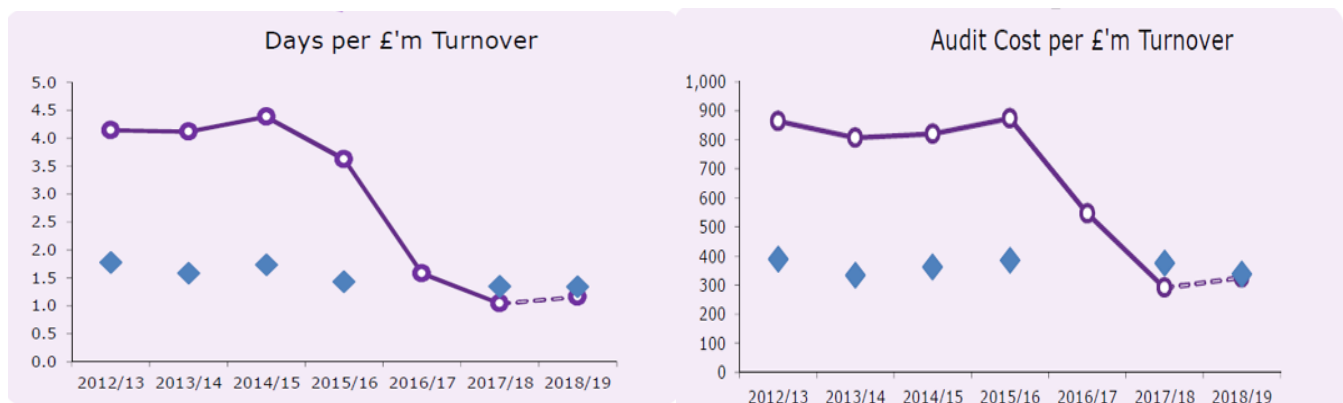
26. The chart below shows the trend in the number of actual days delivered in recent years. The figures for past years are expressed as the average coverage per termly period in those years, in order to provide a meaningful comparison with the plan for Term 3 in 2018/19. Internal Audit's staffing resources were reduced from April 2016, which explains the higher number of days delivered prior to that time.



27. The number of days delivered in Term 1 of 2018/19 was low due to issues with sickness absence and vacancies. A recruitment process has commenced and the Term 2 Plan is based on fresh resources being secured part-way through the term.

### **Benchmarking data**

28. The Section participates in the Chartered Institute of Public Finance and Accountancy (CIPFA) benchmarking club for internal audit services. Extracts from the latest benchmarking report received in August 2018 show that the comparator average (trend line) has now converged downwards towards the level of cost and audit coverage of the Council's Internal Audit Section (plotted 'X's'). The net budget for 2018/19 is £392k.



29. The CIPFA benchmarking exercise is comprised of the following types of participant:

## Member Profile

There were 18 respondents to the 2018 Internal Audit Benchmarking Club.

Authority Type	Total
Unitary Authority	12
County Council	4
District Council	1
Other	1

The outcomes from the CIPFA exercise are of limited value, due to the declining total number of participants and the fact that very few County Councils are members. The Head of Internal Audit has initiated a separate benchmarking exercise with his counterparts in the Midland Counties' Heads of Internal Audit Group (MCHIAG). The outcomes from this will be presented in a future update report and should provide for closer comparisons with internal audit services at other two-tier councils in the region.

### Other Options Considered

30. The Audit Section is working to the Public Sector Internal Audit Standards during 2018/19. 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

31. To set out the Report of the Head of Internal Audit for Term 1 of 2018/19, and to propose the planned coverage of Internal Audit's work in Term 3 of 2018/19, providing Members with the opportunity to make suggestions for its content.

### Statutory and Policy Implications

32. 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 3 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

Head of Internal Audit

### **Constitutional Comments (KK 29/10/2018)**

33. The proposals in this report are within the remit of the Governance & Ethics Committee.

### **Financial Comments (RWK 29/10/2018)**

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

### **Background Papers and Published Documents**





























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

- None

### **Electoral Division(s) and Member(s) Affected**

- All



X Period=2015 OR 2016 OR 2017 OR 2018 X Report Actual Date = (multiple)				
Org Unit1 Name	Audit	Type	Report Actual D	Rating (report item)
ASCH	 2018-39 - Safeguarding adults - governance, monitoring and reporting	Assurance	22/06/2018	 Reasonable Assurance
ASCH	 2018-49 - Services to self-funders	Assurance	10/07/2018	 Reasonable Assurance
ASCH	 2018-51 - Homecare Commissioning and Contract Management	Assurance	05/07/2018	 Reasonable Assurance
Children and Families	 2017-92 - School expansion and pupil place planning	Assurance	05/06/2018	 Reasonable Assurance
Children and Families	 2018-53 - NCC Children's residential homes	Assurance	07/06/2018	 Reasonable Assurance
Cross cutting	 2016-57 - Employee recruitment	Assurance	30/04/2018	 Reasonable Assurance
Cross cutting	 2017-36 - Serious & Organised Crime	Counter Fraud	06/04/2018	 Reasonable Assurance
Cross cutting	 2018 - xc1 - Annual Governance Statement	Assurance	10/04/2018	 Substantial Assurance
Cross cutting	 2018-38 - Action tracking	Assurance	18/04/2018	 Substantial Assurance
Cross cutting	 2018-62 - Transparency Code	Counter Fraud	30/06/2018	 Not assessed
Cross cutting	 2018-87 - Annual Fraud Report	Counter Fraud	18/07/2018	 Not assessed
Place	 2018-71 - Trading Standards - certifications	Certification	26/06/2018	 Not assessed
Resources	 2016-70 - Pensions Administration	Assurance	14/05/2018	 Reasonable Assurance
Resources	 2018-52 - Council Elections	Assurance	26/07/2018	 Reasonable Assurance

Draft





## Appendix 2

### Council-wide areas (i.e. across departments)

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
Assurance	Advice/ Consultancy	Counter-Fraud	Certification				
Contract management	H	1	20				Assurance review to ensure effective monitoring. Ensure ongoing risk assessment of supplier resilience and supplier failure plans.
Budgetary control	H	1	15				Completion of review due to commence in Term 2
Financial sustainability (Northamptonshire implications)	H	1	25				Self-assessment of NCC position and practice against the key issues identified in the Northamptonshire CC best value inspection report
Access Controls	M	1	15				Review of processes for giving, changing and removing access to resources.
Action tracking	H	1	10				Quarterly updates to the Governance & Ethics Committee on progress with implementing agreed actions
<i>Counter Fraud</i>	H						
Pro-active counter-fraud – Cartels vulnerability assessment		1			5		Work with the Group Manager – Procurement to assess the Council's vulnerability to cartels in the tendering process.
Pro-active counter-fraud – civil prosecutions protocol		1			3		Leading on the development and agreement of a formal protocol for the Council around the pursuit of civil prosecutions.
Fraud alerts		1			1		Review and dissemination of fraud alerts from national counter-fraud agencies
<i>Governance &amp; Scrutiny</i>							
Assurance mapping & Statutory Officer updates		1	25				Leading and co-ordinating the assurance mapping pilot for 2018/19
<i>Advisory &amp; support</i>							
Governance & Ethics Committee				10			Preparation of planning and progress reports, attendance at Committee meetings
Risk, Safety & Emergency Management Board				1			Head of Internal Audit attendance at RSEMB meetings
Client management				2			Planning and quarterly progress reports to Corporate Leadership Team
<b>Sub-Totals</b>			<b>110</b>	<b>13</b>	<b>9</b>	<b>0</b>	
<b>Grand Total</b>		<b>9</b>	<b>132</b>				

## Children and Families

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
School swimming safeguarding	H	To be completed Q1 2019/20	15				Assurance about safeguarding controls in Schools' Swimming Service, plus possibly scoping pricing the offer to schools, buy-back rates, pool contracts, payments and budgetary control.
Personal Budgets	M	1	15				Review of controls to mitigate key risks
Secure unit – staff additional hours claims	n/a	1	2				Completion of review of controls following irregularity enquiry
Client management				2			Planning with, and quarterly progress reports to, Senior Leadership Team.
<b>Sub-Totals</b>			<b>32</b>	<b>2</b>	<b>0</b>	<b>0</b>	
<b>Grand Total</b>		<b>2</b>	<b>34</b>				

## Adult Social Care and Health

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
Direct Payment Support Services	H	1	5				Control environment under which DPSS organisations are permitted to provide services to direct payment holders.
Integrated Care Systems (formerly Sustainability & Transformation Plans)	H	1	15				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.
Care home providers	H	1	15				Review of quality assurance processes
Commissioning in Mosaic & financial controls	H	1		5			Advisory input to departmental-led review of systems and procedures
Deputyships & appointeeships	M	To be completed Q1 2019/20	15				Review of controls to mitigate key risks
Extra Care – review of methodology	M	1	15				In light of expected new incoming strategy for Extra Care, review of how Council builds up care and support, including shared support and extra individual costs.
Homebased Care – automated commissioning	n/a	1		5			Advisory input to automated controls being built in to end-to-end processes
Client management				2			Planning with, and quarterly progress reports to, Senior Leadership Team.
<b>Sub-Totals</b>			<b>65</b>	<b>12</b>	<b>0</b>	<b>0</b>	
<b>Grand Total</b>		<b>6</b>	<b>77</b>				

## Place

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
Strategic management of property estate	H	To be completed Q1 2019/20	20				Review delivery of strategic property plans including the use of assets to generate income and the expected level of capital receipts. Controls in place to deliver effective asset utilisation and management including the projection of vacant properties.
Concessionary fares	H	1	15				Review controls in place for the administration of the concessionary fares scheme. Develop the use of data analytics to identify risk areas for specific deep dive work and follow up intelligence from the NFI exercise.
Counter-fraud investigation contingency	n/a	1			5		Contingency to continue with an investigation into a whistleblower allegation.
Parking – Central processing Unit & enforcement	M	To be completed Q1 2019/20	15				Review of controls to mitigate key risks in the issue of penalty notices and collection of income
Facilities Management	M	1	15				Review of controls to mitigate key risks
Property Compliance	M	1		15			Advisory input in advance of planned service transfers to Arc Partnership
Client management				2			Planning with, and quarterly progress reports to, Senior Leadership Team.
<b>Sub-Totals</b>			<b>65</b>	<b>17</b>	<b>5</b>	<b>0</b>	
<b>Grand Total</b>		<b>4</b>	<b>87</b>				

## Chief Executive's

Area of activity	Priority Level	Job count	Days planned and nature of audit coverage				Likely scope
			Assurance	Advice/ Consultancy	Counter-Fraud	Certification	
Pensions – investments	H	1	15				Review of processes for Investment of Pension Fund assets and the return in investments. Performance monitoring of fund managers.
<b>ICT:</b>							
Cloud computing	H	1		5			Review controls in place for contracting cloud services, contract monitoring arrangements and for continued service delivery and security.
Networks	H	1	5				Review of contracted arrangement for monitoring the delivery, security and availability across the network including wireless networks and voice networks.
Change & Release Management	M	To be completed Q1 2019/20	15				Review the management arrangements in place to change and release, configuration and application of updates and patches. (Cloud and non-Cloud)
Client management				2			Planning with, and quarterly progress reports to, Senior Leadership Team.
<b>Sub-Totals</b>			<b>35</b>	<b>7</b>	<b>0</b>	<b>0</b>	
<b>Grand Total</b>		<b>3</b>	<b>42</b>				



**6 November 2018****Agenda Item: 7****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND  
EMPLOYEES****MEMBER DEVELOPMENT AND TRAINING****Purpose of the Report**

To provide a further update to Members on the existing training offer and sources of training available, following the initial report to Governance and Ethics Committee on 14 March 2018.

To seek Members' views on possible issues to cover in future development and training sessions.

To agree that the Chair or Vice-Chair attend the Public Sector Audit Appointments (PSAA) Local Audit Quality Forum Event in Manchester on 3 December 2018.

**Information**

The Council is keen to offer a range of development and training opportunities to enable Members to undertake their County Councillor role to the best of their ability.

**Induction**

As detailed in the previous report, an induction programme was offered to both new and returning Members following the most recent election in May 2017.

**Ongoing Development – Internal offer**

In their consideration of the new Information Governance Framework on 28 March 2018, Members of Policy Committee requested that cross-party briefings be arranged on the issue of the new General Data Protection Regulations (GDPR). Two workshops have been arranged for 24 October 2018 and 8 November 2018. The aim of these workshops is to share best practice and discuss any information governance concerns which Members have. A number of Members have also now completed the GDPR e-learning training package.

**Ongoing Development – External Offer**

Individual Members can request to attend external conferences, seminars and training courses, with approval by the relevant Committee required when there is a fee payable.

## Member Development Needs

The Committee Members' views are sought on any other development and training needs which they or other County Councillors have.

For information, East Midlands Councils organises a Councillor Development Network which meets approximately 2-3 times a year. The last meeting's agenda included items about Member development priorities and prospective Councillor activity and included a facilitated session for attendees to share and plan induction programmes. The Team Manager, Democratic Services plans to attend future Network meetings and will include any relevant feedback from these meetings within future Member Development and Training updates to this Committee.

## PSAA Local Audit Quality Forum Event, Manchester – 3 December 2018

The theme of this latest event from the PSAA is Financial Resilience and Sustainability and the event will explore:-

- a. the nature and scale of the sustainability challenges facing local bodies
- b. the strategies and disciplines which can help to address them successfully and
- c. the roles and responsibilities of Chief Finance Officer, Auditors, Audit and Scrutiny Committees in helping to maintain resilience and sustainability.

The event is aimed at audit committee Chairs and relevant officers. It is proposed that the Committee's Chair (or Vice-Chair) attends the event along with an officer from the internal audit team.

It should be noted that the Council has been offered two free places at this event and therefore the only costs are those relating to transport.

### **Other Options Considered**

None.

### **Reasons for Recommendations**

To update Members on the existing development and training offer and seek the Committee Members' views on current Member development needs.

To agree that the Chair or Vice-Chair of the Committee attends the PSAA Local Audit Quality Forum, Event.

### **Statutory and Policy Implications**

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



## **Financial Implications**

As part of the overall budget for expenditure relating to Members, £11,000 is set aside for training and conference fees. In the 2018-19 financial year to date, £4,544 has been spent. The only costs relating to the PSAA event on 3<sup>rd</sup> December are related to transport to and from the event.

## **RECOMMENDATIONS**

- 1) That the Committee considers the existing sources of training available and highlight any further Member development needs.
- 2) That the Chair (or Vice-Chair) of the Committee and a relevant officer from the internal audit team attend the Public Sector Audit Appointments (PSAA) Local Audit Quality Forum Event in Manchester on 3 December 2018.

**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](mailto:keith.ford@nottscc.gov.uk)

## **Constitutional Comments (SLB 19/10/18)**

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

## **Financial Comments (SES 19/10/18)**

The financial implications are set out in paragraph 17 of the 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.

- Agenda for Councillor Development Network meeting – 26 September 2018

## **Electoral Division(s) and Member(s) Affected**

All



**6 November 2018****Agenda Item: 9****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND  
EMPLOYEES****WORK PROGRAMME****Purpose of the Report**

1. To review the Committee's work programme for 2018.

**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@nottsc.gov.uk](mailto:keith.ford@nottsc.gov.uk)

**Constitutional Comments (SLB)**

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 29 OCTOBER 2018)**

<b><u>Report Title</u></b>	<b><u>Brief summary of agenda item</u></b>	<b><u>Lead Officer</u></b>	<b><u>Report Author</u></b>
<b>18 December 2018</b>			
Ombudsman Annual Review Letter	To share the Annual Review Letter from the Local Government and Social Care Ombudsman.	Marjorie Toward	Laura Mulvaney-Law
Update on Local Government 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	Jo Kirkby
Update on Use of Resources by Members	To provide the first update on use of resources by Members, in line with the new Protocol agreed by Full Council in May 2018.	Marjorie Toward	Keith Ford
Update on Councillors' Divisional Fund	Six Monthly Update	Marjorie Toward	Keith Ford / Sarah Ashton
Information Governance Improvement Programme	To report progress of the Information Governance Improvement Programme	Marjorie Toward	Caroline Agnew
Assurance Mapping Update	To provide an update on progress with the pilot assurance mapping process.	Rob Disney	Rob Disney
<b>30 January 2019</b>			
External Placements of Looked After Children and Young People	Outcomes of audit (to include specific update on off-contract spend as agreed by the Committee on 14 March 2018)	Rob Disney	Rob Disney / Laurence Jones / Jon Hawketts
Update on Local Government 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	Jo Kirkby
Follow-up of Internal Audit Recommendations	To report the latest progress with implementing the agreed actions relating to Priority 1 Internal Audit recommendations	Rob Disney	Rob Disney
<b>13 March 2019</b>			
Internal Audit 2018/19 Term 2 Report & 2019/20 Term 1 Plan	To provide details of internal audit work completed between August 2018 and November 2018, and to consult on the proposed Internal Audit Plan for the period April 2019 to July 2019.	Rob Disney	Rob Disney

