

## **Governance and Ethics Committee**

**Wednesday, 17 April 2024 at 10:30**

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

---

### **AGENDA**

1	Minutes of last meeting held on 28 February 2024	3 - 6
2	Apologies for Absence	
3	Declarations of Interests by Members and Officers:- (see note below)	
4	Local Government and Social Care Ombudsman Decisions - February to March 2024	7 - 56
5	Governance Update	57 - 68
6	Statement of Accounts 2023-24 - Accounting Policies	69 - 86
7	Outcomes of the Strengthening Overview and Scrutiny Review	87 - 92
8	Work Programme	93 - 98

### **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 Noel McMenamin (Tel. 0115 993 2670) 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 28 February 2024 (commencing at 10.30am)**

**membership**

### **COUNCILLORS**

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

Chris Barnfather  
Samantha Deakin  
Errol Henry JP  
Andy Meakin  
Michael Payne - **Apologies**

Sue Saddington  
Helen-Ann Smith - **Apologies**  
Nigel Turner  
Roger Upton

### **SUBSTITUTE MEMBERS**

Councillor Kate Foale (substitute for Councillor Michael Payne)

### **OFFICERS IN ATTENDANCE**

Robert Briggs - Children and Families  
Dr. Órlaith Green  
Peter McConnochie

Sara Allmond - Chief Executives  
Glen Bicknell  
Richard Elston  
Simon Lacey  
Jo Toomey  
Marjorie Toward  
Nigel Stevenson

Zak Francis - Grant Thornton  
Andrew Smith

### **1. MINUTES**

The Minutes of the last meeting held on 10 January 2024, having been previously circulated, were confirmed and signed by the Chairman.

### **2. APOLOGIES FOR ABSENCE**

Apologies for absence were received from:

- Councillor Helen-Ann Smith (Medical/Illness)
- Councillor Michael Payne (other reasons)

### **MEMBERSHIP CHANGE**

It was reported that Councillor Chris Barnfather had been appointed in place of Councillor Richard Butler.

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

Councillor Philip Owen declared he had an Other Registerable Interest in item 10 – Broxtowe Community Governance Review as he was the Chairman of Nuthall Parish Council, which was part of the review, and he was also a Councillor on Broxtowe Borough Council.

Councillor Kate Foale declared she had an Other Registerable Interest in item 10 – Broxtowe Community Governance Review as she was a Councillor on Broxtowe Borough Council.

Having declared Other Registerable Interests, Councillors Owen and Foale left the Chamber during consideration of item 10.

### **4. UPDATE ON LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS (DECEMBER 2023 TO JANUARY 2024)**

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

#### **RESOLVED: 2024/08**

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

### **5. RESPONSE TO LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS 2024**

The report provided an update on the improvements made to increase the Council's Education, Health and Care Needs Assessment (EHCNA) performance.

Members welcomed the improvements made so far in light of the significant increase in the number of applications received, but raised concerns that the number of applications processed within the deadline was still significantly below the national average. Members were advised that children could access holistic support through schools and an Education and Health Care Plan was not required to access that support.

#### **RESOLVED 2024/09**

- 1) That the significant increase in the number of Education, Health and Care Needs Assessments being requested and the measures taken to increase the Local Authority's Education, Health and Care Needs Assessment performance be noted. [Page 4 of 98](#)

- 2) That it be noted that timeliness and performance continue to be reported to each Children and Families Select Committee meeting and is also subject to oversight of the Special Educational Needs and Disabilities Improvement Board monthly.
- 3) That the Governance and Ethics Committee agrees to receive a further report in 12 months' time to review the progress and the impact of the measures introduced.

#### **6. EXTERNAL AUDIT – AUDIT FINDINGS REPORT 2022/23**

The report set out the External Auditors' audit findings report for 2022/23 which set out the audit findings for both the Council and Pension Fund. Members were given the opportunity to ask questions of the External Auditors and seek assurance about the information provided within the report.

**RESOLVED: 2024/10**

That the external auditors' Audit Findings Report 2022/23 be noted.

#### **7. EXTERNAL AUDIT – ANNUAL AUDIT REPORT 2022/23**

The report provided the External Auditors' Annual Audit Report for 2022/23 which largely related to Value for Money work.

**RESOLVED: 2024/11**

That the External Auditors' Annual Audit Report 2022/23 be accepted.

#### **8. LOCAL AUDIT DELAYS**

**RESOLVED: 2024/12**

- 1) That the issues surrounding the proposals to clear the local audit backlog and embed timely audit be noted.
- 2) That approval be given to delegate responsibility to the Section 151 Officer, in conjunction with the Chairman of this Committee, to respond to the Local Audit Backlog consultation and circulate to Members of the Committee post submission.

#### **9. INTERNAL AUDIT TERM 2 2023-24 PROGRESS AND TERM 1 2024-25 PLAN**

**RESOLVED: 2024/12**

That the outcome of the Internal Audit work carried out in Term 2 of 2023/24, and the planned coverage of Internal Audit's work in Term 1 of 2024/25 to be progressed to help deliver assurance to the Committee in priority areas be noted.

Having declared Other Disclosable Interests Councillor Philip Owen and Councillor Kate Foale left the Chamber for the following item:

**10. BROXTOWE COMMUNITY GOVERNANCE REVIEW**

**RESOLVED: 2024/13**

That the Chief Executive be authorised to submit the letter at **Appendix A** to the report as a courtesy response to the consultation on Broxtowe Borough Council's draft proposals, reserving its position for any formal response until phase 2 of the consultation.

**11. WORK PROGRAMME**

**RESOLVED: 2024/14**

That the work programme be approved with the following amendment:

Review of Arms Lengths Organisations would now be brought to committee in Autumn 2024

The meeting closed at 11.24am

CHAIRMAN

**17 April 2024****Agenda Item: 4****REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE  
AND EMPLOYEES****LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS  
FEBRUARY 2024 TO MARCH 2024****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 was completed and therefore any decisions after 29<sup>th</sup> January 2024.

**Information**

2. Members have asked to see the outcome of Ombudsman investigations regularly and promptly after the decision notice has been received. This report therefore gives details of all the decisions received since the last report to this Committee.
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/](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 fifteen decisions relating to the actions of this Council have been made by the Ombudsman in this period. Appendix A to this report summarises the decisions made in each case for ease of reference and Appendix B provides the full details of each decision.
6. Full investigations were undertaken into seven complaints. Appendix A provides a summary of the outcomes of the investigation. Where fault was found, the table shows the reasons for the failures and the recommendations made. If a financial remedy was made the total amount paid or reimbursed is listed separately.

7. There was fault found in seven cases. All complaints are in Childrens regarding EHCP processes. Six of these were around the delays to the EHCP assessment, specifically the Educational Psychologists (EPs) and the shortage of resource causing the delays for families receiving an EHCP for their children. In all of these six cases (please refer to Appendix A for more details) the EHCP delay was due to waiting for an available EP. The Ombudsman recognises the great efforts the Council are putting in and recognises the work being done to mitigate the impact of Educational Psychologists and also how we respond to complaints, as well as explaining the reasons for the delay during the EHCP process. This is particularly pointed out on cases 23011077 and 23011093. Its offer of extra support to families is also pointed out. Members are reminded of the report submitted by the Service Director of Education, Learning and Inclusion at the last meeting showing how the Council is actively responding to the increased demand for EHCPs, and the improvements being made and will continue to be made. These 6 cases all had apologies made and a combined total of £2,900 paid out as remedy.

The seventh complaint is also regarding the EHCP process. The Council failed to ensure Ms B's son received all his occupational therapy sessions and delayed responding to some of her correspondence. The Council amended the process which involved schools commissioning providers and billing the Council. Changing the process caused the delay. The Ombudsman found fault. There was then delay completing the formal referral form required which is also fault. The providers then missed the required therapy sessions due to slow process according to the Ombudsman. The Council has agreed to apologise and pay £900 for delays and distress and arrange a meeting to establish the options for provision going forwards and making up for missed provision. It is worth noting in this case, the Occupational Therapist (OT) that was requested by the family provided a revised quotation of over £18,500 to deliver the child's annual OT provision which was more than double the cost of the provider that was in place at the time of the complaint. When the quotation was made the new provider had a significant waiting time of 4 – 6 months to take on new clients. The local authority was reluctant to initially agree to securing the provider as they could not commit to a start date (which may have resulted in the child not having any OT provision) and the costings did not represent an efficient use of public resources. The waiting time of 4 to 6 months was typical for most OT providers due to the demand for services. A meeting was held with the OT provider in place in the summer term to discuss the concerns regarding the missed sessions and plan the child's future provision. The occupational therapist was committed to resolving the concerns and offered additional sessions to catch up during the school holidays but this was refused by the family which would help make up lost provision.

Nottinghamshire is now part for the D2N2 (Derbyshire County Council, Nottinghamshire County Council, Derby City Council, and Nottingham City Council) framework and from the 1<sup>st</sup> of April 2024 all requests for OT provision will be processed using regional approved providers. It is expected that this will facilitate a more cohesive and efficient delivery of therapeutic assessments and provision

### **Other Options Considered**

8. The other option considered was not bringing regular reports to the Committee detailing the decisions made by the Local Government and Social Care Ombudsman. This option was rejected as by not having oversight of this report the Committee would not receive



assurances that the learnings from Ombudsman cases were leading to improvements in services.

### **Reasons for Recommendation/s**

9. To enable members to scrutinise complaints dealt with by the Council that went to the Ombudsman and to inform them of the service improvements being made for the benefit of residents as well as colleagues.

### **Statutory and Policy Implications**

10. 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**

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

### **Financial Implications**

12. The details of any financial payments are set out in Appendix A. £3,800 will come from Childrens & Families Department budgetary provision.

### **Implications for Service Users**

13. 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**

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

**Marjorie Toward**

**Monitoring Officer and Service Director – Customers, Governance and Employees**

**For any enquiries about this report please contact:**

Richard Elston Team Manager – Complaints and Information Team

### **Constitutional Comments (HD (Standing))**

14. 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 27/03/2024)**

15. The financial implications are set out in paragraph 13 of the report.

16. The details of the financial payments are set out in Appendix A.

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

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

- None

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

- All

## APPENDIX A

### DECISIONS NOT TO INVESTIGATE FURTHER

DATE	LGO REF	PROCEDURE	COMPLAINT SUMMARY	REASON FOR DECISION
13.02.24	23014383	Corporate	Mrs X, complains the Council has not properly assessed her reports of noise nuisance. In particular she complains the Council has not assessed her reports from inside her home	The Ombudsman will not investigate this complaint because the Council will carry out an assessment of the noise from inside the property
15.02.24	23017957	Corporate	Mr B complains his car was damaged after hitting a pothole which the Council had failed to repair. Mr B says the Council has wrongly refused his compensation claim and has failed to show it undertook adequate inspections of this section of road before the incident	The Ombudsman will not investigate Mr B's complaint that his car was damaged after hitting a pothole which the Council had failed to repair. This is because it is reasonable for Mr B to pursue his compensation claim by taking the Council to court
26.01.24	23016374	Corporate	Miss X complains the Council has failed to accept liability for the cost of repairs to her car caused by the pothole on a Council road	The Ombudsman will not investigate as it is reasonable to expect Miss X to go to court to determine any Council liability
08.02.24	23015233	Corporate	Miss X complained about discrepancies in her late father's (Mr Y's) finances, including payments she believes were wrongly made to his care home. She also complained about a lack of any contract between the home and Mr Y, nor with his family about top-up fees.	The Ombudsman decided not to investigate as there is not good reason for the delay in taking the matter to them earlier.
07.02.24	23014986	Corporate	A Sexual Assault and Referral Centre (SARC) complained the Council did not alert the Police when a domestic abuse survivor (Mx Y) missed their pre-arranged appointments with a Social Worker. They said that social work staff need to be alert to risks for domestic abuse survivors	The Ombudsman cannot investigate complaints made by public bodies

05.02.24	23014658	Corporate	Mr X complains the Council has failed to carry out improvements to a designated cycle path. He says the path is too narrow and dangerous for cyclists and he feels discriminated against.	The Ombudsman will not investigate Mr X's complaint because there is no requirement for the Council to widen or otherwise improve the path and if Mr X believes the Council has failed to properly maintain it, it would be reasonable for him to apply to the court for an Order requiring it to carry out repairs
12.03.24	23016689	Adults	The complainant (Mr X) complains about alleged criminal acts by the Council in respect of the care and safeguarding of his mother (Mrs K). In addition, Mr X's complaint concerns events in 2020 when Mrs K was moved into a care home at the beginning of the Covid-19 pandemic. He alleges the Council coerced Mrs K into a care home and failed to follow relevant policies at that time. He also complains in respect of a safeguarding inquiry in 2023 in respect of plans by Mrs K's family to move her out of her care home.	The Ombudsman will not investigate this complaint because they are not the appropriate body to consider matters relating to criminal acts or acts of negligence. Further, part of the complaint is late and we are unlikely to find fault in relation to safeguarding.
08.02.24	23014231	Adults	Mr X complains about how the Council's Local Authority Designated Officer (LADO) dealt with concerns raised about him	The Ombudsman will not investigate Mr X's complaint because the complaint is made late and I see no good reason to exercise discretion and consider it now.

**THERE WERE NO FULL INVESTIGATIONS WHERE NO FAULT FOUND**

**FULL INVESTIGATIONS WHERE FAULT FOUND**

DATE	LGO REF	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY	STATUS OF AGREED ACTION
26.02.24	23011077	Corporate	Mrs X complained the Council failed to properly assess her child's Education, Health, and Care needs within statutory timescales. There were delays which caused avoidable distress for Mrs X and her child.	Fault found in how the Council should have completed its assessment and decided whether to issue an EHC Plan within 16 weeks. 37 weeks after Mrs X asked for an EHC assessment, this was still not complete whereas legislation states it should be within 16 weeks	The Council agreed to pay a financial remedy to Mrs X and also provide an update to the Ombudsman about the progress it has made in clearing its backlog for Education, Health, and Care needs assessments.	£600	Payment made and action will be completed as there is a department action plan and update will be sent
07.02.24	23008744	Corporate	Mr X complained the Council failed to complete his daughter's education, health and care needs assessment within the statutory deadline	Fault found as service failure due to not being able to have the assessment completed by an EP causing delays of EHCP to be completed	The Council to apologise and pay Mr X £100 for each month from the 16-week deadline (30 August 2023) up to the point it issues an appealable decision, for example a decision to refuse to issue an EHC plan; and	£700	Completed the EHCP and financial remedy for the delays

					if the Council decides to issue an EHC plan, the remedy of £100 per month should continue from the 20-week deadline until a final plan is issued		
22.02.24	23013775	Corporate	Ms X complains about the Council's delay in carrying out an annual review and reassessment of her child's Education Health and Care Plan causing distress and uncertainty	Fault as there is service failure in not completing the reassessment within the required timescales. The shortage of EPs is the reason	To provide a financial remedy to recognise the distress for the delays in the EHC reassessment Ms X asked for	£350	Action completed
22.02.24		Corporate	Ms X complains about the Council's delay in carrying out an annual review and reassessment of her child's Education Health and Care Plan causing distress and uncertainty	Fault as there is service failure in not completing the reassessment within the required timescales. The shortage of EPs is the reason	To provide a financial remedy to recognise the distress for the delays in the EHC reassessment Ms X asked for	£350 (same case as above just different child)	Action completed
22.02.24	23010519	Corporate	Miss X complained the Council failed to carry out an Education, Health and Care needs assessment and to issue an Education, Health	Fault found as service failure due to not being able to have the assessment completed by an EP causing	Ombudsman recognises the increase in demand for EHCPs and fact staff are completing more plans with same resource however due to service failure to recognise the	£575	Action completed

			and Care Plan for her son, Y, in line with statutory timescales	delays of EHCP to be completed	distress, a financial remedy to be paid		
28.02.24	23011093	Corporate	Mrs X complained the Council delayed completing her child Y's Education, Health and Care (EHC) needs assessment and issuing Y's final EHC Plan	The Council was at fault as Y's plan was issued after 33 weeks, which is 13 weeks longer than the statutory timescales allow for.	the Council has agreed to apologise and pay Mrs X £325 to acknowledge the frustration and uncertainty she experienced due to the delay in completing Y's EHC Plan	£325	Action completed
08.03.24	23009620	Corporate	Ms complains that the Council failed to ensure her son received his occupational therapy sessions following a previous Ombudsman investigation which completed in February 2023; and failed to communicate with her effectively. Ms B says her son has also missed out on occupational therapy sessions	Fault found as the Council failed to ensure Ms B's son received all his occupational therapy sessions and delayed responding to some of her correspondence	An apology, payment to Ms B and a meeting to discuss the issues is satisfactory remedy	£900	Apology and payment completed, meeting will be arranged at mutually convenient date





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

Summary: Mrs X complained the Council failed to properly assess her child's Education, Health, and Care needs within statutory timescales. There were delays which caused avoidable distress for Mrs X and her child. The Council agreed to pay a financial remedy to Mrs X. It will also provide an update to the Ombudsman about the progress it has made in clearing its backlog for Education, Health, and Care needs assessments.

---

## **The complaint**

1. Mrs X complains the Council failed to properly assess her child D's Education, Health, and Care (EHC) needs within statutory timescales, after it agreed to carry out a needs assessment in April 2023. She also says the Council's response to her complaint about this was unclear and provided no timescales for when it would resolve the issues.
2. Because of this Mrs X says D missed Special Educational Needs (SEN) support during the delays and then was issued with a final EHC Plan that was unsuitable. Mrs X also says this caused distress, frustration, and time and trouble for her. She wants the Council to:
  - improve its services to ensure it carries out quality EHC needs assessments within statutory timescales; and
  - improve how it communicates with families of children with SEN.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. We cannot investigate a complaint if someone has appealed to a tribunal about the same matter. We also cannot investigate a complaint if in doing so we would overlap with the role of a tribunal to decide something which has been or could have been referred to it to resolve using its own powers. (Local Government Act 1974, section 26(6)(a), as amended)

- 
5. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (Local Government Act 1974, sections 26(1), as amended)
  6. The Ombudsman's view, based on caselaw, is that 'service failure' is an objective, factual question about what happened. A finding of service failure does not imply blame, intent or bad faith on the part of the council involved. There may be circumstances where we conclude service failure has occurred and caused an injustice to the complainant despite the best efforts of the council. This still amounts to fault. We may recommend a remedy for the injustice caused and/or that the council makes service improvements. (R (on the application of ER) v CLA (LGO) [2014] EWCA civ 1407)
  7. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

## **How I considered this complaint**

8. I considered:
  - information provided by Mrs X and her written response to my queries;
  - documentation from the Council;
  - relevant law and guidance; and
  - the Ombudsman's [Guidance on Jurisdiction](#) and [Guidance on Remedies](#).
9. Mrs X and the Council had opportunity to comment on my draft decision. I considered any comments received before making a final decision.
10. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

## **What I found**

### **What should have happened**

#### **Education, Health, and Care assessments and plans**

11. A child or young person with special educational needs (SEN) may have an Education, Health, and Care (EHC) Plan. This sets out the child's needs and what arrangements should be made to meet them.
12. Statutory guidance 'Special educational needs and disability code of practice: 0 to 25 years' ('the Code') sets out the process for carrying out EHC assessments and producing EHC Plans. The guidance is based on the Children and Families Act 2014 and the SEN Regulations 2014. It says the following.
  - Where the Council receives a request for an EHC needs assessment it must decide whether to agree to the assessment and send its decision to the family within six weeks.
  - The process of assessing needs and developing EHC Plans "must be carried out in a timely manner". Steps must be completed as soon as practicable.

- 
- If the Council goes on to carry out an assessment, it must decide whether to issue an EHC Plan or refuse to issue a Plan within 16 weeks of the request for assessment.
  - If the Council goes on to issue an EHC Plan, the whole process from the point when an assessment is requested until the final EHC Plan is issued must take no more than 20 weeks.
13. As part of the assessment councils must gather advice from relevant professionals (SEND Regulation 6(1)). This includes advice and information from an Educational Psychologist (EP), and other professionals specified in the Regulations. Those consulted have a maximum of six weeks to provide the advice.

### **Appeal rights**

14. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
15. There is a right of appeal to the SEND Tribunal about a final EHC Plan, against the description of the child's SEN, the SEN provision specified, or the school or placement specified. The right of appeal only arises when the Council issues the final plan.
16. The courts have established that if someone has appealed to the SEND Tribunal, the law says we cannot investigate any matter which was part of, was connected to, or could have been part of, the appeal to the tribunal. (R (on application of Milburn) v Local Government and Social Care Ombudsman [2023] EWCA Civ 207)
17. Therefore, if a family appeals to the Tribunal about the SEN provision or school placement in a final EHC Plan, we cannot investigate the EHC assessment process that led to that final plan because that is connected to the issue that has been appealed. We can, however, look at matters that do not have a right of appeal, are not connected to an appeal, or are not a consequence of an appeal. This includes delays in the assessment process before an appeal right started.

### **What happened**

18. Mrs X asked the Council to carry out an EHC needs assessment for D in March 2023. Seven weeks later, the Council told her it had agreed to carry out an assessment.
19. In June 2023, the Council wrote to Mrs X to explain the assessment would be delayed because of a lack of available Educational Psychologists (EPs) to carry out an assessment. The Council estimated an EP assessment would take place in late-November 2023. In response to this Mrs X made a complaint about the lack of EPs, and the delays in D's assessment.
20. The Council responded to Mrs X's complaint at Stage 1 of its complaints process in July 2023, then at Stage 2 in August 2023. In response to her complaint, the Council accepted it had not met statutory timescales in assessing D and apologised for the distress caused. It said it expected to assign an EP to assess D in early-November. It said after this, if it decided D needed an EHC Plan, it planned to finalise this within six weeks of the EP assessment. It also explained the following steps it was taking to address the shortage of EPs.
- Securing extra funding for recruitment to help reduce the backlog, improve communication, and meet statutory timescales.

- Asking part time EPs employed by the Council if they can provide more capacity.
  - Advertising to encourage external EP organisations and private EPs to join the Council's private EP list, and privately commissioning EPs from agencies.
  - Advertising to recruit more permanent EPs for the longer term.
21. In October 2023, Mrs X brought her complaint to the Ombudsman.
  22. In November 2023, the Council assigned an EP to assess D. The EP sent their assessment report to the Council three weeks later.
  23. In December 2023, the Council issued a draft EHC Plan for D. Mrs X did not agree with the content of the plan, but asked the Council to finalise it so she could appeal to the SEND Tribunal. The Council issued a final plan in January 2024, ten months after Mrs X asked for the assessment. Mrs X told us she had appealed to the Tribunal about the SEN provision and the school placement in the plan.

## My findings

### Parts of the complaint I have not investigated

24. Mrs X said the Council did not carry out D's EHC assessment properly and did not seek enough advice. As explained at paragraph 17, I cannot investigate how the Council carried out the assessment and sought advice from professionals. This is connected to the SEN provision and school placement the Council decided to put in the final EHC Plan, which Mrs X has appealed. Any injustice Mrs X or D may have experienced due to the assessment not being carried out properly is the same as the injustice which Mrs X seeks to remedy via the Tribunal process.

### EHC needs assessment delay

25. We expect councils to follow statutory timescales set out in the Regulations and Code. We are likely to find fault where there are significant breaches of those timescales.
26. The Council should have completed its assessment and decided whether to issue an EHC Plan within 16 weeks. However, 37 weeks after Mrs X asked for an assessment, this was still not complete, as the Council had not yet received advice from an EP.
27. EHC Plan assessments **must** include advice from an EP. The EP should provide this within six weeks of the Council requesting it. The EP's advice was 24 weeks late. The Council is responsible for commissioning and acting on the EP advice and information. The delay in receiving the advice was due to a nationwide shortage of EPs. The Ombudsman can make findings of fault where there is a failure to provide a service, regardless of the reasons for that service failure. While I accept there are justifiable reasons the EP advice took longer than it should have, the delay was nonetheless fault.
28. After the Council received the EP advice, it issued D's final EHC Plan just over six weeks later. In total, the Council took 44 weeks to assess D and issue their final EHC Plan, instead of the 20 weeks set out in the Regulations and Code. This was a delay of 24 weeks, or nearly 6 months, which was fault. This also frustrated Mrs X's right to appeal to the SEND Tribunal about the content of the plan because she could not do so until the Council issued a final plan.
29. In response to a previous Ombudsman investigation ([22003903](#)), in April 2023 the Council provided us with evidence of the actions it was taking to increase EP capacity and reduce waiting times for EHC assessments. I am satisfied the

---

Council continued to make further efforts to address this, as set out in its July 2023 complaint response to Mrs X, described at paragraph 20. I therefore have not made further recommendations for actions the Council should take, other than to update us on the assessment backlog.

30. Although the Council accepted fault, it did not offer any remedy for the injustice caused to Mrs X and D by the delay. I cannot say whether the delay before the EP gave their advice in November 2023 meant D lost out on SEN provision. This is because EP advice forms a key source of information for the Council to decide what provision to include in a child's EHC Plan. The EP advice reflected D's needs as they were in November 2023, not necessarily as they would have been in June 2023 if there was no delay. I therefore cannot say what the EP advice would have been or what the Council would have taken from that advice for inclusion in D's EHC plan, if there had been no delay. However, I consider the delay caused distress, frustration, and uncertainty to Mrs X and D. The Council should remedy this injustice.

### **Complaint response**

31. Mrs X said the Council's response to her complaint about this was unclear and provided no timescales for when it would resolve the issues. When the Council first told Mrs X about the EP delays, it did not provide a timescale. However, after she queried this the Council responded a week later to provide an estimate.
32. My view is the Council responded to Mrs X's complaint in good time, fully explained the reasons for the delay, and the steps it was taking to address it. The Council was clear about the estimated timescales for D's assessment and met these timescales. I have not found fault with how the Council responded to the complaint.

### **Agreed action**

33. Within one month of our final decision the Council will pay Mrs X £600 to recognise the distress, frustration and uncertainty caused to her and D by the Council's failure to meet statutory timescales. This is calculated at roughly £100 for each month of delay.
34. Within three months of our final decision the Council will provide an update to the Ombudsman about the progress it has made in clearing its backlog for EHC needs assessments. This will include a copy of its latest updated action plan to increase EP capacity and reduce waiting times for EHC assessments.
35. The Council will provide us with evidence it has complied with the above actions.

### **Final decision**

36. I have completed my investigation. There was fault by the Council which caused avoidable distress for D and Mrs X. The Council agreed to pay a financial remedy to Mrs X. It will also provide an update to the Ombudsman about the progress it has made in clearing its backlog for EHC needs assessments.

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



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

Summary: Mr X complained the Council failed to complete his daughter's education, health and care needs assessment within the statutory deadline. We find the Council was at fault. This caused Mr X and his daughter uncertainty and distress. To address the injustice caused by fault the Council has agreed to make a symbolic payment. The Council is already carrying out service improvements to address the shortage of staff and backlog of cases.

---

## **The complaint**

1. The complainant, Mr X, complains the Council has failed to complete his daughter's education, health and care needs assessment within the statutory deadline.
2. Mr X said this has had a significant impact on him and his daughter's education.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

## **How I considered this complaint**

6. I considered all the information provided by Mr X and the Council.
7. Mr X and the Council had an opportunity to comment on my draft decision. I considered their comments before making a final decision.



---

## What I found

8. The Act and Regulations set out the way councils should assess the special educational needs and disabilities of children and young people. The Code provides guidance to councils about how to do this.
9. Councils must decide whether to carry out an EHC needs assessment within six weeks of receiving a parent request. Regulation 6 sets out what professional advice a Council must seek. Educational Psychology (EP) advice is a mandatory part of the assessment process.
10. Professionals should provide their advice within six weeks of a request from the Council to do so. Once the Council has received all relevant advice it must decide whether an EHC plan is required. If so, it must issue a final plan within twenty weeks of receiving the request to assess.
11. At the stage when a council refuses to issue an EHC plan, or when it issues a final EHC plan, parents and the young person have a right to appeal to the SEND Tribunal, if they disagree with the council's decision. They have two months to lodge an appeal.

## Summary of the key events

12. Mr X requested a needs assessment for his daughter, B, on 10 May 2023. The Council responded on 15 June 2023. It agreed to undertake an EHC assessment. But it said there would be delays due to a shortage of educational psychologists (EP).
13. Mr X complained to the Council in August 2023 about the delays in the process. In response the Council apologised for the delay. It said B was on the EP waiting list which remained approximately nine months. The Council advised Mr X to contact the schools special educational needs co-ordinator (SENCO) who would be able to explain the additional support B could receive.
14. The Council also said the EP service had taken the following steps to reduce the length of the wait:
  - asking EP's currently employed on part-time contracts if they could provide additional capacity, as private EP's [the EP service currently have five offering additional time as associates];
  - advertising to encourage organisations and private psychologists to join the associate EP list. They need to go through the quality assurance processes;
  - commissioning agency EP capacity, as private EP's [the EP service currently have 20 agency EP's and are working continually to secure more to reduce waiting time further];
  - advertising to recruit additional EP capacity, to assist with a longer-term plan of ensuring the Council can meet statutory deadlines; and
  - the EP service is also looking at creative ways to provide EP advice in a more efficient way.
15. Mr X was unhappy with the Council's response. He said the Council had incorrectly advised him to speak with the school SENCO as he said B was electively home educated. He also said he had paid for a service to provide him with support on the process.
16. The Council responded and:



- apologised for incorrectly advising him to speak with the school SENCO. It said its records confirm B was electively home educated;
- explained there was a national shortage of EP's;
- directed Mr X to free services he could contact for support. This included the Council's local offer.

### **Analysis- was there fault by the Council causing injustice?**

17. There is service failure due to the Council's inability to commission an EP. The LGSCO is aware of the problems arising from a national shortage of EPs, which in turn has created delay in the completion of B's assessment. In response to my enquiries the Council said B's assessment is predicted to be started within two months from the 5 December 2023.
18. As there is fault in this case, we have to consider the injustice caused to Mr X and B and provide a remedy. As the needs assessment has not yet been completed we do not know what, if any, needs will be met in a plan and so cannot provide a remedy for lost provision. However, Mr X and B have experienced uncertainty and distress, and this is ongoing.
19. In line with the LGSCO's remedies guidance, we recommend the Council should pay £100 for each month outside the statutory timescales. This payment is ongoing until Mr X receives a right of appeal.
20. I acknowledge the proactive steps the Council is taking to try and resolve the lack of EP's. Some of these are detailed in paragraph 14. The Council said further EP's have recently been appointed who are undergoing training. Further recruitment is planned for April 2024.
21. I understand Mr X contacted a paid service for help regarding the delays. But we could not ask the Council to reimburse these costs. This is because there is free support available.
22. Mr X told us the Council incorrectly told him to contact the school SENCO. He said he found this distressing and insulting. The Council has recognised this error and apologised. I consider this to be an appropriate remedy.

### **Agreed action**

23. To remedy the injustice caused by fault, within one month of my final decision, the Council has agreed to:
  - apologise and pay Mr X £100 for each month from the 16-week deadline (30 August 2023) up to the point it issues an appealable decision, for example a decision to refuse to issue an EHC plan; and
  - if the Council decides to issue an EHC plan, the remedy of £100 per month should continue from the 20-week deadline until a final plan is issued.
24. The Council should provide us with evidence it has complied with the above actions.

### **Final decision**

25. I have completed my investigation with a finding of fault causing injustice for the reasons explained in this statement. The above agreed actions provide a suitable remedy for the injustice caused by fault.

---

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

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

Summary: Ms X complains about the Council's delay in carrying out an annual review and reassessment of her child's Education Health and Care Plan causing distress and uncertainty. We found there was service failure by the Council due to the delay in carrying out the Education Health and Care Plan reassessment. We have recommended a suitable remedy in this case and so have completed out investigation.

---

## **The complaint**

1. I have called the complainant Ms X. She complains there were failings in the way the Council dealt with the annual review of her son's (whom I shall refer to as Z) Education, Health and Care Plan (EHC Plan) in December 2022. In particular Ms X says the Council:
  - Failed to complete the annual review within the required timescales so she had to raise concerns with the Council that Z's school placement was at risk as he was not getting the support needed.
  - Failed to provide her with a copy of the professionals reports before issuing the draft EHC Plan so she could comment on the document.
  - Failed to hold a review meeting with NHS professionals involved in Z's health care needs before issuing the EHC Plan.
  - Has removed how some provision listed in Z's previous EHC Plan will be specifically provided in the new EHC Plan issued in August 2023.
2. Ms X says the Council's actions have caused distress and uncertainty to her and Z.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need

---

to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (Local Government Act 1974, sections 26(1), as amended)

5. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
6. 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)
7. We cannot investigate complaints about what happens in schools. (Local Government Act 1974, Schedule 5, paragraph 5(b), as amended)
8. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal about the same matter. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (Local Government Act 1974, section 26(6)(a), as amended)
9. We cannot investigate a complaint if someone has appealed to a tribunal. (Local Government Act 1974, section 26(6)(a), as amended)
10. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
11. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

### **What I have and have not investigated**

12. I have investigated Ms X's concerns from December 2022 onwards about the Council's delay in carrying out the annual review and reassessment and a failure to provide reports. I have not investigated any concerns Ms X may have about issues before the annual review planned for December 2022. This is because any complaints about matters before then are late as it was open to Ms X to have complained to us about them before now.
13. I have not investigated Ms X's concerns about the failure to hold an NHS review meeting and contents of the EHC Plan issued in August 2023. This is because once the Council issued the final EHC Plan in August 2023 Ms X could have appealed to the SEND Tribunal if she disagreed with the contents, provision, and placement in the EHC Plan. I consider it reasonable to expect Ms X to use her right of appeal because only the SEND Tribunal can instruct the Council to make changes to the EHC Plan. Any concerns Ms X may have about the input of the NHS professionals goes to the contents of the EHC Plan which can be considered as part of an appeal to the SEND tribunal.

### **How I considered this complaint**

14. I spoke to Ms X and considered the information she provided with her complaint. I made enquiries with the Council and considered its response along with relevant law and guidance.
15. Ms X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

Page 28 of 98

- 
16. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

## **What I found**

### **Law and guidance**

#### **Education, Health and Care Plans**

17. A child with special educational needs may have an Education, Health and Care (EHC) Plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections. We cannot direct changes to the sections about education or name a different school. Only the SEND Tribunal can do this.
18. Parents have a right to appeal to the SEND Tribunal if a council refuses to carry out an assessment, or they disagree with the special education provision, or the school named in the child's EHC Plan. Parents also have the right of appeal following an annual review on decisions to amend or cease a plan.
19. The Council is responsible for making sure that arrangements specified in the EHC Plan are put in place. We can look at complaints about this, such as where support set out in the EHC Plan has not been provided, or where there have been delays in the process.

#### **Due Diligence**

20. The Ombudsman does recognise it is not practical for councils to keep a 'watching brief' on whether schools are providing all the special educational provision for every pupil with an EHC Plan. The Ombudsman does consider that councils should be able to demonstrate due diligence in discharging this important legal duty and as a minimum have systems in place to:
- check the special educational provision is in place when a new or substantially different EHC Plan is issued or there is a change in placement;
  - check the provision at least annually via the review process; and
  - investigate complaints or concerns that provision is not in place at any time.

#### **Arrangements for reviewing an EHC Plan**

21. Councils must review EHC Plan's at least every 12 months. A council can delegate responsibility to a school to arrange the annual review.
22. Councils must decide whether to maintain the EHC Plan in its current form, amend it, or cease to maintain it within four weeks of the review meeting. The Council should issue the final EHC Plan or decide not to amend the EHC Plan at all as soon as practicable and within eight weeks of the date it sent the plan to the parents/young person with the proposed amendments. Decisions to amend or cease a plan can be appealed to the SEND Tribunal.

#### **Reassessment of EHC Plans**

23. The council must decide whether to conduct a reassessment of a child or young person's EHC Plan if this is requested by the child's parent, the young person or their educational placement. The council may also decide to complete a reassessment if it thinks one is necessary.
24. The council can refuse a request for a reassessment if less than six months have passed since a previous EHC needs assessment. It can also refuse a request if it

---

does not think it is necessary, for example because it does not feel a child or young person's needs have changed significantly.

25. The council must tell the child's parent or the young person whether it will complete an EHC needs reassessment within 15 calendar days of receiving the request. If the decision is not to reassess, the council must also provide information about the right to appeal that decision to the tribunal.
26. If the council agrees to an EHC needs reassessment, it has 14 weeks to issue the final EHC Plan from the date it agreed to reassess to the date it issues the final amended EHC Plan.

### **Events leading to the complaint**

27. What follows is a brief chronology of key events. It does not contain all the information I reviewed during my investigation.

### **Background information**

28. Z has a diagnosis with Autistic Spectrum Disorder and has impaired communication, sensory and mobility issues. Z has an EHC Plan issued in 2016. In 2021 Ms X appealed to the SEND Tribunal following an annual review in 2020. The Council agreed for Z to attend an independent specialist school (school) from September 2021.

### **Annual Review December 2022**

29. Z's annual review was due to be held in December 2022, but Ms X asked for a reassessment of Z's needs. The Council agreed to the reassessment and started a new EHC needs assessment process. The Council held an Education Placement Review in December instead of the annual review meeting due to the decision to reassess Z. The Council accepts there was a delay in completing the reassessment because of a lack of education psychologists (EP) to carry out the assessment.
30. The Council and school carry out education meetings each term. At the meeting in March 2023 the school raised concerns about Z because of significant behavioural changes due to a health matter and lack of school progress. The school said it had already decided to arrange for extra support through an EP to help Z and the school team. The Council says the school were aware of Z's needs, continually updated his risk assessment and made immediate changes to ensure he was safe and so were others around him.
31. A Council EP completed a report on Z on 25 April 2023 and advised Z needed 1:1 support unless receiving video interaction provision when 2:1 support was required. The Council completed the reassessment and issued a draft EHC Plan for Z in May 2023.
32. Ms X raised concerns Z's school placement may break down as she felt he needed more support. Ms X considered removing Z from the school. But decided to keep him at the placement and asked for extra staff for support to Z.
33. The Council and school held a meeting in June 2023 to discuss Z's placement and support which Ms X was unable to attend. The school agreed to put forward information and costings for the Council to consider. The Council says it had no evidence then that Z needed 2:1 support other than when receiving the video interaction.
34. The Council held an annual review meeting with Ms Y in July 2023 to discuss Z's needs and it issued the final EHC Plan on 15 August 2023 with Z to remain at the school. The Council says it remained in frequent contact with the school during

---

the summer break requesting outstanding information and clarifying his support needs.

35. In October 2023 following discussions with the school, EP, and health professionals the Council agreed to provide 2:1 funding at all times in Z's placement.

### **The Council's response to Ms X's complaints**

#### **Delay in carrying out the annual review**

36. Ms X complained to the Council about the delay in carrying out the annual review. The Council explained the annual review had not gone ahead because Ms X asked for a reassessment as she considered Z's EHC needs required updating. The Council agreed to the reassessment. This superseded the annual review process and is why it did not go ahead. The Council apologised to Ms X if it had not fully explained to her the reason for the annual review not continuing although it was aware she had spoken to officers about it.
37. Although the annual review did not go ahead the Council advises it has taken action to improve its annual review processes and to the EHC Assessment Pre-16 service. This has resulted in increased management capacity and extra EHC Coordinators. And so, the Council has reduced caseloads and all cases, including those considered complex, are being more effectively managed. The extra staffing also includes officers who are working specifically on annual reviews and who have responsibility for amending/writing EHC Plans following annual reviews. The Council says this has reduced the backlog of outstanding reviews and it is dealing with annual reviews within the statutory processes. It says the increased staffing is leading to service improvement with EHC Coordinators proactively involved in the annual review process.

#### **My assessment**

38. The Council has apologised to Ms X if she considered it had not fully explained to her it was carrying out the reassessment of Z's EHC needs rather than hold an annual review. I consider the apology is suitable action for the Council to take as it was acting on Ms X's requests for a reassessment of the EHC needs which was the outcome she was seeking.

#### **Failure to provide reports**

39. Ms X said the Council had failed to make the reassessment reports and information available to her and her case worker via the Council's digital hub. So, they could not comment on the draft EHC Plan.
40. The Council confirmed that following Ms X's complaint it investigated whether there was any missing information on the hub. The Council advised Ms X it did not have some medical reports on Z and asked Ms X if there were any reports to be included. Ms X asked for a copy of the reports the Council had available. The Council accepted a slight delay in sending the reports from Z's doctor, the EP, SALT, and OT reports to Ms X. Ms X was then able to attend an annual review meeting in July 2022 to go through the information she considered was missing from the reassessment before the Council finalised the plan.

#### **My assessment**

41. It is unclear whether the reports were available to Ms X to see via the hub. But documents show the Council investigated Ms X's concerns, asked about medical report and posted some reports out to her. So, Ms X has been able to see the documents and comment on them before the Council finalised the EHC Plan. I



---

appreciate this will have added to Ms X's frustration over not being access the information sooner in the process and the time taken to complete the reassessment. I refer to the frustration caused to Ms X about accessing documents further in the statement.

#### **Failure to meet the reassessment timescales**

42. Ms X said the Council failed to meet the statutory guidelines set out in the Code for the EHC Plan review which should take no more than 20 weeks. Ms X said this put Z's placement at risk. The Council responded to Ms X's complaints. It said the reassessment needed to follow the same process as Z's first EHC needs assessment. And it needed to draw up of the EHC Plan within the same timescales and rights of appeal. It had agreed to do a full EHC reassessment at the annual review. So, it started this process rather than the annual review.
43. The Council accepts that once it agreed to a reassessment should have been done within 14 weeks according to statutory timescales for reassessments. The Council apologised to Ms X for any distress caused.
44. The Council confirmed the delay had been caused by a lack of educational psychologists. There is a national shortage of EPs, and the Council has seen a significant increase in number of EHC assessments commissioned in its area. The Council confirms it is aiming to recruit more EPs as a priority and expand its EP service. It also looked at ways to complete the EP assessments more efficiently. This includes using agency EPs to reduce the waiting list for EP assessments and implementing a new efficient EP assessment and report writing process.
45. The Council confirmed it held termly placement meetings with the school to discuss Z's placement. So, it was aware of concerns raised about Z's behavioural changes and lack of school progress. The Council noted the school was arranging extra support for Z. And drawing up costings to support the placement and Z's needs for the Council to consider.

#### **My assessment**

46. As the Council has accepted and the documents show there were delays to the EHC reassessment agreed at the meeting in December 2022. The Council should have issued final EHC Plan by the end of March 2023 being 14 weeks after it agreed to do reassessment. However, it took the Council until August 2023 to issue the final EHC Plan. This was 40 weeks in total so longer than the guidance recommends.
47. The Council explained the delay was due to a lack of EP's when carrying out EHC Plan needs reassessments. It is unfortunate this reason affected the Council's ability to carry out its duties which I consider amount to service failure. The Council has apologised to Ms X for the delays caused by this service failure. This is suitable action for it to take.
48. We would normally make service improvement recommendations to the Council about its EHC Plan process. However, the Council has already taken such action and following plans drawn up to ensure it improves its service in this area. This is appropriate action for it to take.
49. But the delay in carrying out the reassessment has caused an injustice to Ms X and Z. This is through distress and uncertainty over the outcome of the reassessment. And the frustration in not being able to access documents in a timely way. So, I recommend the Council should provide a remedy to Ms X and Z



---

by making Ms X a payment of £350 to recognise the distress, uncertainty and frustration caused during the delay.

50. The evidence shows the Council was aware of Ms X's concerns about Z's placement and she considered it was at risk. The Council discussed the concerns with the school who arranged additional support. So, I am satisfied the Council responded to Ms X's concerns as we would expect it do and demonstrated due diligence about Z's placement. The Council agreed to consider costings for additional support. The Council's decision on the level of support Z needs is part of the EHC Plan issued in August 2023. It was therefore open to Ms X to appeal to the SEND Tribunal if she disagreed with the level of support being provided. However, the Council agreed to fund 2:1 support for Z at all times from October 2023.

### **Agreed action**

51. To remedy the injustice caused by the Council's delay in carrying out the EHC reassessment the Council will make a payment of £350 to Ms X within one month of my final decision. This is in recognition of the delay caused and distress and uncertainty over the outcome of the reassessment. It is also for Ms X's frustration in not being able to access documents in a timely way.
52. The Council should provide us with evidence it has complied with the above actions.

### **Final decision**

53. I have completed my investigation. I have found evidence of service failure by the Council and have recommended a suitable remedy for the injustice caused in this case.

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



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

Summary: Ms X complains about the Council's delay in carrying out an annual review and reassessment of her child's Education Health and Care Plan causing distress and uncertainty. We found there was service failure by the Council due to the delay in carrying out the Education Health and Care Plan reassessment. We have recommended a suitable remedy in this case and so have completed our investigation.

---

## **The complaint**

1. I have called the complainant Ms X. She complains there were failings in the way the Council dealt with the annual review of her son's (whom I shall refer to as Y) Education, Health and Care Plan (EHC Plan) in December 2022. In particular Ms X says the Council:
  - Failed to complete the annual review within the required timescales so she had to raise concerns with the Council that Y's school placement was at risk as he was not getting the support needed.
  - Failed to provide her with a copy of the professionals reports before issuing the draft EHC Plan so she could comment on the document.
  - Failed to hold a review meeting with NHS professionals involved in Y's health care needs before issuing the EHC Plan.
  - Has removed how some provision listed in Y's previous EHC Plan will be specifically provided in the new EHC Plan issued in August 2023.
2. Ms X says the Council's actions have caused distress and uncertainty to her and Y.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need

---

to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (Local Government Act 1974, sections 26(1), as amended)

5. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
6. 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)
7. We cannot investigate complaints about what happens in schools. (Local Government Act 1974, Schedule 5, paragraph 5(b), as amended)
8. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal about the same matter. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (Local Government Act 1974, section 26(6)(a), as amended)
9. We cannot investigate a complaint if someone has appealed to a tribunal. (Local Government Act 1974, section 26(6)(a), as amended)
10. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
11. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

### **What I have and have not investigated**

12. I have investigated Ms X's concerns from December 2022 onwards about the Council's delay in carrying out the annual review and reassessment and a failure to provide reports. I have not investigated any concerns Ms X may have about issues before the annual review planned for December 2022. This is because any complaints about matters before then are late as it was open to Ms X to have complained to us about them before now.
13. I have not investigated Ms X's concerns about the failure to hold an NHS review meeting and contents of the EHC Plan issued in August 2023. This is because once the Council issued the final EHC Plan in August 2023 Ms X could have appealed to the SEND Tribunal if she disagreed with the contents, provision, and placement in the EHC Plan. I consider it reasonable to expect Ms X to use her right of appeal because only the SEND Tribunal can instruct the Council to make changes to the EHC Plan. Any concerns Ms X may have about the input of the NHS professionals goes to the contents of the EHC Plan which can be considered as part of an appeal to the SEND tribunal.

### **How I considered this complaint**

14. I spoke to Ms X and considered the information she provided with her complaint. I made enquiries with the Council and considered its response along with relevant law and guidance.
15. Ms X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

Page 36 of 98

- 
16. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

## **What I found**

### **Law and guidance**

#### **Education, Health and Care Plans**

17. A child with special educational needs may have an Education, Health and Care (EHC) Plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections. We cannot direct changes to the sections about education or name a different school. Only the SEND Tribunal can do this.
18. Parents have a right to appeal to the SEND Tribunal if a council refuses to carry out an assessment, or they disagree with the special education provision, or the school named in the child's EHC Plan. Parents also have the right of appeal following an annual review on decisions to amend or cease a plan.
19. The Council is responsible for making sure that arrangements specified in the EHC Plan are put in place. We can look at complaints about this, such as where support set out in the EHC Plan has not been provided, or where there have been delays in the process.

#### **Due Diligence**

20. The Ombudsman does recognise it is not practical for councils to keep a 'watching brief' on whether schools are providing all the special educational provision for every pupil with an EHC Plan. The Ombudsman does consider that councils should be able to demonstrate due diligence in discharging this important legal duty and as a minimum have systems in place to:
- check the special educational provision is in place when a new or substantially different EHC Plan is issued or there is a change in placement;
  - check the provision at least annually via the review process; and
  - investigate complaints or concerns that provision is not in place at any time.

#### **Arrangements for reviewing an EHC Plan**

21. Councils must review EHC Plan's at least every 12 months. A council can delegate responsibility to a school to arrange the annual review.
22. Councils must decide whether to maintain the EHC Plan in its current form, amend it, or cease to maintain it within four weeks of the review meeting. The Council should issue the final EHC Plan or decide not to amend the EHC Plan at all as soon as practicable and within eight weeks of the date it sent the plan to the parents/young person with the proposed amendments. Decisions to amend or cease a plan can be appealed to the SEND Tribunal.

#### **Reassessment of EHC Plans**

23. The council must decide whether to conduct a reassessment of a child or young person's EHC Plan if this is requested by the child's parent, the young person or their educational placement. The council may also decide to complete a reassessment if it thinks one is necessary.
24. The council can refuse a request for a reassessment if less than six months have passed since a previous EHC needs assessment. It can also refuse a request if it

---

does not think it is necessary, for example because it does not feel a child or young person's needs have changed significantly.

25. The council must tell the child's parent or the young person whether it will complete an EHC needs reassessment within 15 calendar days of receiving the request. If the decision is not to reassess, the council must also provide information about the right to appeal that decision to the tribunal.
26. If the council agrees to an EHC needs reassessment, it has 14 weeks to issue the final EHC Plan from the date it agreed to reassess to the date it issues the final amended EHC Plan.

### **Events leading to the complaint**

27. What follows is a brief chronology of key events. It does not contain all the information I reviewed during my investigation.

### **Background information**

28. Y has been diagnosed with severe Autistic Spectrum Disorder, a learning disability and ADHD. Y is pre-verbal with sensory, social communication and interaction issues and other medical conditions. Y has an EHC Plan issued in 2016. In 2021 Ms X appealed to the SEND Tribunal following an annual review in 2020. The Council agreed for Y to attend an independent specialist school (school) from September 2021.

### **Annual Review December 2022**

29. Y's annual review was due to be held in December 2022, but Ms X asked for a reassessment of Y's needs. The Council agreed to the reassessment and started a new EHC needs assessment process. The Council held an Education Placement Review in December instead of the annual review meeting due to the decision to reassess Y. The Council accepts there was a delay in completing the reassessment because of a lack of education psychologists (EP) to carry out the assessment.
30. The Council and school carry out education meetings each term. At the meeting in March 2023 the school raised concerns about Y because of his significant behavioural changes and lack of school progress. The school said it had already decided to arrange for extra support through an EP and OT to help Y and the school team.
31. A Council EP completed a report on Y on 25 April 2023 and advised Y needed 1:1 support unless receiving video interaction provision when 2:1 support was required. The Council completed the reassessment and issued a draft EHC Plan for Y in May 2023.
32. Ms X raised concerns Y's school placement may break down as she felt he needed more support. Ms X considered removing Y from the school. But decided to keep Y at the placement and asked for extra staff for him.
33. The Council and school held a meeting in June 2023 to discuss Y's placement and support which Ms X was unable to attend. The school agreed to put forward information and costings for the Council to consider. The Council says it had no evidence then that Y needed 2:1 support other than when receiving the video interaction.
34. The Council held an annual review meeting with Ms Y in July 2023 to discuss Y's needs and it issued Y's final EHC Plan on 15 August 2023 with Y to remain at the school.

- 
35. In October 2023 following discussions with the school, EP, and health professionals the Council agreed to provide 2:1 funding for targeted times in Y's placement.

### **The Council's response to Ms X's complaints**

#### **Delay in carrying out the annual review**

36. Ms X complained to the Council about the delay in carrying out the annual review. The Council explained the annual review had not gone ahead because Ms X asked for a reassessment as she considered Y's EHC needs required updating. The Council agreed to the reassessment. This superseded the annual review process and is why it did not go ahead. The Council apologised to Ms X if it had not fully explained to her the reason for the annual review not continuing although it was aware she had spoken to officers about it.
37. Although the annual review did not go ahead the Council advises it has taken action to improve its annual review processes and to the EHC Assessment Pre-16 service. This has resulted in increased management capacity and extra EHC Coordinators. And so, the Council has reduced caseloads and all cases, including those considered complex, are being more effectively managed. The extra staffing also includes officers who are working specifically on annual reviews and who have responsibility for amending/writing EHC Plans following annual reviews. The Council says this has reduced the backlog of outstanding reviews and it is dealing with annual reviews within the statutory processes. It says the increased staffing is leading to service improvement with EHC Coordinators proactively involved in the annual review process.

#### **My assessment**

38. The Council has apologised to Ms X if she considered it had not fully explained to her it was carrying out the reassessment of Y's EHC needs rather than hold an annual review. I consider the apology is suitable action for the Council to take as it was acting on Ms X's request for a reassessment of the EHC needs which was the outcome she was seeking.

#### **Failure to provide reports**

39. Ms X said the Council had failed to make the reassessment reports and information available to her and her case worker via the Council's digital hub. So, they could not comment on the draft EHC Plan.
40. The Council confirmed that following Ms X's complaint it investigated whether there was any missing information on the hub. It found it had not included an OT report from January 2023 in the EHC Plan and it was added to the amended EHC Plan. Ms X asked for a copy of the reports. The Council accepted a slight delay in sending the reports from Y's doctor, the EP, SALT, and OT reports to Ms X. Ms X was then able to attend an annual review meeting in July 2022 to go through the information she considered was missing from the reassessment before the Council finalised the plan.

#### **My assessment**

41. It is unclear whether the reports were available to Ms X to see via the hub. But documents show the Council investigated Ms X's concerns and posted the reports out to her. So, Ms X has been able to see the documents and comment on them before the Council finalised the EHC Plan. I appreciate this will have added to Ms X's frustration over not being access the information sooner in the process and the time taken to complete the reassessment. I refer to the frustration caused to Ms X about accessing documents further in the statement.



---

### **Failure to meet the reassessment timescales**

42. Ms X said the Council failed to meet the statutory guidelines set out in the Code for the EHC Plan review which should take no more than 20 weeks. Ms X said this put Y's placement at risk. The Council responded to Ms X's complaints. It said the reassessment needed to follow the same process as Y's first EHC needs assessment. And it needed to draw up of the EHC Plan within the same timescales and rights of appeal. It had agreed to do a full EHC reassessment at the annual review. So, it started this process rather than the annual review.
43. The Council accepts that once it agreed to a reassessment should have been done within 14 weeks according to statutory timescales for reassessments. The Council apologised to Ms X for any distress caused.
44. The Council confirmed the delay had been caused by a lack of educational psychologists. There is a national shortage of EPs, and the Council has seen a significant increase in number of EHC assessments commissioned in its area. The Council confirms it is aiming to recruit more EPs as a priority and expand its EP service. It also looked at ways to complete the EP assessments more efficiently. This includes using agency EPs to reduce the waiting list for EP assessments and implementing a new efficient EP assessment and report writing process.
45. The Council confirmed it held termly placement meetings with the school to discuss Y's placement. So, it was aware of concerns raised about Y's behavioural changes and lack of school progress. The Council noted the school was arranging extra support for Y. And drawing up costings to support the placement and Y's needs for the Council to consider.

### **My assessment**

46. As the Council has accepted and the documents show there were delays to the EHC reassessment agreed at the meeting in December 2022. The Council should have issued final EHC Plan by the end of March 2023 being 14 weeks after it agreed to do reassessment. However, it took the Council until August 2023 to issue the final EHC Plan. This was 40 weeks in total so longer than the guidance recommends.
47. The Council explained the delay was due to a lack of EP's when carrying out EHC Plan needs reassessments. It is unfortunate this reason affected the Council's ability to carry out its duties which I consider amount to service failure. The Council has apologised to Ms X for the delays caused by this service failure. This is suitable action for it to take.
48. We would normally make service improvement recommendations to the Council about its EHC Plan process. However, the Council has already taken such action and following plans drawn up to ensure it improves its service in this area. This is appropriate action for it to take.
49. But the delay in carrying out the reassessment has caused an injustice to Ms X and Y. This is through distress and uncertainty over the outcome of the reassessment. And the frustration in not being able to access documents in a timely way. So, I recommend the Council should provide a remedy to Ms X and Y by making Ms X a payment of £350 to recognise the distress, uncertainty and frustration caused during the delay.
50. The evidence shows the Council was aware of Ms X's concerns about Y's placement and she considered it was at risk. The Council discussed the concerns with the school who arranged additional support. So, I am satisfied the Council



---

responded to Ms X's concerns as we would expect it do and demonstrated due diligence about Y's placement. The Council agreed to consider costings for additional support. The Council's decision on the level of support Y needs is part of the EHC Plan issued in August 2023. It was therefore open to Ms X to appeal to the SEND Tribunal if she disagreed with the level of support being provided. However, the Council agreed to fund additional support for Y from October 2023.

### **Agreed action**

51. To remedy the injustice caused by the Council's delay in carrying out the EHC reassessment the Council will make a payment of £350 to Ms X within one month of my final decision. This is in recognition of the delay caused and distress and uncertainty over the outcome of the reassessment. It is also for Ms X's frustration in not being able to access documents in a timely way.
52. The Council should provide us with evidence it has complied with the above actions.

### **Final decision**

53. I have completed my investigation. I have found evidence of service failure by the Council and have recommended a suitable remedy for the injustice caused in this case.

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



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

Summary: Miss X complained the Council failed to carry out an Education, Health and Care needs assessment and to issue an Education, Health and Care Plan for her son, Y, in line with statutory timescales. The Council was at fault. It agreed to pay Miss X £575 to recognise the uncertainty and frustration caused to her.

---

## **The complaint**

1. Miss X complained the Council failed to carry out an Education, Health and Care needs assessment and to issue an Education, Health and Care Plan for her son, Y, in line with the timescales set out in the statutory guidance. Miss X said this caused her frustration and Y to miss out on the specialist provision he needs. Miss X wanted the Council to apologise, to issue an EHC Plan for Y and pay her compensation for the distress and time and trouble caused to her and Y.

## **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. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (Local Government Act 1974, sections 26(1), as amended)
3. There may be circumstances where we conclude service failure has occurred and caused an injustice to the complainant despite the best efforts of the council. This still amounts to fault. We may recommend a remedy for the injustice caused and/or that the council makes service improvements. (R (on the application of ER) v CLA (LGO) [2014] EWCA civ 1407)
4. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)
6. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

---

## How I considered this complaint

7. I read the documents provided by Miss X and discussed the complaint with her on the phone.
8. I considered the documents the Council sent in response to my enquiries.
9. Miss X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## What I found

### Relevant legislation and statutory guidance

10. A child or young person with special educational needs may have an Education, Health and Care (EHC) Plan. This document sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections. We cannot direct changes to the sections about their needs, education, or the name of the educational placement. Only the tribunal or the council can do this.
11. Statutory guidance 'Special educational needs and disability code of practice: 0 to 25 years' ('the Code') sets out the process for carrying out EHC assessments and producing EHC Plans. The guidance is based on the Children and Families Act 2014 and the SEN Regulations 2014. It says the following:
  - Where the council receives a request for an EHC needs assessment it must decide whether to agree to the assessment and send its decision to the parent of the child or the young person within six weeks;
  - The process of assessing needs and developing EHC Plans "must be carried out in a timely manner". Steps must be completed as soon as practicable;
  - If the council goes on to carry out an assessment, it must decide whether to issue an EHC Plan or refuse to issue a Plan within 16 weeks; and
  - If the council goes on to issue an EHC Plan, the whole process from the point when an assessment is requested until the final EHC Plan is issued must take no more than 20 weeks (unless certain specific circumstances apply).
12. As part of the assessment, councils must gather advice from relevant professionals (SEND Regulation 6(1)). This includes psychological advice and information from an Educational Psychologist (EP). Those consulted have a maximum of six weeks to provide the advice.

### What happened

13. Miss X's son has autism spectrum disorder which impacts all areas of his learning and development. Y was due to start school in September 2023.
14. Miss X asked the Council to complete an EHC needs assessment for Y at the beginning of March 2023.
15. The Council agreed to complete an assessment six weeks later in April 2023 and wrote to Miss X to tell her it would begin the assessment process. If it decided to issue an EHC Plan it should therefore have done so by the end of July. It said that there would be a delay in completing the statutory assessments due to capacity issues in the Educational Psychology (EP) service. It said because of the delays it would not be able to complete the EHC needs assessment process within the statutory 20-week timescale and apologised.
16. The Council wrote to Miss X in mid-June 2023 and apologised for the continued delays in the EHC needs assessment. It set out the actions it had taken which

---

included recruiting further EPs and introducing more efficient EP assessments and advice.

17. Y started school in September 2023. Miss X complained to the Council in September. She said the Council had failed to seek EP advice as part of the EHC needs assessment and failed to issue its decision in line with the timelines in the statutory guidance.
18. The Council upheld Miss X's complaint and apologised for the delay in the EP assessment. It said there was a waiting list of approximately four months until Y would be assessed. It reiterated the actions it was taking to reduce the backlog for EP assessments.
19. Miss X told the Council she was dissatisfied with its response and it had not provided a resolution to her complaint.
20. The Council replied and reiterated its previous response. It said Y was on the waiting list for an EP assessment and the wait was approximately three months.
21. Y was assessed by the EP and the Council received the EP report in November 2023. The Council considered the EP report and agreed to issue an EHC Plan for Y at the end of November 2023. It wrote to Miss X and told her of its decision.
22. The Council issued a draft EHC Plan at the beginning of December 2023 and sent it to Miss X for her comments.
23. The Council issued a final EHC Plan for Y on 2 January 2024, 43 weeks after Miss X made the application for the EHC needs assessment. The Plan named the type of school Y should attend.
24. Miss X told me she has started mediation about the content of sections B, F and I of the Plan. Miss X can appeal to the SEND Tribunal if she remains dissatisfied with the content of Y's Plan following mediation. Miss X has told me she intends to use her appeal rights to the Tribunal.

#### **Action taken by the Council in relation to EP delays**

25. We are currently investigating other cases against this Council where there were delays in commissioning EP reports. In response to our enquiries on this and other cases the Council has told us the actions it is taking to increase capacity and improve the timelines of assessments. It said it has explored ways in which EP assessments can be completed more efficiently as well as examining internal and external options, and has asked part time staff to increase working hours. It said it:
  - had introduced a new efficient EP assessment and report writing processes, with a reduced four-week deadline (previously six weeks) when a new assessment was allocated with 95% of four-week deadlines currently being met;
  - had seen a 36% increase in EP EHC assessments completed by its core staff in the academic year 2022-2023, without a staffing increase;
  - planned to use agency/locum EPs to reduce the waiting list for EP assessments. It had an existing contract with one recruitment agency and had activated a second contract in September 2023, with delivery already reducing waiting times; and
  - had expanded its Educational Psychology Service team. It said it was hoping to recruit nine additional full time equivalent (FTE) EPs and three additional trainee EPs by 2025. It said 3.6 FTE EPs had recently been appointed for start

---

dates in September 2024 and September 2025 (who were currently Trainee Educational Psychologists undergoing qualification) with further recruitment planned for April 2024.

26. I am satisfied the Council is making efforts to mitigate the impact of the nation-wide shortage of EPs on its service users. We will continue to monitor the effectiveness of these actions through our casework.

### **My findings**

27. Miss X applied for an EHC needs assessment for Y, and the Council agreed to complete the assessment within the timeframe set by the statutory guidance. However, due to high demand for EP assessments, and insufficient capacity within the service, the EP assessment was significantly delayed. As the Council could not complete the needs assessment without the EP assessment it caused a delay in the overall assessment process. The Council issued the final plan 23 weeks later than the statutory guidance allows. That was service failure and caused Miss X frustration and uncertainty. The Council has already apologised to Miss X for the injustice caused by the delay.
28. I cannot say what injustice the delay may have caused to Y, as his EHC Plan is subject to further scrutiny through mediation and the SEND Tribunal.
29. I have set out the actions the Council has already taken to improve its service, and so I have not made any further service improvement recommendations.

### **Agreed action**

30. Within one month of this decision the Council will pay Miss X £575 for the frustration and uncertainty caused to her by the five-month delay in obtaining the EP report. This remedy is calculated at roughly £100 per month from the date the Council should have issued the final EHC Plan in July 2023 until the date it issued the final Plan in January 2024.
31. The Council will provide us with evidence it has complied with the above actions.

### **Final decision**

32. I have completed my investigation. I found fault causing injustice and the Council agreed to my recommendation to remedy that injustice.

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

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

Summary: Mrs X complained the Council delayed completing her child Y's Education, Health and Care (EHC) needs assessment and issuing Y's final EHC Plan. The Council was at fault. The Council has agreed to apologise and make a payment to Mrs X to acknowledge the frustration and uncertainty the delays caused her.

---

## **The complaint**

1. Mrs X complained the Council delayed completing her child's Education, Health and Care (EHC) needs assessment and issuing a final EHC Plan. In particular it failed to consider commissioning a private Educational Psychologist report. This caused her distress and frustration and delayed her right of appeal.

## **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. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (Local Government Act 1974, sections 26(1), as amended)
4. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)
6. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

---

## How I considered this complaint

7. I have considered:
  - the information provided by Mrs X and discussed the complaint with her.
  - information provided by the Council in response to our initial enquiries.
  - the relevant law and guidance and the Ombudsman's guidance on remedies.
8. Mrs X and the Council had the opportunity to comment on my draft decision. I considered any comments I received before making a final decision.

## What I found

### Education, Health and Care plan (EHC) Plan

9. A child or young person with special educational needs may have an Education, Health and Care (EHC) Plan. This document sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections. We cannot direct changes to the sections about their needs, education, or the name of the educational placement. Only the tribunal or the council can do this.
10. Statutory guidance 'Special educational needs and disability Code of Practice: 0 to 25 years' ('the Code') sets out the process for carrying out EHC assessments and producing EHC Plans. The guidance is based on the Children and Families Act 2014 and the SEN Regulations 2014. It says:
  - where a council receives a request for an EHC needs assessment it must decide whether to agree to the assessment and send its decision to the parent of the child or young person within six weeks;
  - The process of assessing needs and developing EHC Plans "must be carried out in a timely manner". Steps must be completed as soon as practicable.
  - as part of the EHC assessment councils must gather advice from relevant professionals. This includes psychological advice and information from an Educational Psychologist (EP). The Code of Practice states the EP should normally be employed or commissioned by the local authority. Those consulted have a maximum of six weeks to provide the advice;
  - If the council goes on to carry out an assessment, it must decide whether to issue an EHC Plan or refuse to issue a Plan within 16 weeks.
  - If the council goes on to issue an EHC Plan, the whole process from the point when an assessment is requested until the final EHC Plan is issued must take no more than 20 weeks (unless certain specific circumstances apply).
11. There is a right of appeal to the SEND Tribunal about the special educational provision and school or placement named in a child's EHC Plan. This appeal right is only engaged once the final EHC Plan has been issued.

### What happened

12. In December 2022 Mrs X requested an EHC needs assessment for her child, Y. In January 2023 the Council agreed to carry this out.
13. Mrs X complained to the Council in April 2023 as she was still waiting for Educational Psychologist's (EP) advice which was due by early March. She said she was recently told there would be a further eight week delay. Mrs X asked the Council to consider privately commissioning EP advice and she provided details of a Clinical Psychologist.

[Page 48 of 98](#)



- 
14. The Council responded to Mrs X's complaint in May 2023. It apologised for the delay and explained the Council was affected by a significant increase in requests for EHC needs assessments and it did not have sufficient EP capacity to meet demand. It said it would not commission the EP she sourced as it was obliged to commission its own EP advice. It explained it had been commissioning private psychologists to extend its pools of EPs to carry out assessments. It had been advertising to encourage organisations and private educational psychologists to work with its EP team. It said it currently had 20 agency EPs working to reduce waiting times even further. Even so it still had a waiting list.
  15. In early July 2023 the EP submitted their report to the Council.
  16. Mrs X remained unhappy and the Council responded at the second stage of its complaints process in July 2023. The Council apologised again and explained it was working hard to increase EP capacity whilst maintaining the quality of assessments. This included commissioning agency EPs and advertising to encourage organisations and Independent Educational Psychologists to join its associate EP list and go through its quality assurance processes.
  17. It explained the SEND code of practice stated advice must be sought from an Educational Psychologist who should normally be employed or commissioned by the local authority and that was the approach it adopted. It noted Mrs X had sourced a Clinical Psychologist but explained that even if they were commissioned it would still need an EP assessment. It said the Council had since agreed to issue Y with an EHC Plan and advised it would continue to build EP capacity and the capacity of the EHC team to improve timeliness once assessments were completed.
  18. The Council issued Y's final EHC Plan in August 2023.

### **Other cases**

19. We are currently investigating other cases against this Council where there were delays in commissioning EP reports. In response to our enquiries on those other cases the Council told us the actions it was taking to increase capacity and improve the timelines of assessments. It said it has explored ways in which EP assessments can be completed more efficiently as well as examining internal and external options. As well as asking part time staff to increase working hours, it said it:
  - had introduced a new efficient EP assessment and report writing processes, with a reduced four week deadline (previously six weeks) when a new assessment was allocated with 95% of four week deadlines currently being met.
  - had seen a 36% increase in EP EHC assessments completed by its core staff in the academic year 2022-2023, without a staffing increase.
  - planned to use agency/locum EPs to reduce the waiting list for EP assessments. It had an existing contract with one recruitment agency and had activated a second contract in September 2023, with delivery already reducing waiting times.
  - had expanded its Educational Psychology Service. It said it was hoping to recruit nine additional full time equivalent (FTE) EPs and three additional trainee EPs by 2025. It said 3.6 FTE EPs had recently been appointed for start dates in September 2024 and September 2025 (who were currently Trainee Educational Psychologists undergoing qualification) with further recruitment planned for April 2024.

---

## **My findings**

20. We expect councils to follow statutory timescales set out in the law and the Code. We are likely to find fault where there are significant breaches of those timescales.
21. The Council agreed to carry out an EHC needs assessment for Y in January 2023 which was within the six week statutory timescale from the date of request. It then had to progress the assessment 'in a timely manner' so it could issue Y's final EHC Plan within 20 weeks of the assessment request. However, EHC needs assessments **must** include advice from an EP, which should be received within six weeks of the Council requesting it. The EP did not provide their advice until July 2023. This delay was fault.
22. There is a national shortage of EPs. The Ombudsman can make findings of fault where there is a failure to provide a service, regardless of the reasons for that service failure. Y's wait to be seen by an EP meant their EHC needs assessment took longer than the statutory timescales allow for. The Council was at fault as Y's plan was issued after 33 weeks, which is 13 weeks longer than the statutory timescales allow for.
23. I cannot say to what extent Y missed out on provision because of the delays. This is because the EP advice reflected Y's needs at the time of the assessment, not necessarily as they would have been when it was originally due. I therefore cannot say what the EP advice would have been or what the Council would have taken from that advice for inclusion in Y's EHC Plan. If Mrs X disagrees with the content of the final EHC Plan, it is open to her to appeal this to the Tribunal.
24. However, the delays in the EHC needs assessment process caused Mrs X uncertainty and frustration while she awaited Y's final EHC Plan and meant her appeal right was delayed.
25. Mrs X was unhappy the Council would not commission a private EP report. The Council explained how it was already commissioning agencies and private EPs to reduce the wait for EP assessments. The Council did not agree to contact the particular Clinical Psychologist Mrs X suggested as it would still have needed to await input from an Educational Psychologist, as this is a requirement under the Regulations. It was not at fault.
26. I am satisfied the Council is making efforts to mitigate the impact of the nation-wide shortage of EPs on its service users. We will continue to monitor the effectiveness of these actions through our casework.

## **Agreed action**

27. Within one month of the final decision, the Council has agreed to apologise and pay Mrs X £325 to acknowledge the frustration and uncertainty she experienced due to the delay in completing Y's EHC Plan. That equates to £100 per month for the delay.
28. The Council should provide us with evidence it has complied with the above actions.

## **Final decision**

29. I have completed my investigation. The Council was at fault causing an injustice which it has agreed to remedy.

---

## Investigator's decision on behalf of the Ombudsman



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

Summary: the Council failed to ensure Ms B's son received all his occupational therapy sessions and delayed responding to some of her correspondence. An apology, payment to Ms B and a meeting to discuss the issues is satisfactory remedy.

---

## **The complaint**

1. The complainant, whom I shall refer to as Ms B, complained the Council:
  - failed to ensure her son received his occupational therapy sessions following a previous Ombudsman investigation which completed in February 2023; and
  - failed to communicate with her effectively.
2. Ms B says this has caused her significant stress and led to her going to time and trouble to chase the Council. Ms B says her son has also missed out on occupational therapy sessions.

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

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

## **How I considered this complaint**

6. As part of the investigation, I have:
  - considered the complaint and Ms B's comments;
  - made enquiries of the Council and considered the comments and documents the Council provided.

- 
7. Ms B and the organisation had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## **What I found**

### **What should have happened**

8. A child with special educational needs may have an education, health and care plan (EHC plan). An EHC plan describes the child's special educational needs and the provision required to meet them.
9. The Council is responsible for making sure that arrangements specified in the EHC plan are put in place. We can look at complaints about this, such as where support set out in the EHC plan has not been provided, or where there have been delays in the process.

### **What happened**

10. Ms B's son has special educational needs and began attending a specialist school in January 2023. Ms B's son has EHC plan which provides for weekly occupational therapy provision during term time.
11. The Council appointed Company A to provide occupational therapy sessions in February 2023.
12. In March 2023 Ms B contacted the Council to ask about the process for changing occupational therapy providers. When she did not receive a response Ms B contacted the Council on 4 April 2023 and asked the Council to commission a new occupational therapy provider. Ms B provided the Council with details for Company B.
13. The Council contacted Company B for a quote. That quote was significantly higher than what the Council paid for Company A to deliver the occupational therapy. Company B also had a 4-6 month waiting list. The Council told Ms B senior management would need to agree the change in providers and the case would then need referring to the Council's panel to approve.
14. Ms B chased the Council in May 2023. On 26 May the Council told Ms B management had agreed for the request for a new occupational therapy provider to go to panel and the next panel was on 8 June. I understand this did not happen because the Council changed the way it commissioned providers to give more responsibility to schools.
15. Company A contacted Ms B in June 2023 to offer to make up some of the missing occupational therapy sessions during the school holiday. Ms B raised concerns about whether that was suitable. Ms B said she would prefer most sessions to take place at school.
16. Ms B's partner contacted the Council at the beginning of the new school year in September 2023 to report another missed occupational therapy session. The Council said Ms B's son would go back to panel for a decision on moving to a new provider and said the Council hoped to have feedback on that before the review meeting planned for the end of September.
17. The annual review of the EHC plan took place on 29 September. Following that the Council referred the request for a new occupational therapy provider to panel. The panel agreed that request on 12 October.
18. On 8 November Ms B asked the Council for an update on the progress of the transfer to Company B. Ms B chased the Council on 20 November and pointed

---

out the Council needed to complete the form for Company B. The Council confirmed on 30 November it had sent the form to Company B. Ms B's son is now on Company B's waiting list and continues to receive occupational therapy sessions from Company A. Since the end of February 2023 there have been 12 confirmed missed occupational therapy sessions.

### **Analysis**

19. Ms B says the Council failed to ensure her son received his occupational therapy sessions as set out in his EHC plan from February 2023. The evidence I have seen satisfies me Ms B's son missed out on 12 occupational therapy sessions between February 2023 and the middle of January 2024. Ms B has also provided details of a recent missed occupational therapy session. It is therefore clear the issues with the provision are continuing. That means Ms B's son has missed out on a third of his occupational therapy sessions in the last 11 months. The Council is responsible for ensuring the provision in the EHC plan is put into place and failure to do so is fault.
20. The Council says Company A has offered to put in place extra occupational therapy sessions to make up for those missed. Ms B accepts Company A offered her sessions at home for her son during the school holidays. However, Ms B says that was not convenient for her son and in any case she wants the sessions to take place in school. Ms B is also concerned about whether Company A is in a position to put in place the extra sessions given it cannot always provide the scheduled sessions.
21. I note the Council says it intends to arrange a meeting with the school and parents to review the existing occupational therapy provision in school. I welcome that and would hope this would enable Company A to put on more sessions. However, I also share Ms B's concern about whether this is possible given Company A is regularly failing to carry out the scheduled sessions due to a lack of staffing. I am therefore not convinced it will be possible to put in place enough sessions to make up for those which have been missed before Ms B's son moves to Company B later this year.
22. I am also concerned about how the Council handled the move to Company B. The evidence I have seen satisfies me Ms B asked the Council to move to a new provider in April 2023. As the Council pointed out, Company B is significantly more expensive than Company A. That meant the Council needed to seek agreement from managers and then its panel for the change in provider to go ahead. I am satisfied the Council had agreement from managers to take the case to its panel in May 2023 though and there is no evidence the Council took the case to panel until October 2023.
23. I appreciate in the intervening period the Council amended the process which involved schools commissioning providers and billing the Council. However, changing the process should not have resulted in any delay for Ms B. That delay is fault. There was then delay completing the formal referral form required which is also fault. Those delays added an additional six months. I am also concerned during that period the Council failed to provide Ms B with any update and it was left to her to chase what was happening. That, alongside delay responding to some of her communications, is also fault.
24. That delay is significant because Company B has a 4-6 month waiting list. It is possible if the Council had not delayed Ms B's son would now be able to move to Company B. Delay completing the move has therefore compounded the issues

---

with the missed sessions as Ms B is left with some uncertainty about whether the situation could have been resolved if the Council had acted quicker.

25. As I cannot be satisfied Company A will be able to make up the missing sessions I recommended the Council pay Ms B £600 to reflect the missing sessions. I also recommended the Council pay Ms B an additional £300 to reflect the frustration she has experienced and her uncertainty about whether the situation could have been resolved earlier. The Council has agreed to my recommendations, including a recommendation for a meeting with Ms B to discuss the options going forward.

### **Agreed action**

26. Within one month of my decision the Council should:
- apologise to Ms B for the distress and uncertainty she experienced due to the faults identified in this decision. The Council may want to refer to the Ombudsman's updated guidance on remedies, which sets out the standards we expect apologies to meet;
  - pay Ms B £900; and
  - arrange a meeting with Ms B to discuss the options going forward.

### **Final decision**

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

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



**17 April 2024****Agenda Item:5****REPORT OF SERVICE DIRECTOR FINANCE, INFRASTRUCTURE &  
IMPROVEMENT****GOVERNANCE UPDATE****Purpose of the Report**

1. To inform Committee of the progress being made with the Governance Action Plan for 2023/24.

**Information**

2. The Accounts and Audit (England) Regulations 2015 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. The Council continues to review progress against the action plan on a regular basis throughout the year. This ensures the AGS is used as a live document, contributing towards maintaining an appropriate, strategic focus on the Council's ongoing governance arrangements.
4. This latest update identifies the following as the most significant governance issues for the Council.

Issue	Comment
<b>Cabinet/Scrutiny model of corporate governance</b>	Full Council at its meeting on the 31 <sup>st</sup> March 2022 approved a revised model of governance which was implemented following the Annual General Meeting on 12 <sup>th</sup> May 2022. It was agreed that the member working group would remain in place to deal with any issues arising and undertake a review of the operation of the new model after 12 months. The member working group reconvened for March 2023 to consider the operation of the new governance model and made recommendations to Full Council which were approved at its meeting in July 2023.

Issue	Comment
	<p>To inject both independence and best practice suggestions into the review of the scrutiny arrangements, the Centre for Governance and Scrutiny (CfGS) has been engaged. It is an independent body which is a centre of expertise in scrutiny matters and who assist organisations to achieve their outcomes through improved governance and scrutiny.</p> <p>The CfGS has undertaken an independent review engaging with all political groups and officers whose roles involve scrutiny activity to both gather information and feedback initial observations. The findings of the review have been considered by the enlarged member working group, including Chairman and Vice Chairman of Overview Committee. The recommendations from the review will be reported to Governance and Ethics Committee before passing on the responsibility for progressing this activity to Overview Committee.</p>
<b>Devolution</b>	<p>The East Midlands Combined County Authority (EMCCA) was formally established in February 2024. The new mayoral combined county authority includes the areas covered by Nottinghamshire County Council, Derbyshire County Council, Derby City Council and Nottingham City Council (the 'Constituent Councils'). The inaugural mayoral election is set to take place on 2 May 2024.</p> <p>Following consideration of responses to a public consultation, the Constituent Councils approved a final version of the proposal to establish the EMCCA in March 2023 and delegated authority to their respective Chief Executive to submit the Proposal to the Secretary of State, jointly and in consultation with each other once the Levelling Up and Regeneration Bill received Royal Assent. The Proposal was formally submitted to the Secretary of State on 1 November 2023 following the coming into force of the relevant provisions of the Levelling Up and Regeneration Act 2023 (LURA).</p> <p>Council agreed at its 7 December 2023 meeting to the creation of the EMCCA, with the Council as a constituent member. At the same meeting, Council also consented to the making of the relevant legislation required to formally establish the EMCCA. Following debates in the House of Commons on 7 February 2024, and in the Lords on 19 February 2024 the Regulations to create the EMCCA were passed on 28 February 2024. The first meeting of the EMCCA Board took place on 20 March 2024 with the Leader and Deputy Leader of the Council representing Nottinghamshire County Council as Constituent Council members of the EMCCA Board.</p> <p>A critical milestone was reached in January 2024 with the approval of the provisional Assurance Framework by DLUHC. This document sets out how the EMCCA will use public money responsibly, and transparently. The approval of this document unlocked a further £250,000 of central government capacity funding alongside early access to the £38 million a year East Midland investment fund agreed as part of the devolution deal.</p> <p>The next phase of the programme is a transitional one as the combined authority is established as an independent institution.</p>

Issue	Comment
	<p>Responsibility for day to day running of the new organisation and delivery of the programme will transfer to the new EMCCA once established in the coming months. However, as a constituent member and in keeping with the partnership approach adopted throughout the programme, Nottinghamshire County Council will remain actively involved in the development of the new organisation.</p>
<b>Climate change</b>	<p>At its Annual General Meeting on 27/5/2021, the Council declared a Climate Emergency, and made a commitment to achieving carbon neutrality in all its activities by 2030.</p> <p>The Cabinet Member for Transport and Environment has subsequently received a number of reports on progress including reviewing the Corporate Environment Policy to incorporate the 2030 target, receiving the Councils Greenhouse Gas Reports for 2019/20, 2020/21, 2021/22, 2022/23 and agreeing numerous projects funded through the Green Investment Fund to support a Carbon Reduction Plan which was approved in February 2023.</p> <p>A review of the Corporate Property Strategy, and a comprehensive set of building design standard, both of which align with the Carbon Reduction Plan, are nearing completion. Highways &amp; Transport colleagues continue to look at ways to green the internal and grey fleet.</p> <p>Departmental working groups are established where necessary, and the Employee Green Initiatives Group has been relaunched and supported on an ongoing basis. A Carbon Literacy Training package has been developed and is being offered to all Members and Officers with over 180 staff and members now having been trained, and a complimentary eLearning programme is under development. Work continues to embed climate change impacts within all Council decisions.</p> <p>A net Zero Framework is in preparation for approval and publication in summer 2024 setting out how the Council proposes to work with partners and communities to help deliver carbon reductions across the whole of Nottinghamshire using the Councils statutory responsibilities, scale of influence, and purchasing power. The Net Zero Framework is currently going through the stakeholder engagement and political approvals process.</p> <p>Discussions have been held with Zurich to ensure the potential impacts of climate change on communities, council services and budgets are effectively captured in future iterations of the County Councils corporate risk register, and to help inform investment and operational priorities.</p>
<b>The transformation agenda</b>	<p>As previously reported there has been significant progress on reviewing the corporate transformation portfolio, as per the commitment in the Nottinghamshire Plan Annual Delivery Plan for 2023/24 (Action 10.11) to align with the Council's strategic aims and ambitions. The Council has moved to a whole organisation portfolio approach, seeking to make all change activity connected and visible.</p>

Issue	Comment
	<p>Governance has been refreshed to create clear line of sight and accountability for transformation across the organisation.</p> <p>The Annual Delivery Plan describes how the Council works collaboratively, both across the Council and with partners, to continue the development of our cross-cutting transformation programmes. This will help us to test new and improved ways of working, service delivery and systems and help create the conditions to enable us to make a difference for the County's communities and residents. The Annual Delivery Plan and budget process have been more closely aligned, this ensures proposed savings and efficiencies are aligned with other areas for delivery in 24/25.</p> <p>The Transformation and Change group, continue to work closely with projects leads and subject matter experts in departments to support delivery of transformation programmes, monitoring and reporting of our change, working with senior responsible and accountable officers to track delivery.</p>
<b>Financial resilience and sustainability</b>	<p>The recent significant increases in inflation and specific increases in external costs for essential services continues to impact on the Council through additional budget pressure bids. The importance of effective management of the most volatile elements of the annual budget is heightened and remains a key area of focus. The Medium-Term Financial Strategy (MTFS) continues to be updated and reported regularly. Maintaining the flow of transparent, financial data for Councillors remains a key priority.</p> <p>Cabinet approved the Budget proposals for 2024/25 on 8 February 2024 which will be debated at Full Council on the 22 February 2024. This set out the 4-year MTFS funding gap of £36m, with a balanced budget in 2024/25 and 2025/26. This followed a review of pressures and inflation together with mitigations and efficiencies. The report set out the assumptions underlying the MTFS and followed public consultation and review by Overview Committee through the year. The level of contingency and reserves were agreed in light of a full review of the risks inherent within the MTFS.</p> <p>The Period 9 monitoring report identifies a forecast in-year underspend of £5.5m (0.9% of the Council's Net Budget Requirement), with identified additional income from business rates and interest earned which have been partly offset by significant pressures arising from increasing demand on our social care services, including SEND Transport, and the impacts of inflation. Management actions are in place which have mitigated the impacts of these increasing pressures.</p>
<b>People Strategy and the Nottinghamshire Way</b>	<p>A workforce review is ongoing. The primary focus has been resourcing as it is an area of risk for the Council. There is a strategy and delivery plan in place which is seeing positive outcomes in a range of areas. The ongoing review will also be used to support service redesign and develop a new operating model for the Council.</p>

Issue	Comment
	<p>There is a large piece of cross-Council engagement work taking place, at all levels and across all departments to input into the forward looking and resilient council work stream and future operating model. This engagement includes feedback on elements of the People Strategy and Nottinghamshire Way.</p> <p>As part of the People Strategy there are six core areas of work that are being delivered on. Our aim is to ensure that we have a skilled, motivated, cost effective, resilient, sustainable workforce, to support this we are implementing workforce plans and resourcing activity enabling us to recruit and retain staff and develop the skills we need. A core of part of this work is to continue to improve our approach to health and wellbeing, working environment and ways of working. We have made a number of improvements to our wellbeing offer over the past year and it is a well-regarded service.</p>
<b>Adult Social Care reforms</b>	<p>The delay to charging reform set out in the Autumn statement in November 2022 is still in place, therefore the estimated cost of the reforms and resource requirements still present significant risks for the Council.</p> <p>More recently the Department of Health and Social Care launched the Accelerating Reform Fund (ARF) to support innovation in Adult Social Care as part of its ambitions set out in the 10-year vision "People at the Heart of care".</p> <p>As part of the ARF, the department has jointly won a bid with Nottingham City Council for £943,000 to cover three areas of focus.</p> <ul style="list-style-type: none"> <li>• The rollout and expansion of the use of technology to support people receiving care to increase their independence, preventing, reducing and delaying the need for longer term care and support.</li> <li>• Expanding the Shared Lives service for Nottingham and Nottinghamshire, to increase respite placements for informal carers, caring for young adults with learning disabilities, mental health needs and other disabilities.</li> <li>• Creating a digital directory for community assets, including events, support groups, activities and organisations, that can be used by the whole system within Nottingham and Nottinghamshire.</li> </ul> <p>Furthermore, the new Care Quality Commission (CQC) led assurance and inspection regime has commenced with neighbouring Local Authorities selected for pilots and full assessments. Learning from our regional neighbours and the feedback from our Annual Conversation in July 2023 and a recent Peer Review as part of sector led improvement, will mitigate against the reputational risk this new inspection regime poses for the Council. Over the coming months the department will refresh the Local Authority Self-Assessment and Information Return (LASAIR) which was first submitted to ADASS (East Midlands) in February 2023.</p> <p>The continued pressures and lack of capacity in the care workforce impacts on the Council's ability to meet its statutory duties under the</p>

Issue	Comment
	<p>Care Act and will have a direct influence on any CQC future rating. The department is currently embedding a prioritisation matrix which has been adopted across the East Midlands to support allocation of work according to risk.</p>
<p><b>Demand for care and support</b></p>	<p>The Council and external care market continues to be impacted by high demand for Adult Social Care support with some people waiting for home-based care and other interventions. The Council has seen an increase in the complexity of support needs for adults requiring social care support leading to increased levels of longer-term services and additional support required for unpaid carers. Demand for adult social care is forecasted to continue to increase driven by preventable disability and chronic disease, in addition to an ageing population.</p> <p>However, over the past 12 months the external homecare market continues to grow with an increased number of hours commissioned and people supported.</p> <p>The Council still has a waiting-list for care and support in some areas which continues to present a risk to the individuals concerned and impacts on wider Council services such as an increase in enquiries and complaints.</p> <p>Work is underway at a regional level to understand the impact of people waiting in more detail through a project working with people with lived experience, and across our frontline services visibility of demand has improved over the last six months with dashboards in place to support operational managers. These dashboards will be further enhanced by the introduction of a prioritisation matrix for those people waiting to reduce the risk and support demand management and staffing capacity.</p> <p>The external market continues to report that they are experiencing improved recruitment, with the outcome that there is the increase in hours of care and support delivered. However, this increased recruitment for some providers is from international recruitment which comes with a number of risks.</p> <p>The Nottinghamshire ICS (Integrated Care System) remains one of six ICS' in England to be identified by NHSE for national escalation due to high numbers of people in acute hospital care. Encouragingly a recent review by NHSE showed a marked improvement in the delivery of the action plan with feedback that the ICS is a "mature and evidence driven partnership". The department has contributed extensively to having a data set that produces "one version of the truth" and this was recognised by NHSE colleagues. Although there is still work to be done before de-escalation is agreed, it was recognised the journey the system has been on to get to this point.</p> <p>All the risks identified are set out in comprehensive directorate and departmental risk register.</p>



Issue	Comment
<b>Children's Social Care Reform</b>	<p>In December 2023, the Department for Education published guidance for reform in children's social care in order to deliver the ambitions within its Stable homes, built on love strategy, published in February 2023. This strategy aims to transform the children's social care system and better meet children's needs through the following "pillars":</p> <ul style="list-style-type: none"> <li>• Family help that provides the right support at the right time so that children can thrive with their families.</li> <li>• A decisive multi-agency child protection system</li> <li>• Unlocking the potential of family networks</li> <li>• A valued, supported and highly skilled social worker for every child who needs one.</li> <li>• A system that continuously learns and improves and makes better use of evidence and data.</li> </ul> <p>The reform guidance introduces the following changes:</p> <ul style="list-style-type: none"> <li>• A national kinship strategy to set out support for family networks providing loving and stable homes to children.</li> <li>• a new children's social care national framework to set out the purpose, principles and outcomes that should be achieved in children's social care.</li> <li>• updates to the Working together to safeguard children statutory guidance which sets out how to safeguard and promote the welfare of children.</li> <li>• a data strategy to set out long-term plans to transform data in children's social care.</li> <li>• new approaches to promote fostering to ensure the right homes for children.</li> </ul> <p>Over the next twelve months, Children and Family Services will respond to the reform guidance, through the Local Safeguarding Children Partnership arrangements and through implementation of new models of service delivery as required through the Safeguarding, Inclusion and Support programme.</p>
<b>Experiences and outcomes of children and young people with Special Educational Needs and Disabilities</b>	<p>In January 2023, the Nottinghamshire local area partnership was the first local area in the country to be inspected under the Ofsted/CQC inspection framework exploring the experiences and outcomes of children and young people with special educational needs and disabilities. The inspection report, published in June 2023, concluded with the narrative judgement that "there are widespread and/or systemic failings leading to significant concerns about the experiences and outcomes of children and young people with SEND, which the local area partnership must address urgently." Priority areas for improvement were identified in the following two areas:</p> <ol style="list-style-type: none"> <li>a. Leaders, NHS Nottingham and Nottinghamshire Integrated Care Board and education, health, and care providers should cooperate to urgently identify, assess and provide for the needs of children and young people with SEND. This includes assessment of needs, timely issuing of EHC plans and holistic oversight of these plans through annual reviews.</li> </ol>

Issue	Comment
	<p>b. Leaders, including commissioners and providers, should act urgently to identify and address the delays and gaps in access to some health services, particularly speech and language therapy, neurodevelopmental pathways and equipment services. They should also ensure that they use available performance data to identify where gaps exist and whether actions taken to address these are effective.</p> <p>In order to respond to the inspection findings and ensure that there is focussed activity which leads to an improvement in children's experiences and outcomes, the local area partnership has developed and is implementing a priority action plan, which is tracked through an Improvement Board which is independently chaired and has been meeting monthly since June 2023. Progress is additionally scrutinised as a standing item at Children and Families Select Committee and through monitoring from the Department for Education and NHS England, with improvements made to date including the percentage of children receiving their Education, Health and Care Plan improving from 4.5% in 2022 to 28.% in 2023.</p>
<b>Risk management</b>	<p>An action plan has been developed to address the scope for improvement in the Council's risk management arrangements, following an external 'health check'. A clearer distinction is being drawn between the management of operational and strategic risks, presenting the opportunity to link risk management through to strategic planning and reporting in a more impactful way. Work has continued with Zurich to revise departmental and corporate risk registers along with developing a risk management framework for subsequent reporting. CLT have reviewed and amended drafts of all the aforementioned documents and will be considering further in April. Work has also continued to recruit a permanent resource to lead on Corporate Risk Management.</p>

5. Corporate Leadership Team colleagues have been consulted with in compiling the above list of issues which continue to represent the most significant governance issues on which the Council needs to focus. CLT colleagues have provided insight to these governance issues by considering 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 update. The Action Plan for 2023/24 is set out in **Appendix 1**, showing the progress that



has been identified through consultation with relevant managers. Actions that were agreed as completed as part of the previous update have now been removed.

### **Other Options Considered**

7. None – the Council has a single governance action plan and has determined to receive regular 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**

- 1) That Members note the actions taken to update the governance issues raised in this report.

**Nigel Stevenson**

**Service Director – Finance, Infrastructure & Improvement**

**For any enquiries about this report please contact:**

Simon Lacey, Group Manager – Internal Audit & Risk Management

### **Constitutional Comments (SSR - 26/03/2024)**

10. The recommendations fall within the remit of the Governance and Ethics Committee.

### **Financial Comments (SES – 27/03/2024)**

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	Progress status
<b>1. Risk management:</b> agree and implement a revised approach to risk management for the Council.	Group Manager – Internal Audit & Risk Management	Sept 2024	 In progress
<p>Progress has continued to be made with assistance from Zurich until a permanent internal resource can be recruited. The departmental and corporate risk registers have been revised and updated during the year and work continues to continually refresh them. A new corporate reporting format has been agreed with CLT and the new risk management framework has been developed to reflect the agreed changes. A Risk Management Update report will be presented to the Governance &amp; Ethics Committee to highlight progress against the risk management approach after endorsement by CLT.</p>			
<b>2. Data quality in Mosaic:</b> greater priority given to addressing issues highlighted by routine reporting.	Corporate Director – Adults Social Care and Public Health	Sept 2024	 In progress
<p>The departments approach to data quality continues to be aligned to the requirements set out in the Care Data Matters: a roadmap for better data for adult social care which was first published by the DHSC in February 2023, and updated in December 2023. This guidance introduced a mandatory quarterly submission of our Client Level Data (CLD) for social care activity and support which commenced in July 2023, and from the new financial year will replace the Short and Long Term (SALT) national return.</p> <p>Since the last report the DHSC has developed a draft CLD dashboard, which highlights and support the department in understanding where to focus data quality improvements following the quarterly data submission.</p> <p>The risk levels remain very high and to mitigate this the department continues to develop a Data Quality Framework to address the data gaps and improve reporting and a dedicated data working group provides the governance for the data quality framework and planned activity. Project resource has been secured for the next six months to support and progress this work.</p>			

Planned Action	Officer responsible	Target date for completion	Progress status
<b>3. Special Educational Needs and Disabilities:</b> addressing improvement areas highlighted by the Ofsted/CQC inspection.	Corporate Director – Children and Families	March 2025	 In progress
<p>The department continues to work with partners to respond to the Ofsted/CQC inspection findings published in June 2023. This work will ensure that focussed activity leads to improvement in children's experiences and outcomes, the local area partnership has developed and is implementing a priority action plan, which is tracked through an Improvement Board.</p> <p>Progress is additionally scrutinised as a standing item at Children and Families Select Committee and through monitoring from the Department for Education and NHS England.</p>			
<b>4. Childrens Social Care Reform:</b> addressing changes required following the reform guidance.	Corporate Director – Children and Families	March 2025	 In progress
<p>The department continues to progress work to assess the impact of the guidance published by the Department for Education to support the <i>stable homes, built on love</i> strategy across each of the 'pillars'. This work will continue over the next twelve months through the Local Safeguarding Children Partnership arrangements. This will include the development and implementation of new models of service delivery as required through the Safeguarding, Inclusion and Support programme.</p>			

17 April 2024

Agenda Item: 6

## **REPORT OF SERVICE DIRECTOR – FINANCE, INFRASTRUCTURE AND IMPROVEMENT**

### **STATEMENT OF ACCOUNTS 2023/24 – ACCOUNTING POLICIES**

#### **Purpose of the Report**

1. To allow Members to review and approve the proposed accounting policies used in creating the Authority's Statement of Accounts for 2023/24.

#### **Information**

2. Accounting policies are defined by the CIPFA Code of Practice on Local Authority Accounting (The Code) as "the specific principles, bases, conventions, rules and practices applied by an Authority in preparing and presenting its financial statements".
3. The Statement of Accounts therefore includes a note explaining the accounting policies used in producing the main financial statements and disclosures. Both the CIPFA Code and our External Auditors indicate that these policies should be reviewed and approved by the Governance and Ethics Committee prior to inclusion in the final Statement of Accounts.
4. Members will note that other than refreshing various dates, a review of the 2023/24 Accounting Policies has revealed that no changes in relation to content are required and the proposed policies are therefore set out in Appendix A to this report.

#### **Other Options Considered**

5. An option to not formally approve the 2023/24 accounting policies has been considered, however best practice indicates that these policies should be reviewed and approved by Governance and Ethics Committee prior to their inclusion in the Authority's statutory financial statements.

#### **Reason/s for Recommendations**

6. In order to comply with best practice, it is recommended that this Committee approves the Authority's accounting policies for 2023/24.

#### **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.

## **RECOMMENDATION/S**

- 1) That Members approve the Authority's 2023/24 accounting policies.

**Nigel Stevenson**

**Service Director – Finance, Infrastructure and Improvement**

**For any enquiries about this report please contact:**

Glen Bicknell, Interim Group Manager, Financial Services

### **Constitutional Comments (KK 28/03/2024)**

8. Governance and Ethics Committee is the appropriate body of the Council to consider the report.

### **Financial Comments (JPEG 26/03/2024)**

9. There are no financial implications arising from this report.

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

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

- CIPFA Code of Practice on Local Accounting in the United Kingdom 2023/24

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

- All

# STATEMENT OF ACCOUNTING POLICIES

## 1. General Policies

The Statement of Accounts summarises the Authority's transactions for the 2023/24 financial year and its position at the year-end of 31 March 2024. The Authority is required to prepare an annual Statement of Accounts by the Accounts and Audit (England) Regulations 2015, which require them to be prepared in accordance with proper accounting practices. These practices are primarily based on the Code of Practice on Local Authority Accounting in the United Kingdom 2023/24, which is based on International Financial Reporting Standards (IFRS).

The accounting convention adopted in the Statement of Accounts is principally historical cost, modified by the revaluation of certain categories of non-current assets and financial instruments.

## 2. Accruals of Income and Expenditure

Activity is accounted for in the year that it takes place, not simply when cash payments are made or received. In particular:

- Revenue from contracts with service recipients, whether for services or the provision of goods, is recognised when (or as) the goods or services are transferred to the service recipient in accordance with the performance obligations in the contract.
- Supplies are recorded as expenditure when they are consumed – where there is a gap between the date supplies are received and their consumption, they are carried as inventories on the Balance Sheet.
- Expenses in relation to services received (including services provided by employees) are recorded as expenditure when the services are received rather than when payments are made.
- Interest receivable on investments and payable on borrowings is accounted for respectively as income and expenditure on the basis of the effective interest rate for the relevant financial instrument rather than the cash flows fixed or determined by the contract.
- Where revenue and expenditure have been recognised but cash has not been received or paid, a debtor or creditor for the relevant amount is recorded in the Balance Sheet. Where debts may not be settled, the balance of debtors is written down and a charge made to revenue for the income that might not be collected.

## 3. Prior Period Adjustments, Changes in Accounting Policies, Estimates and Errors

Prior period adjustments may arise as a result of a change in accounting policies or to correct a material error. Changes in accounting estimates are accounted for prospectively, i.e. in the current and future years affected by the change and do not give rise to a prior period adjustment.

Changes in accounting policies are only made when required by proper accounting practices or the change provides more reliable or relevant information about the effect of transactions, other events and conditions on the Authority's financial position or financial performance. Where a change is made, it is applied retrospectively (unless stated otherwise) by adjusting opening balances and comparative amounts for the prior period as if the new policy had always been applied.

Material errors discovered in prior period figures are corrected retrospectively by amending opening balances and comparative amounts for the prior period.

#### 4. Events after the Balance Sheet Date

Events after the Balance Sheet date are those events, both favourable and unfavourable, that occur between the end of the reporting period and the date when the Statement of Accounts is authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the end of the reporting period – the Statement of Accounts is adjusted to reflect such events
- those that are indicative of conditions that arose after the reporting period – the Statement of Accounts is not adjusted to reflect such events, but where a category of events would have a material effect, disclosure is made in the notes of the nature of the events and their estimated financial effect.

Events taking place after the date of authorisation for issue are not reflected in the Statement of Accounts.

#### 5. Costs of Support Services

The costs of overheads and support services are charged to services in accordance with the Authority's arrangements for reporting accountability and financial performance.

#### 6. Government Grants and Contributions

Whether paid on account, by instalments or in arrears, government grants and third-party contributions and donations are recognised as due to the Authority when there is reasonable assurance that:

- the Authority will comply with the conditions attached to the payments, and
- the grants or contributions will be received.

Amounts recognised as due to the Authority are not credited to the Comprehensive Income and Expenditure Statement until conditions attached to the grant or contribution have been satisfied. Conditions are stipulations that specify that the future economic benefits or service potential embodied in the asset acquired using the grant or contribution are required to be consumed by the recipient as specified, or future economic benefits or service potential must be returned to the transferor.

Monies advanced as grants and contributions for which conditions have not been satisfied are carried in the Balance Sheet as receipts in advance. When conditions are satisfied, the grant or contribution is credited to the relevant service line (attributable revenue grants and contributions) or Taxation and Non-Specific Grant Income (non-ringfenced revenue grants and all capital grants) in the Comprehensive Income and Expenditure Statement.

Where capital grants are credited to the Comprehensive Income and Expenditure Statement, they are reversed out of the General Fund Balance in the Movement in Reserves Statement.

Where the grant has yet to be used to finance capital expenditure, it is posted to the Capital Grants Unapplied reserve. Where it has been applied, it is posted to the Capital Adjustment Account. Amounts in the Capital Grants Unapplied reserve are transferred to the Capital Adjustment Account once they have been applied to fund capital expenditure.



## 7. Charges to Revenue for Non-Current Assets

Services, support services and trading accounts are debited with the following amounts to record the cost of holding non-current assets during the year:

- depreciation attributable to the assets used by the relevant service.
- revaluation and impairment losses on assets used by the service where there are no accumulated gains in the Revaluation Reserve against which the losses can be written off.
- amortisation of intangible non-current assets attributable to the service.

The Authority is not required to raise Council Tax to fund depreciation, revaluation and impairment losses or amortisation. However, it is required to make an annual contribution from revenue towards the reduction in its overall borrowing requirement equal to an amount calculated on a prudent basis determined by the Authority in accordance with statutory guidance.

Depreciation, revaluation and impairment losses and amortisation are therefore replaced by the contribution in the General Fund Balance (Minimum Revenue Provision), by way of an adjusting transaction with the Capital Adjustment Account in the Movement in Reserves Statement for the difference between the two.

## 8. Property, Plant and Equipment (PPE)

Assets that have physical substance and are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes and that are expected to be used during more than one financial year are classified as Property, Plant and Equipment.

### Recognition

Expenditure on the acquisition, creation or enhancement of Property, Plant and Equipment is capitalised on an accruals basis, provided that it is probable that the future economic benefits or service potential associated with the item will flow to the Authority and the cost of the item can be measured reliably. Expenditure that maintains but does not add to an asset's potential to deliver future economic benefits or service potential (i.e. repairs and maintenance) is charged as an expense when it is incurred.

As a rule, assets are only recognised when they exceed the de-minimis levels set out below. However, assets below de-minimis meeting all other criteria may still be capitalised if it is deemed appropriate. Most commonly this will be when capitalisation leads to greater utilisation of available funding.

Asset Type	De minimis
Land and Buildings	£0
Community Assets	£10,000
Infrastructure Assets	£0
Assets under Construction	£0
Heritage Assets	£10,000
Vehicles, Plant, Furniture and Equipment	£10,000
Other assets	£10,000

## Measurement

Assets are initially measured at cost, comprising:

- the purchase price.
- any costs attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.
- an initial estimate of the costs of dismantling and removing the item and restoring the site on which it is located.

The Authority does not capitalise borrowing costs.

The cost of assets acquired other than by purchase is deemed to be its fair value unless the acquisition does not have commercial substance (i.e. it will not lead to a variation in the cash flows of the Authority). In the latter case, where an asset is acquired via an exchange, the cost of the acquisition is the carrying amount of the asset given up by the Authority.

Donated assets are measured initially at fair value. The difference between fair value and any consideration paid is credited to the Taxation and Non-Specific Grant Income line of the Comprehensive Income and Expenditure Statement unless the donation has been made conditionally. Until conditions are satisfied, the gain is held in the Donated Assets Account. Where gains are credited to the Comprehensive Income and Expenditure Statement, they are reversed out of the General Fund Balance to the Capital Adjustment Account in the Movement in Reserves Statement.

Assets are then carried in the Balance Sheet using the following measurement bases:

- Highways Infrastructure Assets - measured at depreciated historical cost. However, this is a modified form of historical cost – opening balances for highways infrastructure assets were originally recorded in balance sheets at amounts of capital undischarged for sums borrowed as at 1 April 1994 which was deemed at that time to be historical cost.
- Community Assets and Assets under Construction – historical cost (depreciated where appropriate).
- Heritage Assets - held at valuation or, under certain conditions, historical cost (depreciated where appropriate).
- Operational assets – current value, determined as the amount that would be paid for the asset in its existing use (existing use value – EUV). Where no market exists to allow a valuation on an EUV basis (e.g. schools), the Depreciated Replacement Cost method (DRC) is used. This is the sum of the fair value for the existing use of the land and the current gross replacement cost of the building, in line with the methodology for Modern Equivalent Asset (MEA), less allowances for physical deterioration, obsolescence and optimisation.
- Non-Operational Assets (i.e. surplus assets) – fair value as per the requirements of IFRS13 using the principle of “highest and best use” from a market participant’s perspective.

Where there is no market-based evidence of current value because of the specialist nature of an asset (e.g. school buildings), depreciated replacement cost (DRC) is used as an estimate of current value.

Where non land and building assets have short useful lives or low values (or both), depreciated historical cost basis is used as a proxy for current value.

The current land and building values used in the Statement of Accounts are based upon a certificate as at 31 March 2024 issued by Mr N Gamble MRICS, Group Manager – Property Asset Management from the Authority’s Place Department on xx May 2024. A rolling 5-year revaluation programme is in place to maintain the accuracy of the valuations. When significant changes occur in any year, they are included in the revaluation schedule undertaken during that year.

Assets included in the Balance Sheet at current value are revalued sufficiently regularly to ensure that their carrying amount is not materially different from their current value at the year-end, but as a minimum every five years. Increases in valuations are matched by credits to the

Revaluation Reserve to recognise unrealised gains. Exceptionally, gains might be credited to the Comprehensive Income and Expenditure Statement where they arise from the reversal of a loss previously charged to a service. Where decreases in value are identified, they are accounted for by:

- where there is a balance of revaluation gains for the asset in the Revaluation Reserve, the carrying amount of the asset is written down against that balance (up to the amount of the accumulated gains)
- where there is no balance in the Revaluation Reserve or an insufficient balance, the carrying amount of the asset is written down against the relevant service line(s) in the Comprehensive Income and Expenditure Statement.

The Revaluation Reserve contains revaluation gains recognised since 1 April 2007 only, the date of its formal implementation. Gains arising before that date have been consolidated into the Capital Adjustment Account.

## **Impairment**

Assets are assessed at each year-end as to whether there is any indication that they may be impaired. Where indications exist and any possible differences are estimated to be material, the recoverable amount of the asset is estimated and, where this is less than the carrying amount of the asset, an impairment loss is recognised for the shortfall.

Where impairment losses are identified, they are accounted for by:

- where there is a balance of revaluation gains for the asset in the Revaluation Reserve, the carrying amount of the asset is written down against that balance (up to the amount of the accumulated gains)
- where there is no balance in the Revaluation Reserve or an insufficient balance, the carrying amount of the asset is written down against the relevant service line(s) in the Comprehensive Income and Expenditure Statement.

Where an impairment loss is reversed subsequently, the reversal is credited to the relevant service line(s) in the Comprehensive Income and Expenditure Statement, up to the amount of the original loss, adjusted for depreciation that would have been charged if the loss had not been recognised.

## **Depreciation**

Depreciation is provided for on all PPE assets by the systematic allocation of their depreciable amounts over their useful lives. An exception is made for assets without a determinable finite useful life (i.e. freehold land and certain Community Assets) and assets that are not yet available for use (i.e. assets under construction).

Depreciation is charged in the year after acquisition or construction. Where depreciation is provided for, assets are depreciated using the straight- line method. The lives of the assets vary and fall within the following ranges:

<b>Asset Type</b>	<b>Useful Life (In Years)</b>
Buildings	1 – 50
Vehicles and plant	1 – 20
Infrastructure	15 – 40
IT and other equipment	3 – 10
Intangibles	3 – 5
Furniture and Fittings	5 – 15

Where an item of PPE has major components whose costs are at least 20% of the total cost of the item, the components are depreciated separately. For the purposes of these accounts, a

review was carried out for all items over a de-minimis of £0.5 million and the Authority has not identified any components to be depreciated separately.

Revaluation gains are also depreciated, with an amount equal to the difference between current value depreciation charged on assets and the depreciation that would have been chargeable based on their historical cost being transferred each year from the Revaluation Reserve to the Capital Adjustment Account.

### **Accounting for Schools Property, Plant and Equipment**

The Authority has made detailed judgements regarding the control exercised over schools run in a wide variety of ways to determine whether non-current assets should be held on the Balance Sheet. The treatment of all schools has been considered by analysis predicated on the application of tests inherent within the following IFRS adopted by the CIPFA Code (Module 4 – Non Current Assets) – IAS16 – Property, Plant and Equipment, IAS17 – Leases and IFRIC12 – Service Concession Arrangements. This has resulted in the following treatment:

- Academy schools - off-Balance Sheet
- Foundation schools - on-Balance Sheet
- Voluntary Aided schools – off-Balance Sheet
- Voluntary Controlled schools – off-Balance Sheet
- Community schools – on-Balance Sheet

The assets of those Schools that convert to Academy status are derecognised from the Authority's Balance Sheet at nil proceeds. No impairment is recognised by the Authority prior to disposal.

### **Disposals and Non-current Assets Held for Sale**

When it becomes probable that the carrying amount of an asset will be recovered principally through a sale transaction, rather than through its continuing use, it is reclassified as an Asset Held for Sale. The asset is revalued immediately before reclassification and then carried at the lower of this amount and fair value less costs to sell. Where there is a subsequent decrease to fair value less costs to sell, the loss is posted to the Other Operating Expenditure line in the Comprehensive Income and Expenditure Statement. Gains in fair value are recognised only up to the amount of any losses previously recognised in the Surplus or Deficit on Provision of Services. Depreciation is not charged on Assets Held for Sale.

If assets no longer meet the criteria to be classified as Assets Held for Sale, they are reclassified back to non-current assets and valued at the lower of their carrying amount before they were classified as Held for Sale; adjusted for depreciation, amortisation or revaluations that would have been recognised had they not been classified as Held for Sale, and their recoverable amount at the date of the decision not to sell.

Assets that are to be abandoned or scrapped are not reclassified as Assets Held for Sale.

When an asset is disposed of or decommissioned, the carrying amount of the asset in the Balance Sheet (whether PPE or Assets Held for Sale) is written off to the Other Operating Expenditure line in the Comprehensive Income and Expenditure Statement as part of the gain or loss on disposal. Receipts from disposals (if any) are credited to the same line in the Comprehensive Income and Expenditure Statement also as part of the gain or loss on disposal (i.e. netted off against the carrying value of the asset at the time of disposal). Any revaluation gains accumulated for the asset in the Revaluation Reserve are transferred to the Capital Adjustment Account.

Amounts received for a disposal in excess of £10,000 are categorised as capital receipts and are required to be credited to the Capital Receipts Reserve and can then be used for new capital investment or set aside to reduce the Authority's underlying need to borrow (the capital financing requirement).

The written-off value of disposals is not a charge against Council Tax, as the cost of non-current assets is fully provided for under separate arrangements for capital financing. Amounts are appropriated to the Capital Adjustment Account from the General Fund Balance in the Movement in Reserves Statement.

## **9. Revenue Expenditure Funded from Capital Under Statute (REFfCUS)**

Expenditure incurred during the year that may be capitalised under statutory provisions but that does not result in the creation of a non-current asset has been charged as expenditure to the relevant service in the Comprehensive Income and Expenditure Statement in the year. Where the Authority has determined to meet the cost of this expenditure from existing capital resources or by borrowing, a transfer in the Movement in Reserves Statement from the General Fund Balance to the Capital Adjustment Account then reverses out the amounts charged so that there is no impact on the level of Council Tax.

## **10. Leases**

Leases are classified as finance leases where the terms of the lease transfer substantially all the risks and rewards incidental to ownership of the property, plant or equipment from the lessor to the lessee. All other leases are classified as operating leases.

Where a lease covers both land and buildings, the land and buildings elements are considered separately for classification.

Arrangements that do not have the legal status of a lease but convey a right to use an asset in return for payment are accounted for under this policy where fulfilment of the arrangement is dependent on the use of specific assets.

### **The Authority as Lessee**

#### **Finance Leases**

Property, Plant and Equipment held under finance leases is recognised on the Balance Sheet at the commencement of the lease at its fair value measured at the lease's inception (or the present value of the minimum lease payments, if lower), where the fair value exceeds the de-minimis limit. The asset recognised is matched by a liability for the obligation to pay the lessor. Initial direct costs of the Authority are added to the carrying amount of the asset. Premiums paid on entry into a lease are applied to write down the lease liability. Where material, contingent rents are charged as expenses in the periods in which they are incurred.

Lease payments are apportioned between:

- a charge for the acquisition of the interest in the property, plant or equipment – applied to write down the lease liability, and
- a finance charge (debited to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement).

Property, Plant and Equipment recognised under finance leases is accounted for using the policies applied generally to such assets, subject to depreciation being charged over the lease term if this is shorter than the asset's estimated useful life (where ownership of the asset does not transfer to the Authority at the end of the lease period).

The Authority is not required to raise Council Tax to cover depreciation or revaluation and impairment losses arising on leased assets. Instead, a prudent annual contribution is made from revenue funds towards the deemed capital investment in accordance with statutory requirements. Depreciation and revaluation and impairment losses are therefore substituted by a revenue contribution in the General Fund Balance, by way of an adjusting transaction with the Capital Adjustment Account in the Movement in Reserves Statement for the difference between the two.

#### **Operating Leases**

Rentals paid under operating leases are charged to the Comprehensive Income and Expenditure Statement as an expense of the services benefiting from use of the leased Property,

Plant or Equipment. Charges are made on a straight-line basis over the life of the lease, even if this does not match the pattern of payments (e.g. there is a rent-free period at the commencement of the lease).

## **The Authority as Lessor**

### **Finance Leases**

Where the Authority grants a finance lease over a property or an item of plant or equipment, the relevant asset is written out of the Balance Sheet as a disposal. At the commencement of the lease, the carrying amount of the asset in the Balance Sheet (whether Property, Plant and Equipment or Assets Held for Sale) is written off to the Other Operating Expenditure line in the Comprehensive Income and Expenditure Statement as part of the gain or loss on disposal. A gain, representing the Authority's net investment in the lease, is credited to the same line in the Comprehensive Income and Expenditure Statement also as part of the gain or loss on disposal (i.e. netted off against the carrying value of the asset at the time of disposal), matched by a lease (long-term debtor) asset in the Balance Sheet.

Lease rentals receivable are apportioned between:

- a charge for the acquisition of the interest in the property – applied to write down the lease debtor (together with any premiums received), and
- finance income (credited to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement).

The gain credited to the Comprehensive Income and Expenditure Statement on disposal is not permitted by statute to increase the General Fund Balance and is required to be treated as a capital receipt. Where a premium has been received, this is posted out of the General Fund Balance to the Capital Receipts Reserve in the Movement in Reserves Statement. Where the amount due in relation to the lease asset is to be settled by the payment of rentals in future financial years, this is posted out of the General Fund Balance to the Deferred Capital Receipts Reserve in the Movement in Reserves Statement. When the future rentals are received, the element for the capital receipt for the disposal of the asset is used to write down the lease debtor. At this point, the deferred capital receipts are transferred to the Capital Receipts Reserve.

The written-off value of disposals is not a charge against Council Tax, as the cost of non-current assets is fully provided for under separate arrangements for capital financing. Amounts are therefore appropriated to the Capital Adjustment Account from the General Fund Balance in the Movement in Reserves Statement.

### **Operating Leases**

Where the Authority grants an operating lease over a property or an item of plant or equipment, the asset is retained in the Balance Sheet. Rental income is credited to the Other Operating Expenditure line in the Comprehensive Income and Expenditure Statement. Credits are made on a straight-line basis over the life of the lease, even if this does not match the pattern of payments (e.g. there is a premium paid at the commencement of the lease). Initial direct costs incurred in negotiating and arranging the lease are added to the carrying amount of the relevant asset and charged as an expense over the lease term on the same basis as rental income.

## **11. Private Finance Initiatives (PFI) and Similar Contracts**

The Authority has entered into a number of Private Finance Initiative contracts. PFI and similar contracts are agreements to receive services, where the responsibility for making available the property, plant and equipment needed to provide the services passes to the PFI contractor. As the Authority is deemed to control the services that are provided under its PFI schemes, and as ownership of the property, plant and equipment will pass to the Authority at the end of the contracts for no additional charge, the Authority carries the assets used under the contracts on its Balance Sheet as part of Property, Plant and Equipment.

The original recognition of these assets at fair value (based on the cost to purchase the property, plant and equipment) was balanced by the recognition of a liability for amounts due to the



scheme operator to pay for the capital investment. For the Bassetlaw Schools PFI scheme and East Leake Schools PFI scheme, the liability was written down by initial capital contributions of £9.0 million and £2.9 million respectively.

Non-current assets recognised on the Balance Sheet are revalued and depreciated in the same way as Property, Plant and Equipment owned by the Authority.

The amounts payable to the PFI operators each year are analysed into five elements:

- fair value of the services received during the year – debited to the relevant service in the Comprehensive Income and Expenditure Statement
- finance cost – an interest charge on the outstanding Balance Sheet liability, debited to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement
- contingent rent – increases in the amount to be paid for the property arising during the contract, debited to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement
- payment towards liability – applied to write down the Balance Sheet liability towards the PFI operator (the profile of write-downs is calculated using the same principles as for a finance lease)
- lifecycle replacement costs – charges for ongoing capital maintenance of the Property, Plant and Equipment debited to the relevant scheme.

## 12. Heritage Assets

### Tangible and Intangible Heritage Assets

The Authority's Heritage Assets are held at County Hall or at the Nottinghamshire Archives. Nottinghamshire Archives has a number of architectural drawings and records relating to Rufford Abbey and the Savile of Rufford Estate. These collections are held in support of the primary objective of the Authority's Archives. In addition, the Authority retains a number of important ceremonial regalia and paintings that are also retained for increasing the knowledge, understanding and appreciation of the Authority's history and local area.

Heritage Assets are recognised and measured (including the treatment of revaluation gains and losses) in accordance with the Authority's accounting policies on Property, Plant and Equipment.

The carrying amounts of Heritage Assets are reviewed where there is evidence of impairment for Heritage Assets, e.g. where an item has suffered physical deterioration or breakage or where doubts arise as to its authenticity. Any impairment is recognised and measured in accordance with the Authority's general policies on impairment. Where assets are disposed of, the proceeds of such items are accounted for in accordance with the Authority's general provisions relating to the disposal of Property, Plant and Equipment. Disposal proceeds are disclosed separately in the notes to the financial statements and are accounted for in accordance with statutory accounting requirements relating to capital expenditure and capital receipts.

## 13. Intangible Assets

Expenditure on non-monetary assets that do not have physical substance but are controlled by the Authority as a result of past events (e.g. software licences) is capitalised when it is expected that future economic benefits or service potential will flow from the intangible asset to the Authority.

Intangible assets are measured initially at cost. Amounts are only revalued where the fair value of the assets held by the Authority can be determined by reference to an active market. In practice, no intangible asset held by the Authority meets this criterion, and they are therefore carried at amortised cost. The depreciable amount of an intangible asset is amortised over its useful life to the relevant service line(s) in the Comprehensive Income and Expenditure

Statement. An asset is tested for impairment whenever there is an indication that the asset might be impaired – any losses recognised are posted to the relevant service line(s) in the Comprehensive Income and Expenditure Statement. Any gain or loss arising on the disposal or abandonment of an intangible asset is posted to the Other Operating Expenditure line in the Comprehensive Income and Expenditure Statement.

Where expenditure on intangible assets qualifies as capital expenditure for statutory purposes, amortisation, impairment losses and disposal gains and losses are not permitted to have an impact on the General Fund Balance. The gains and losses are therefore reversed out of the General Fund Balance in the Movement in Reserves Statement and posted to the Capital Adjustment Account and the Capital Receipts Reserve.

## **14. Investment Properties**

Investment Properties are those that are used solely to earn rentals and/or for capital appreciation. The definition is not met if the property is used in any way to facilitate the delivery of services or production of goods or is held for sale.

Investment Properties are measured initially at cost and subsequently at fair value as per the requirements of IFRS13. Fair value is based on the amount at which the asset could be sold in an orderly transaction between knowledgeable market participants at the measurement date. As a non-financial asset, an investment property will be measured at its highest and best use. Properties are not depreciated but are revalued annually according to market conditions at the year-end. Gains and losses on revaluation are posted to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement. The same treatment is applied to gains and losses on disposal.

Rentals received in relation to investment properties are credited to the Financing and Investment Income line and result in a gain for the General Fund Balance. However, revaluation and disposal gains and losses are not permitted by statutory arrangements to have an impact on the General Fund Balance. The gains and losses are therefore reversed out of the General Fund Balance in the Movement in Reserves Statement and posted to the Capital Adjustment Account and the Capital Receipts Reserve.

## **15. Employee Benefits and Pensions**

### **Benefits Payable During Employment**

Short-term employee benefits are those due to be settled within 12 months of the year-end. They include such benefits as wages and salaries, paid annual leave and paid sick leave, bonuses and non-monetary benefits (e.g. cars) for current employees and are recognised as an expense for services in the year in which employees render service to the Authority. An accrual is made for the cost of holiday entitlements (or any form of leave, e.g. time off in lieu) earned by employees but not taken before the year-end which employees can carry forward into the next financial year. The accrual is made at the wage and salary rates applicable in the following accounting year, being the period in which the employee takes the benefit. The accrual is charged to Surplus or Deficit on the Provision of Services, but then reversed out through the Movement in Reserves Statement so that holiday benefits are charged to revenue in the financial year in which the holiday absence occurs.

### **Termination Benefits**

Termination benefits are amounts payable as a result of a decision by the Authority to terminate an officer's employment before the normal retirement date or an officer's decision to accept voluntary redundancy in exchange for those benefits and are charged on an accruals basis to the appropriate service segment or, where applicable, to a corporate service segment at the earlier of when the Authority can no longer withdraw the offer of those benefits or when the Authority recognises costs for a restructuring.

Where termination benefits involve the enhancement of pensions, statutory provisions require the General Fund balance to be charged with the amount payable by the Authority to the pension fund or pensioner in the year, not the amount calculated according to the relevant accounting standards. In the Movement in Reserves Statement, appropriations are required to and from the



Pensions Reserve to remove the notional debits and credits for pension enhancement termination benefits and replace them with debits for the cash paid to the pension fund and pensioners and any such amounts payable but unpaid at the year-end.

## **Post-Employment Benefits**

Employees of the Authority are members of two separate pension schemes:

- The Teachers' Pension Scheme, administered by Capita Teachers' Pensions on behalf of the Department for Education (DfE)
- The Local Government Pension Scheme, administered by Nottinghamshire County Council.

Both schemes provide defined benefits to members (retirement lump sums and pensions), earned as employees work for the Authority. However, the arrangements for the teachers' scheme mean that liabilities for these benefits cannot ordinarily be identified specifically to the Authority. The scheme is therefore accounted for as if it were a defined contribution scheme and no liability for future payments of benefits is recognised in the Balance Sheet. The Education & SEND and Schools line in the Comprehensive Income and Expenditure Statement is charged with the employer's contributions payable to Teachers' Pensions in the year.

## **The Local Government Pension Scheme (LGPS)**

The Scheme is accounted for as a defined benefits scheme:

- The liabilities of the pension fund attributable to the Authority are included in the Balance Sheet on an actuarial basis using the projected unit method – i.e. an assessment of the future payments that will be made in relation to retirement benefits earned to date by employees, based on assumptions about mortality rates, employee turnover rates etc. and projections of projected earnings for current employees. In assessing these liabilities at 31 March 2024 for the 2023/24 Statement of Accounts, the actuary made a number of changes in the assumptions underlying the present value of the scheme liabilities. These include changes in the discount rate, assumed pensions increases and inflation.
- The assets of the pension fund attributable to the Authority are included in the Balance Sheet at their fair value:
  - quoted securities – current bid price
  - unquoted securities – professional estimate
  - unutilised securities – current bid price
  - property – market value.

The change in the net pensions liability is analysed into several components:

- Service Cost comprising:
  - current service cost / gain – the change in liabilities as a result of years of service earned this year – allocated in the Comprehensive Income and Expenditure Statement to the services for which the employees worked.
  - past service cost – the increase in liabilities arising from current year decisions whose effect relates to years of service earned in earlier years – debited to the Surplus or Deficit on the Provision of Services in the Comprehensive Income and Expenditure Statement as part of Other Operating Income and Expenditure
  - net interest on the net defined benefit liability (asset), i.e. net interest expense for the Authority – the change during the period in the net defined benefit liability (asset) that arises from the passage of time charged to the Financing and Investment Income and Expenditure line of the Comprehensive Income and Expenditure Statement – this is calculated by applying the discount rate used to measure the defined benefit obligation at the beginning of the period to the net defined benefit liability (asset) at the beginning of the period – taking into account any changes in the net defined benefit liability (asset) during the period as a result of contribution and benefit payments.

- Remeasurements comprising:
  - the return on plan assets – excluding amounts included in net interest on the net defined benefit liability (asset) – charged to the Pensions Reserve as Other Comprehensive Income and Expenditure
  - actuarial gains and losses – changes in the net pensions liability that arise because events have not coincided with assumptions made at the last actuarial valuation or because the actuaries have updated their assumptions – credited/debited to the Pensions Reserve
  - Contributions paid to the pension fund – cash paid as employer's contributions to the pension fund in settlement of liabilities; not accounted for as an expense.

In relation to retirement benefits, statutory provisions require the General Fund balance to be charged with the amount payable by the Authority to the pension fund or directly to pensioners in the year, not the amount calculated according to the relevant accounting standards. In the Movement in Reserves Statement, this means that there are appropriations to and from the Pensions Reserve to remove the notional debits and credits for retirement benefits and replace them with debits for the cash paid to the pension fund and pensioners and any such amounts payable but unpaid at the year-end. The negative balance that arises on the Pensions Reserve thereby measures the beneficial impact to the General Fund of being required to account for retirement benefits on the basis of cash flows rather than as benefits are earned by employees.

### **Discretionary Benefits**

The Authority also has restricted powers to make discretionary awards of retirement benefits in the event of early retirements. Any liabilities estimated to arise as a result of an award to any member of staff (including teachers) are accrued in the year of the decision to make the award and accounted for using the same policies as are applied to the Local Government Pension Scheme.

## **16. Cash and Cash Equivalents**

Amounts held in call accounts or money market funds are highly liquid and readily convertible. These can be held for relatively long periods as call account rates are currently attractive. However, these accounts are used to cover short-term cash flow needs and so will be classed as cash equivalents.

Fixed term investments, of whatever duration, and amounts held in notice accounts are not readily convertible to known amounts of cash. Fixed deals and notice periods can be broken but only through negotiation with the borrower and at a penalty depending on the fair value of the loan at the time of break. All such investments will not therefore be classed as cash equivalents.

In the Cash Flow Statement, cash and cash equivalents are shown net of bank overdrafts that are repayable on demand and form an integral part of the Authority's cash management.

## **17. Financial Instruments**

### **Financial Liabilities**

Financial liabilities are recognised on the Balance Sheet when the Authority becomes a party to the contractual provisions of a financial instrument and are initially measured at fair value and are carried at their amortised cost. Annual charges to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement for interest payable are based on the carrying amount of the liability, multiplied by the effective rate of interest for the instrument. The effective interest rate is the rate that exactly discounts estimated future cash payments over the life of the instrument to the amount at which it was originally recognised.

For most of the borrowings that the Authority has, this means that the amount presented in the Balance Sheet is the outstanding principal repayable (plus accrued interest); and interest charged to the Comprehensive Income and Expenditure Statement is the amount payable for the year according to the loan agreement.

Gains and losses on the repurchase or early settlement of borrowing are credited and debited to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement in the year of repurchase/settlement. However, where repurchase has taken place as part of a restructuring of the loan portfolio that involves the modification or exchange of existing instruments, the premium or discount is respectively deducted from or added to the amortised cost of the new or modified loan and the write-down to the Comprehensive Income and Expenditure Statement is spread over the life of the loan by an adjustment to the effective interest rate.

Where premiums and discounts have been charged to the Comprehensive Income and Expenditure Statement, regulations allow the impact on the General Fund Balance to be spread over future years. The Authority has a policy of spreading the gain or loss over the term that was remaining on the loan against which the premium was payable or discount receivable when it was repaid. The reconciliation of amounts charged to the Comprehensive Income and Expenditure Statement to the net charge required against the General Fund Balance is managed by a transfer to or from the Financial Instruments Adjustment Account in the Movement in Reserves Statement.

## **Financial Assets**

Financial assets are classified based on a classification and measurement approach that reflects the business model for holding the financial assets and their cashflow characteristics. There are three main classes of financial assets measured at:

- amortised cost
- fair value through profit or loss (FVPL), and
- fair value through other comprehensive income (FVOCI).

The Authority's business model is to hold investments to collect contractual cash flows. Financial assets are therefore classified as amortised cost, except for those whose contractual payments are not solely payment of principal and interest (i.e. where the cash flows do not take the form of a basic debt instrument).

### **Financial Assets Measured at Amortised Cost**

Financial assets measured at amortised cost are recognised on the Balance Sheet when the Authority becomes a party to the contractual provisions of a financial instrument and are initially measured at fair value. They are subsequently measured at their amortised cost. Annual credits to the Financing and Investment Income and Expenditure line in the Comprehensive Income and Expenditure Statement (CIES) for interest receivable are based on the carrying amount of the asset multiplied by the effective rate of interest for the instrument. For most of the financial assets held by the Authority, this means that the amount presented in the Balance Sheet is the outstanding principal receivable (plus accrued interest) and interest credited to the CIES is the amount receivable for the year in the loan agreement.

When soft loans are made, a loss is recorded in the CIES (debited to the appropriate service) for the present value of the interest that will be foregone over the life of the instrument, resulting in a lower amortised cost than the outstanding principal.

Interest is credited to the Financing and Investment Income and Expenditure line in the CIES at a marginally higher effective rate of interest than the rate receivable from the relevant organisations, with the difference serving to increase the amortised cost of the loan in the Balance Sheet. Statutory provisions require that the impact of soft loans on the General Fund Balance is the interest receivable for the financial year – the reconciliation of amounts debited and credited to the CIES to the net gain required against the General Fund Balance is managed

by a transfer to or from the Financial Instruments Adjustment Account in the Movement in Reserves Statement.

Any gains and losses that arise on the derecognition of an asset are credited or debited to the Financing and Investment Income and Expenditure line in the CIES.

### **Expected Credit Loss Model**

The Authority recognises expected credit losses on all of its financial assets held at amortised cost, either on a 12-month or lifetime basis. The expected credit loss model also applies to lease receivables and contract assets. Only lifetime losses are recognised for trade receivables (debtors) held by the Authority.

Impairment losses are calculated to reflect the expectation that the future cash flows might not take place because the borrower could default on their obligations. Credit risk plays a crucial part in assessing losses. Where risk has increased significantly since an instrument was initially recognised, losses are assessed on a lifetime basis. Where risk has not increased significantly or remains low, losses are assessed on the basis of 12-month expected losses.

## **18. Fair Value Measurement**

The Authority measures some of its non-financial assets such as surplus assets and investment properties and some of its financial instruments at each reporting date at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement assumes that the transaction to sell the asset or transfer the liability takes place either:

- a) in the principal market for the asset or liability, or
- b) in the absence of a principal market, in the most advantageous market for the asset or liability

The Authority measures the fair value of an asset or liability using the assumptions that market participants would use when pricing the asset or liability, assuming that market participants act in their economic best interest.

When measuring the fair value of a non-financial asset, the Authority takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use.

The Authority uses valuation techniques that are appropriate in the circumstances and for which sufficient data is available, maximising the use of relevant observable inputs and minimising the use of unobservable inputs.

Inputs to the valuation techniques in respect of assets and liabilities for which fair value is measured or disclosed in the Authority's financial statements are categorised within the fair value hierarchy, as follows:

Level 1 – quoted prices (unadjusted) in active markets for identical assets or liabilities

Level 2 – inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly

Level 3 – unobservable inputs for the asset or liability

## **19. Inventories**

Inventories are included in the Balance Sheet at the lower of cost and net realisable value.

## 20. Interests in Companies and Other Entities

The Authority has involvement with a number of entities where interests are not considered to be material. The nature and value of the relationships are disclosed within the single entity accounts. In line with the Code requirement on group accounts and consolidation, maintained schools within the county are considered to be entities controlled by the Authority. The income, expenditure, assets and liabilities, reserves and cash flows of these schools are recognised within the Authority's single entity accounts rather than group accounts.

## 21. Provisions

Provisions are made where an event has taken place that gives the Authority a legal or constructive obligation that probably requires settlement by a transfer of economic benefits or service potential, and a reliable estimate can be made of the amount of the obligation. For instance, the Authority may be involved in a court case that could eventually result in the making of a settlement or the payment of compensation.

Provisions are charged as an expense to the appropriate service line in the Comprehensive Income and Expenditure Statement in the year that the Authority becomes aware of the obligation. These are measured at the best estimate at the Balance Sheet date of the expenditure required to settle the obligation, taking into account relevant risks and uncertainties.

When payments are eventually made, they are charged to the provision carried in the Balance Sheet. Estimated settlements are reviewed at the end of each financial year – where it becomes less than probable that a transfer of economic benefits will now be required (or a lower settlement than anticipated is made), the provision is reversed and credited back to the relevant service.

Where some or all of the payment required to settle a provision is expected to be recovered from another party (e.g. from an insurance claim), this is only recognised as income for the relevant service if it is virtually certain that reimbursement will be received if the Authority settles the obligation.

## 22. Contingent Liabilities

A contingent liability arises where an event has taken place that gives the Authority a possible obligation whose existence will only be confirmed by the occurrence, or otherwise, of uncertain future events not wholly within the control of the Authority. Contingent liabilities also arise in circumstances where a provision would otherwise be made but either it is not probable that an outflow of resources will be required or the amount of the obligation cannot be measured reliably.

Contingent liabilities are not recognised in the Balance Sheet but are disclosed in a note to the accounts.

## 23. Contingent Assets

A contingent asset arises where an event has taken place that gives the Authority a possible asset whose existence will only be confirmed by the occurrence, or otherwise, of uncertain future events not wholly within the control of the Authority.

Contingent assets are not recognised in the Balance Sheet but are disclosed in a note to the accounts where it is probable that there will be an inflow of economic benefits or service potential.

No contingent assets have been identified for the Authority at 31 March 2024.

## 24. Reserves

The Authority sets aside specific amounts as reserves for future policy purposes or to cover contingencies. Reserves are created by appropriating amounts out of the General Fund Balance

in the Movement in Reserves Statement. When expenditure to be financed from a reserve is incurred, it is charged to the appropriate service in that year to score against the Surplus or Deficit on the Provision of Services in the Comprehensive Income and Expenditure Statement. The reserve is then appropriated back into the General Fund Balance in the Movement in Reserves Statement so that there is no net charge against Council Tax for the expenditure.

Certain reserves are kept to manage the accounting processes for non-current assets, financial instruments, retirement and employee benefits and do not represent usable resources for the Authority.

## **25. Schools**

The Code of Practice on Local Authority Accounting in the United Kingdom confirms that the balance of control for Local Authority maintained schools (i.e. those categories of school identified in the School Standards and Framework Act 1998, as amended) lies with the Local Authority. The Code also stipulates that those schools' assets, liabilities, reserves and cash flows are recognised in the Local Authority financial statements (and not the Group Accounts). Therefore schools' transactions, cash flows and balances are recognised in each of the financial statements of the Authority as if they were the transactions, cash flows and balances of the Authority.

## **26. VAT**

VAT payable, for both revenue and capital, is included as an expense only to the extent that it is not recoverable from Her Majesty's Revenue and Customs. VAT receivable is excluded from income.

## **27. Accounting for Council Tax and NNDR**

The Council Tax and NNDR income included in the Comprehensive Income and Expenditure Statement is the Authority's share of accrued income for the year. However, regulations determine the amount of Council Tax and NNDR that must be included in the Authority's General Fund. Therefore, the difference between the income included in the Comprehensive Income and Expenditure Statement and the amount required by regulation to be credited to the General Fund is taken to the Collection Fund Adjustment Account and included as a reconciling item in the Movement in Reserves Statement.

The Balance Sheet includes the Authority's share of the end of year balances in respect of Council Tax and NNDR relating to arrears, impairment allowances for doubtful debts, overpayments and prepayments and appeals.



**17 April 2024****Agenda Item:7****REPORT OF SERVICE DIRECTOR CUSTOMERS, GOVERNANCE AND  
EMPLOYEES AND MONITORING OFFICER****OUTCOMES OF THE STRENGTHENING OVERVIEW AND SCRUTINY  
REVIEW****Purpose of the Report**

1. To consider and agree the recommendations from the independent scrutiny review and refer them to Overview Committee for implementation.

**Information**

2. The Council established the new model of executive governance in May 2022, creating a Cabinet and Scrutiny function. In the process of agreeing the new model and required changes to the Council's Constitution it was recommended that the operation of the new arrangements be reviewed after 12 months operation.
3. The cross-party Member Working Group considered the operation of the new governance model and recommended minor changes to arrangements which were reflected in revisions to the Constitution. These were agreed by Full Council at its meeting in July 2023.
4. An independent review of the operation of the Council's scrutiny function was also commissioned from the Centre for Governance and Scrutiny. This was a member led process which took the form of a review into current arrangements and made recommendations for improvements to how scrutiny operates at the Council.
5. The initial stage of the review was carried out between September and October 2023:
  - a. Stage one involved one to one conversations with a small number of officers and Members 'closest' to the scrutiny function, observation of Overview Committee and Health Scrutiny Committee (September meetings) and review of the October Forward Plan
  - b. Stage two involved a series of facilitated group conversations between the Independent Reviewer and individual political groups, backbench Members, Cabinet members and the cross-party Member Working Group plus meeting with the Chairs and Vice Chairs of the Scrutiny Committees. Discussions also subsequently took place with officers including the Corporate Leadership Team.

- c. Stage three involved preparing findings, reporting to various groups individually on those findings and supporting the start of development of action planning and identifying specific areas of work.

## **Review recommendations**

6. The review set out a number of recommendations under key themes, as set out below:

### **7. Ownership, Understanding and Engagement**

- (1) That political Groups appoint members to scrutiny committees with the time, authority and expertise and support them to contribute and operate in an independently minded fashion.
- (2) That Scrutiny Officers develop a local induction to Overview and Scrutiny at Nottinghamshire and such training is rolled out regularly to officers and Members.
- (3) That the Monitoring Officer assures herself that she has the optimal level of capacity and capability amongst scrutiny officers to deliver on its statutory responsibilities and the expectations of Members.
- (4) That the Chief Executive, Monitoring Officer and the Section 151 Officer actively and visibly champion, and raise the profile of, the important role of the Statutory Scrutiny Officer within the organisation and, where necessary, with partners.
- (5) That the Council develops an Executive/Scrutiny Protocol to reset relationships and ensure a positive flow of information between these two functions.
- (6) That the Council explores the use of other Committee rooms not the Council Chamber, for scrutiny meetings.

### **8. Information**

- (1) That the Monitoring Officer, Senior Scrutiny Officer and Chief Executive ensure:
  - (a) that tiers one to three of the organisation understand that the Forward Plan has many roles and one such role is a tool to support Overview and Scrutiny work planning;
  - (b) that those officers, supported by the Corporate Leadership Team and Executive, visibly role model a culture of openness and transparency towards the use of the Forward Plan;
  - (c) that a fundamental review of the Forward Plan is undertaken to ensure its utility to the organisation and the public. That the benefits of extending the timeframe of the plan out from 28 days to approximately six months is also considered.
- (2) That the Monitoring Officer and Chief Executive engage political group leaders on how best to support all Members to effectively and efficiently access and understand governance documentation.
- (3) That the Monitoring Officer clarifies the responsibilities of all Members in respect of accessing information of a confidential nature and where necessary puts safeguards in place to support such access.



## 9. Work Programming

(1) That the work programming process be reset to contain the following features:

- (a) a documented process with the inputs and outputs of Scrutiny Members, backbench Members, Corporate Leadership Team, Cabinet and Partners documented;
- (b) a process which operates over an identified timescale with the majority of each Committee's work programme being set in advance of, or immediately after, the new municipal year;
- (c) that a protocol is developed to govern the establishment of task groups to include, chairing, agreement of scope/terms of reference and membership as a minimum;
- (d) that consideration be given to how to engage the Council's communications team in the work of Overview and Scrutiny;
- (e) that Scrutiny and Select Committee chairs visibly take active steps to ensure their work programmes are Member-led.

## 10. Overlaps

- (1) That the chairs of relevant committees convene as necessary on an ad hoc basis to resolve issues of a cross cutting nature.
- (2) That the Council considers joint sittings of Committees or joint task groups to undertake their enquiries so to utilise the talents, knowledge and experiences of all Members on such committees.

## **Change in Governance Arrangements Member Working Group**

- 11. The Member Working Group, including the Chairman and Vice-Chairman of Overview Committee, met in February 2024 to receive a briefing on the outcomes of the review and its recommendations from the independent reviewer.
- 12. The Member Working Group was in support of the recommendations and endorsed their presentation at Governance and Ethics Committee for consideration and approval. The group was keen to progress work on developing an action plan to implement the recommendations.

## **Next Steps**

- 13. Members are asked to consider and endorse the recommendations from the review.
- 14. Overview Committee will be tasked with developing an action plan based on the recommendations and leading on the implementation and monitoring of the impact of the actions.

## **Other Options Considered**

- 15. It was agreed that a review of the operation of the new governance arrangements be undertaken after 12 months in operation. The recommendations set out in the report in relation to scrutiny were made following an independent review by the Centre for Governance and Scrutiny working closely with elected members. Given that scrutiny is a member-led process it is important that a wide range of members from all groups were involved in the review

process and that the Governance and Ethics Committee now has the opportunity to consider the recommendations and actions proposed.

### **Reason/s for Recommendation/s**

16. To ensure that Governance and Ethics Committee has sight of the outcome of the independent review and seek approval for implementation of the recommendations arising from the independent review and monitoring of the actions arising by members through Overview Committee.

### **Statutory and Policy Implications**

17. 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.

## **RECOMMENDATIONS**

- 1) That the review recommendations set out in paragraphs 7 to 10 of the report, be approved.
- 2) That Overview Committee be requested to develop and oversee implementation of an action plan in response to the review recommendations.

**Marjorie Toward**

**Service Director Customers, Governance and Employees and Monitoring Officer**

**For any enquiries about this report please contact:** Heather Dickinson, Group Manager  
Legal, Democratic and Information Governance, Tel: 0115 9774835; Email:  
[heather.dickinson@nottsc.gov.uk](mailto:heather.dickinson@nottsc.gov.uk)

### **Constitutional Comments (HD 05/04/2024)**

18. Governance and Ethics Committee has the authority to consider the report and its recommendations.

### **Financial Comments (CSS 08/04/2024)**

19. 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.

- CfGS Rapid Review report

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

- All



**17 April 2024****Agenda Item: 8****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND  
EMPLOYEES****WORK PROGRAMME****Purpose of the Report**

1. To review the Committee's work programme.

**Information**

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

**Other Options Considered**

4. The option to not present a work programme to the Committee was rejected as it would not allow forward planning or management of agenda items.

**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:**

Noel McMenamin - Democratic Services

Tel. 0115 992 2670

E-mail: [noel.mcmenamin@nottsc.gov.uk](mailto:noel.mcmenamin@nottsc.gov.uk)

### **Constitutional Comments (EH)**

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

### **Financial Comments (NS)**

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

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

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

- None

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

- All

## **GOVERNANCE & ETHICS COMMITTEE – WORK PROGRAMME (as at 9 April 2024)**

<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>17 April 2024</b>			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Review of the improvements to communication	To review the impact of the measures introduced by Adult Social Care Financial Services following corporate review and in response to LGSCO decision findings	Sue Batty	Nicola Peace
Governance Update	To consider progress against the Governance Action Plan for 2023/24	Nigel Stevenson	Simon Lacey
Statement of Accounts – 2023 – 24 Accounting Policies	To review and approve the proposed accounting policies used in creating the Statement of Accounts for 2023/24	Nigel Stevenson	Glen Bicknell
Outcomes of the Strengthening Overview and Scrutiny Review	To consider and agree recommendations from the independent scrutiny review and refer them to Overview Committee for implementation.	Marje Toward	Heather Dickinson
<b>19 June 2024</b>			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Governance and Ethics Committee Annual Report	To consider the draft annual report	Nigel Stevenson	Simon Lacey
Annual Governance Statement 2023 – 24	To consider the draft statement for 2023/24	Nigel Stevenson	Simon Lacy
Assurance Mapping Annual Report	To review the assurance provided from the map in 2022/23 and consider coverage for 2023/24	Nigel Stevenson	Simon Lacey
Head of Internal Audit's Annual Report 2023/24	To inform the Committee of the Annual Report for 2023/24 and opinion on adequacy of arrangements for governance, risk management and control	Nigel Stevenson	Simon Lacey
Informing the Risk Assessment – 2023-24 Statement of Accounts	To consider the Risk Assessment for the Statement of Accounts	Nigel Stevenson	Glen Bicknell
External Audit Plan 2023-24	To consider the External Audit Plan for the forthcoming audit	Nigel Stevenson	Glen Bicknell



Review of Improvements in Communications – Adult Social Care Financial Services	To review the impact of the measures introduced by Adult Social Care Financial Services following corporate review and in response to LGSCO decision findings	Sue Batty	Nicola Peace
Use of the Councillors Divisional Fund 2023/24	To provide an annual update on the use of the Councillor's Divisional Fund for 2022/23	Marjorie Toward	Keith Ford
Review of Whistleblowing Policy	To consider the outcomes of a review of the Council's current Whistleblowing Policy	Marjorie Toward	Heather Dickinson/Emma Hunter
<b>24 July 2024</b>			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Term 3 Progress 2023/24 and Term 2 Plan 2024/25	To consider proposed audit coverage for Term 2	Nigel Stevenson	Simon Lacey
Annual Fraud Report 2022-23	To review the incidence of fraud over the year and an update on risks and mitigations	Nigel Stevenson	Simon Lacey
Follow-Up of Internal Audit recommendations – 6 monthly update	To consider an update on progress with implementing agreed actions from Internal Audit reports	Nigel Stevenson	Simon Lacey
<b>4 September 2024</b>			
<b>16 October 2024</b>			
Review of Arms Length Organisations	To review the governance arrangements of Arms Length Organisations	Nigel Stevenson	Derek Higton
<b>27 November 2024</b>			



