

Governance and Ethics Committee

Thursday, 01 February 2018 at 13:00

County Hall, West Bridgford, Nottingham, NG2 7QP

AGENDA

- | | | |
|---|--|---------|
| 1 | Minutes of last meeting held on 13 December 2017 | 3 - 6 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Results of NHS Digital Audit of Data Sharing Agreements with Public Health | 7 - 24 |
| 5 | Assurance Mapping | 25 - 30 |
| 6 | Follow Up of Internal Audit Recommendations | 31 - 42 |
| 7 | Update on Local Government Ombudsman Decisions - November and December 2017 | 43 - 78 |
| 8 | Work Programme | 79 - 82 |

Notes

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.
- (2) Members of the public wishing to inspect "Background Papers" referred to in

the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

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

Councillors or Officers requiring clarification on whether to make a declaration of interest are invited to contact Keith Ford (Tel. 0115 977 2590) or a colleague in Democratic Services prior to the meeting.

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

Meeting **GOVERNANCE AND ETHICS COMMITTEE**

Date **Wednesday 13 December 2017 (commencing at 1.00pm)**

membership

Persons absent are marked with 'A'

COUNCILLORS

Bruce Laughton (Chairman)

Nicki Brooks
Steve Carr
Jim Creamer
Richard Jackson
Tony Harper

Mike Pringle
Rachel Madden
Mike Quigley MBE
Phil Rostance
Martin Wright

OFFICERS IN ATTENDANCE

Cherry Dunk
Michael Fowler
Paul McKay



Adult Social Care, Health and Public Protection

Caroline Agnew
Sue Bearman
Glen Bicknell
Phil Dent
Rob Disney
Keith Ford
Andrew Howarth
Jo Kirkby
Laura Mulvany-Law
Nigel Stevenson
Clare Winter



Resources

Tony Crawley

KPMG – External Auditor

Emily Fletcher

Graduate Observer

MINUTES

The Minutes of the last meeting held on 8 November 2017, having been previously circulated, were confirmed and signed by the Chairman.

APOLOGIES FOR ABSENCE

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

- Councillor Martin Wright had replaced Councillor Andy Sissons
- Councillor Mike Pringle had replaced Councillor Kate Foale
- Councillor Jim Creamer had replaced Councillor Errol Henry
- Councillor Richard Jackson had replaced Councillor John Handley

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

None

EXTERNAL AUDIT – ANNUAL AUDIT LETTER 2016-17 AND PROGRESS REPORT

The Chairman highlighted his recent visits to the various teams which come under the Committee's remit and thanked officers, on behalf of the Committee for the excellent work being undertaken.

Tony Crawley, KPMG Audit Manager, explained the purpose of the Annual Audit Letter, introduced the progress report and answered Members' queries.

During discussions, Members commented on the following issues:-

- the role of the Committee in overseeing any concerns raised with officers;
- the challenges posed by the new General Data Protection Regulations and the work which the Council had already undertaken to share the best practice of Essex County Council;
- the National Audit Office report on Homelessness and the Homelessness Reduction Act 2017, which it was felt brought additional responsibilities for local authorities, without bringing any additional resources.

RESOLVED: 2017/027

That further consideration be given to the comments made by Members.

UPDATE ON 'LIMITED ASSURANCE' INTERNAL AUDIT REPORTS IN ADULT SOCIAL CARE, HEALTH AND PUBLIC PROTECTION (ASCH&PP) DEPARTMENT

Phil Dent, Audit Team Leader, introduced the reports and gave a presentation highlighting the key messages and themes and the action tracking process.

Paul McKay, Deputy Director ASCH&PP and Cherry Dunk, Group Manager Quality and Market Management responded to Members' queries about commissioning, the need for separate bank accounts for direct payments, the Council's willingness to pursue criminal proceedings where appropriate and the storage of bank details in line with data protection requirements.

RESOLVED: 2017/028

That individual Members contact the relevant officers for further information and individual briefings if required.

INFORMATION GOVERNANCE IMPROVEMENT PROGRAMME UPDATE

Caroline Agnew, Programme Manager, introduced the report, outlining the implications of the new General Data Protection Regulations and the work required by the County Council and other authorities to ensure compliance.

RESOLVED: 2017/029

- 1) That the Committee receive further updates on this issue on a six monthly basis.
- 2) That the approach to developing the Council's information governance function and the additional permanent and temporary resources, as set out in paragraphs 17 to 26 of the report, be agreed subject to approval of allocations from contingency by the Finance and Major Contracts Management Committee.
- 3) That authority be delegated to the Corporate Director for Resources to vary structures and approaches in relation to information governance within the overall budget envelope for the information governance function and Programme.

DISQUALIFICATION CRITERIA FOR COUNCILLORS – DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION

Sue Bearman, Senior Solicitor, introduced the report which sought Members' views in order to finalise the Council's response to this consultation.

Following discussions and further clarifications, Members were in agreement that the proposed approach was correct in requiring that disqualification be applicable where either an order was made by a court or a caution (equivalent to admission of guilt) had been issued.

RESOLVED: 2017/030

That the consultation response be amended, to underline the point about court orders and cautions, and submitted to the Department for Communities and Local Government.

OUTCOMES FROM THE COMPLAINTS PROCESS – APRIL 2016 TO MARCH 2017

Jo Kirkby, Team Manager and Laura Mulvany-Law, Senior Practitioner from the Complaints and Information Team introduced the report which presented a summary of Local Government Ombudsman (LGO) complaints from the 2016-17 financial year.

RESOLVED: 2017/031

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

OUTCOMES FROM THE COMPLAINTS PROCESS – APRIL 2016 TO MARCH 2017

Jo Kirkby, Team Manager, Complaints and Information Team introduced the report which detailed the LGO complaint decisions received since April 2017.

During discussions, Members raised concerns about Complaint Ref 16 002 738 and sought assurances that social work cases continued to be progressed when reallocated to other members of staff due to staff absence. Officers agreed to provide further details of how the learning from this particular case had informed current practice.

RESOLVED: 2017/032

- 1) That further details of how the learning from complaint reference 16 002 738 had informed current social work practice be shared with Committee Members.
- 2) That all LGO decisions where an investigation had taken place be submitted to the Committee on an ongoing basis, to give a complete picture of those complaints upheld or otherwise.

WORK PROGRAMME

During discussions, Members requested that twice yearly updates be provided to the Committee on Member Development and Training.

RESOLVED: 2017/033

That no further changes to the work programme were required at this stage

The meeting closed at 2.17 pm.

CHAIRMAN

1 February 2018**Agenda Item: 4****REPORT OF DIRECTOR OF PUBLIC HEALTH****RESULTS OF NHS DIGITAL AUDIT OF DATA SHARING AGREEMENTS
WITH PUBLIC HEALTH****Purpose of the Report**

1. To update Members on the outcome of an audit of a data sharing agreement between the Council and the NHS and to seek comments on the actions undertaken in response.

Information and Advice

2. The Public Health division includes a specialist Public Health intelligence function, which provides information to support production of the Joint Strategic Needs Assessment, provision of specialist Public Health advice to CCGs, and to inform Public Health service commissioning. As Public Health services are planned according to population need, the team requires access to data to enable it to undertake these tasks.
3. Hospital Episode Statistics (HES) is a NHS data warehouse containing details of all admissions, outpatient appointments and Accident & Emergency attendances at NHS hospitals in England. This data is collected during a patient's time at hospital and is submitted to allow hospitals to be paid for the care they deliver, but is also designed to enable secondary use for non-clinical purposes. The Public Health intelligence team uses the data to identify patterns and levels of disease in the local population, which is essential for planning health and care services and also to inform development of services to improve health at a population level: the key function of Public Health.
4. Formal agreement is in place with the NHS in order for the Public Health team to receive and use de-personalised HES information. The Audit report refers to the data as pseudonymised: this means the process of distinguishing individuals in a dataset by using a unique identifier which does not reveal their 'real world' identity.' This definition and discussions around the difference between pseudonymisation and anonymisation can be found in the Information Commissioner's Office Anonymisation Code of Practice at <https://ico.org.uk/media/1061/anonymisation-code.pdf>
5. It is a condition of the data sharing agreement that NHS Digital is able to conduct an audit of how the organisation complies with the information sharing requirements. One such audit was conducted at the end of June 2017.

6. The audit evaluated how the Council conforms to the requirements of the data sharing framework contract (DSFC) and the data sharing agreement (DSA) with respect to the provision of the following HES datasets:

HES Dataset	Level of data	Dataset period
Admitted Patient Care	Pseudonymised /Anonymised Non Sensitive	2016-2017 (M11 to M13 including AR) 2017-2018 (M2 to M10)
Outpatients	Pseudonymised /Anonymised Non Sensitive	2016-2017 (M11 to M13 including AR) 2017-2018 (M2 to M10)
HES Accident and Emergency	Pseudonymised /Anonymised Non Sensitive	2016-2017 (M11 to M13 including AR) 2017-2018 (M2 to M10)

7. The overall findings of the Audit were either of substantial or moderate assurance, as set out in the table below:

Information Transfer	Moderate assurance
Access Control	Substantial assurance
Data Use and Benefits	Substantial assurance
Risk Management	Substantial assurance
Operational Management and Control	Moderate assurance
Data Destruction	Moderate assurance

8. The full report of the Auditors is contained in Annex A.
9. The Audit report contained a number of observations and recommendations. The report was taken to the Council's internal Information Management Group and an Improvement Plan was drawn up by the Council to address the observations. The agreed improvement plan is contained in Annex B, including information on progress to date.

Other Options Considered

10. None. It is a condition of the Data Sharing Agreement that the Council will participate in audit as required by NHS Digital, and respond to the findings of any audit through an improvement plan.

Reason for Recommendation

11. The audit report was initially submitted to the internal Information Management Group, which identified that the report should be brought to Members for scrutiny.

Statutory and Policy Implications

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

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

Financial Implications

13. The costs of the activities associated with the data referred to are met out of the Council's allocation of Public Health grant. There are no financial implications relating to the outcomes of the audit.

RECOMMENDATION

- 1) That Committee receive and comment on the audit report and the proposed actions

Barbara Brady
Director of Public Health

For any enquiries about this report please contact:

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Senior Public Health Intelligence Specialist
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Constitutional Comments (SLB 20.12.2017)

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

Financial Comments (DG 08.01.2018)

15. The financial implications are contained within paragraph 13 of 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

Directorate / Programme	Care Services	Project	Data Sharing Audits
		Status	Approved
Director	Catherine O’Keeffe	Version	1.0
Owner	Sean Walsh	Version issue date	11/08/2017

NHS Digital Audit of Data Sharing Activities: Nottinghamshire County Council – Public Health

1 Audit Summary

1.1 Purpose

This document records the key findings of a data sharing audit at Nottinghamshire County Council (NCC) Public Health (PH) on 29 and 30 June 2017. It provides an evaluation of how NCC conforms to the requirements of the data sharing framework contract (DSFC) CON-389496-S4N5H and the data sharing agreement (DSA) DARS-NIC-389495-J7Z8L with respect to the provision of the following Hospital Episode Statistics (HES) datasets:

HES Dataset	Level of data	Dataset period
Admitted Patient Care	Pseudonymised /Anonymised Non Sensitive	2016-2017 (M11 to M13 including AR) 2017-2018 (M2 to M10)
Outpatients	Pseudonymised /Anonymised Non Sensitive	2016-2017 (M11 to M13 including AR) 2017-2018 (M2 to M10)
HES Accident and Emergency	Pseudonymised /Anonymised Non Sensitive	2016-2017 (M11 to M13 including AR) 2017-2018 (M2 to M10)

Table 1: DSA Datasets

The above datasets supplement previous years already held by the Council.

The data controller is NCC and the data processor is Nottinghamshire Health Informatics Service (NHIS). NHIS is certified to ISO 27001:2013 for IT support.

The report also considers whether NCC conforms to its own policies and procedures.

This is an exception report based on the criteria expressed in the NHS Digital Audit Guide.

1.2 Scope and Assurance Statement

The audit considered the fitness for purpose of the main processes with respect to data handling at NCC along with its associated documentation against the scope areas shown in Table 2.

The NHS Digital Audit Team has assigned the following assurance ratings to these areas based upon the findings of the audit.

Information Transfer	Moderate assurance
Access Control	Substantial assurance
Data Use and Benefits	Substantial assurance
Risk Management	Substantial assurance
Operational Management and Control	Moderate assurance
Data Destruction	Moderate assurance

Table 2: Scope and Assurance rating for NCC

Detailed findings related to the areas of scope are detailed in Table 3.

1.3 Overall Risk Statement

It is the Audit Team's opinion that based on evidence presented during the audit and the type of data being shared, there is low risk of a breach of information security, duties of care, confidentiality or integrity (including inappropriate access to or loss of data) provided by NHS Digital to NCC under the terms and conditions of the data sharing agreements signed by both parties.

1.4 Response

NCC PH has reviewed this report and confirmed that it is accurate.

NCC PH will establish a corrective action plan to address each finding shown in Table 3.

NHS Digital will validate this plan and the resultant actions at a post audit review with NCC to confirm the findings have been satisfactorily addressed.

2 Findings

Table 3 and Table 4 identify the minor nonconformities, observations and item for follow-up raised as part of the audit for NCC and NHIS respectively. NCC will be responsible for reporting on the findings raised against NHIS.

In addressing a finding the data recipient must take account of any referenced supplementary notes.

Ref	Comments	Link to Area	Clause	Designation	Notes
1.	NHS Digital data is being processed and stored at locations that are not declared on the DSA, namely the NCC DR site and the NHIS data centre. Although the NCC DR site is not council owned, the equipment is and is maintained by council staff.	Information Transfer	DSA, 2a and 2b	Minor	
2.	Training for certain NCC PH staff has not been renewed in the last year as the corporate policy states every two years.	Operational Management	DSFC, Schedule 2, 1.3.2	Minor	
3.	No Privacy Impact Assessment (PIA) has been undertaken by NCC for the NHS Digital data. It is NCC practice to complete at least the Part 1 to assess if a full PIA is required.	Operational Management	NCC, Guide to Privacy Impact Assessments	Minor	
4.	Whilst NCC and NHIS were very open during the on-site visit and provided a range of evidence, NCC refused to give the Audit Team sight of the vulnerability (NESSUS) / penetration testing and associated remediation plan(s) citing that it had provided the current Public Services Network (PSN) certificate.	Operational Management	DFSC, Part 2, 7.4	Minor	
5.	NCC should ensure that the appropriate teams have seen the DFSC and DSA to ensure the organisation is fully compliant. This is particularly the case of those DSA covering the provisions of ONS (Office of National Statistics) data.	Operational Management		Observation	
6.	NCC should produce a document which sets out the obligations of NHIS as the Data Processor, including any pertinent requirements in NCC's DSFC/DSA.	Operational Management		Observation	
7.	Incident reporting is under review. As part of this review NCC should ensure that the need to inform NHS Digital of any data / contract breach is reflected.	Operational Management	DSFC, 5.7	Observation	

Ref	Comments	Link to Area	Clause	Designation	Notes
8.	NCC needs to review its data deletion policy to ensure that any NHS Digital supplied data is permanently destroyed when no longer needed. As PH staff use Outlook and Outlook Web Access (OWA) as a mechanism to transfer data between NHIS and NCC networks, NCC needs to recognise that NHS Digital data has a footprint on its Exchange server. <i>The Audit Team provided a copy of NHS Digital's latest guidance.</i>	Data Destruction	DSFC, 4.3.5	Observation	
9.	Guidance should be developed by NCC around the handling and processing of NHS Digital data to provide consistency, including recognition of the various touch points.	Operational Management		Observation	
10.	Site visits should be undertaken by NCC to ensure that contracted third parties are discharging their activities appropriately.	Operational Management		Observation	
11.	The Audit Team is to review further evidence associated with the destruction lifecycle of hardware, namely PCs and laptops.	Data Destruction		Follow-up	

Table 3: NCC – Nonconformities, Observations and Point for follow-up

Ref	Comments	Link to Area	Clause	Designation	Notes
12.	NHIS needs to review its media deletion practices to ensure that any NHS Digital supplied data is permanently destroyed from its systems when no longer needed. This will include both the raw HES files and the database tables.	Data Destruction	DSFC, 4.3.5	Observation	
13.	NHIS should review its access control policy to consider whether the annual review for ensuring correct access is too infrequent.	Access Control	NHIS, Logical Access Control Policy, 7.7	Observation	
14.	NHIS should review its external approval process to ensure that it only processes requests for data access from known NCC managers.	Access Control		Observation	

Table 4: NHIS - Observations

2.1 Supplementary Notes

Not Applicable.

2.2 Data Location

NCC confirmed that processing and storage, including disaster recovery and backups, of the data was limited to the location shown in Table 5.

Data Location	England
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Table 5: Data Location

2.3 Backup Retention

The duration for which data may be retained on backup media is shown in Table 6.

Backup retention	NCC		30 days	
	NHIS	File server	Daily	14 days
			Weekly	28 days
			Monthly	365 days
			Yearly	5 Years
		Database Server DB	Daily	4 days

Table 6: Data Retention Period

2.4 Good Practice

In addition to the findings presented in Table 3 the Audit Team noted the following areas of good practice:

- NCC is actively reviewing its practices to ensure their fitness for purpose
- The council demonstrated clear benefits to health and social care
- There are reasonable physical controls at the NCC datacentre that was visited during the audit.

2.5 Disclaimer

NHS Digital has prepared this audit report for its own purposes. As a result, NHS Digital does not assume any liability to any person or organisation for any loss or damage suffered or costs incurred by it arising out of, or in connection with, this report, however such loss or damage is caused. NHS Digital does not assume liability for any loss occasioned to any person or organisation acting or refraining from acting as a result of any information contained in this report.



NCC Improvement Plan in response to NHS Digital Audit of Data Sharing Agreement 2017

VERSION CONTROL

Author	Creation Date	Version	Status/ changes
Kay Massingham	14.08.2017	1.0	Draft
Changed by	Revision Date		
David Gilding	22.08.2017	2.0	Due dates and status added
Kay Massingham	9.10.2017	2.1	Updates to status and items completed added.
Kay Massingham	05.12.2017	2.2	Updates to status and items completed added.
David Gilding	18.12.2017	2.3	Updates to status and items completed added.
Kay Massingham	20.12.2017	2.4	Updates to status and items completed added.
Kay Massingham	22.1.2018	2.5	Updates to status and items completed added.

Ref	Comments	Type	Designation	Planned actions / updates	Action By	Due Date	Status
1.	NHS Digital data is being processed and stored at locations that are not declared on the DSA, namely the NCC DR site and the NHIS (Nottinghamshire Health Informatics Service) data centre. Although the NCC DR site is not council owned, the equipment is and is maintained by council staff.	Information Transfer	Minor non conformity	1. Collate list of addresses. Complete. 2. Amend DSA to show full list of addresses. Remaining Action: DSAs in process of being updated as part of renewal.	NHIS / NCC ICT DG	28/02/2018	Open

Ref	Comments	Type	Designation	Planned actions / updates	Action By	Due Date	Status
2.	Training for certain NCC PH staff has not been renewed in the last year as the corporate policy states every two years.	Operational Management	Minor non conformity	1. PHIT staff have undertaken all necessary training, July 2017. 2. Mandatory training list for PH division updated to specify annual data protection training requirement for relevant staff, July 2017.	DG KM	31/07/2017	Closed
3.	No Privacy Impact Assessment has been undertaken by NCC for the NHS Digital data. It is NCC practice to complete at least the Part 1 to assess if a full PIA is required.	Operational Management	Minor non conformity	1. Complete PIAs for HES, ONS births and deaths following NCC process. PIA for HES complete. PIA for births and deaths completed and sent to DPH for final approval, 22 January 2018. 2. Develop procedure for consideration of PIAs within PH. Complete: Procedure in place, Oct 2017.	DG / WS / NCC Legal KM	31/01/2018	Open
4.	Whilst NCC and NHIS were very open during the on-site visit and provided a range of evidence, NCC refused to give the Audit Team sight of the vulnerability (NESSUS) / penetration testing and associated remediation plan(s) citing that it had provided the current Public Services Network (PSN) certificate.	Operational Management	Minor non conformity	Discussed at August 2017 IMG meeting. Agreed to refer report to Governance and Ethics Committee. Action: Report referred to Governance and Ethics committee for consideration at meeting 1 Feb 2018.	BB / JFW	01/02/2018	Open
5.	NCC should ensure that the appropriate teams have seen the DFSC and DSA to ensure the organisation is fully compliant. This is particularly the case	Operational Management	Observation	Email sent to relevant teams 18.10.2017: Legal Services, Information Manager; ICT; all members of PH Information Team.	KM	18/10/2017	Closed

Ref	Comments	Type	Designation	Planned actions / updates	Action By	Due Date	Status
	of those DSA covering the provisions of ONS (Office of National Statistics) data.			Copies were attached of <ul style="list-style-type: none"> • Data Sharing Agreement Hospital Episode Statistics • Data Sharing Agreement Access to Primary Care Mortality Database • Data Sharing Framework Contract 			
6.	NCC should produce a document which sets out the obligations of NHIS as the Data Processor, including any pertinent requirements in NCC's DSFC/DSA.	Operational Management	Observation	NCC Legal to produce suitable third party agreement. Discussed with Legal at meeting, 30.10.2017, Draft supplied by Legal, 22.1.2018. Remaining action is to discuss with Legal and finalise document.	Simon Gill	28/02/2018	Open
7.	Incident reporting is under review. As part of this review NCC should ensure that the need to inform NHS Digital of any data/contract breach is reflected.	Operational Management	Observation	Review of reporting personal data breaches is complete and the system approved by the IMG in August 2017. Any potential personal data breaches can currently be reported through the intranet form. The process for reporting personal data breaches has not changed and all staff should be aware how to make a report. Other information security incidents involving the systems/transfer of data, equipment theft/loss etc, should be reported through the ICT security incident process, as per standard	WS / KM	28/02/2018	Open

Ref	Comments	Type	Designation	Planned actions / updates	Action By	Due Date	Status
				<p>reporting procedure.</p> <p>Public Health intelligence specialist is the primary point of contact for NHS Digital and will need to be informed of any incidents identified by NCC personnel or NHIS data processors. He will then need to report incidents to NHS Digital.</p> <p>Relevant NCC staff were informed of the NHS Digital incident reporting process by email on 18.10.2017. NHIS staff were also informed of the NHS Digital incident reporting process by forwarding this email.</p> <p>Remaining action is to write this into the data processing agreement with NHIS at item 6 above.</p>			
8.	<p>NCC needs to review its data deletion policy to ensure that any NHS Digital supplied data is permanently destroyed when no longer needed.</p> <p>As PH staff use Outlook and Outlook Web Access (OWA) as a mechanism to transfer data between NHIS and NCC networks, NCC needs to recognise that NHS Digital data has a footprint on its</p>	Data Destruction	Observation	<p>1. Deletion of data: The draft Information Security Policy references the draft Data Destruction Standard. There is an ICT asset disposal process that can be accessed here: http://home.nottscg.gov.uk/working/ict/arrange-collection. All ICT equipment, either collected as part of this process, or disposed of due to its age or</p>	ICT	28/02/2018	Open

Ref	Comments	Type	Designation	Planned actions / updates	Action By	Due Date	Status
	Exchange server. <i>The Audit Team provided a copy of NHS Digital's latest guidance.</i>			<p>due to being faulty has its data securely deleted before being disposed of as part of a contract with SCC. NCC also verifies that all new externally hosted systems also comply with our Information Retention and Data Destruction Standards. Compliance with the Data Destruction Standard is monitored both via a system provided by SCC, and via the issuing of Certificates of Destruction.</p> <p>2. Discuss transfer of data using OWA / outlook and identify either how to address data deletion given the footprint on Exchange server, or identify appropriate alternatives for data transfer between NCC and NHIS. Response sought from ICT 9.10.2017. – Action: To be followed up with ICT.</p>	ICT		
9.	Guidance should be developed by NCC around the handling and processing of NHS Digital data to provide consistency, including recognition of the various touch points.	Operational Management	Observation	Develop guidance for within PH on the handling of NHS digital data. Complete. Procedures agreed with PH Intelligence Team, October 2017	DG	27/10/2017	Closed
10.	Site visits should be undertaken by NCC to ensure that contracted third parties	Operational Management	Observation	Undertake site visits to test discharge of activities.	TBC	31/08/2017	Closed

Ref	Comments	Type	Designation	Planned actions / updates	Action By	Due Date	Status
	are discharging their activities appropriately.			Was noted by the Information Management Group in August 2017 that site visits should be undertaken to third parties.			
11.	The Audit Team is to review further evidence associated with the destruction lifecycle of hardware, namely PCs and laptops.	Data Destruction	Follow-up	ICT confirmed with the third party supplier that data on devices sent for destruction was permanently destroyed, and supplied information from the SCC lifecycle portal in support. Certificates of data destruction are placed on the Portal on completion. Screenshots were provided as examples and are available on request.	ICT	08/11/2017	Closed

Ref	Comments	Link to Area	Designation	Planned actions	Action By	Due Date	Status
12.	NHIS (Notts Health Informatics Service) needs to review its media deletion practices to ensure that any NHS Digital supplied data is permanently destroyed from its systems when no longer needed. This will include both the raw HES files and the database tables.	Data Destruction	Observation	DG to meet Mat Cooke / Debbie Pallant and agree actions. Actions: Data Destruction is to be covered in the agreement referenced in items 6 and 7 above.	DG / NHIS	28/02/2018	Open
13.	NHIS should review its access control policy to consider whether the annual review for ensuring correct access is too infrequent.	Access Control	Observation	DG to meet Mat Cooke / Debbie Pallant and agree actions. Complete: procedure amended to 6 month checks	DG / NHIS	27/10/2017	Closed

Ref	Comments	Link to Area	Designation	Planned actions	Action By	Due Date	Status
14.	NHIS should review its external approval process to ensure that it only processes requests for data access from known NCC managers.	Access Control	Observation	DG to meet Mat Cooke / Debbie Pallant and agree actions. Complete: approval process amended.	DG / NHIS	27/10/2017	Closed

1 February 2018**Agenda Item: 5****REPORT OF SERVICE DIRECTOR – FINANCE, PROCUREMENT AND
IMPROVEMENT****ASSURANCE MAPPING****Purpose of the Report**

1. To propose a process for assurance mapping within the Council.

Information

2. Internal Audit's 'Quality Assurance and Improvement Plan' for 2017/18 includes a commitment to develop assurance mapping in the Council.
3. The aims and benefits of assurance mapping are:
 - To provide annual assurance to the Council (both the Corporate Leadership Team (CLT) and the Governance & Ethics Committee) that effective governance arrangements are in place in the areas that matter most to the Council
 - To provide a sound and comprehensive basis for the Annual Governance Statement (AGS)
 - To identify any overlaps or gaps in assurance from all available sources, allowing improvements to be made in co-ordinating efforts in the coming year
 - To inform the Governance & Ethics Committee's work programme
 - To inform the Annual Internal Audit Plan
4. **Appendix 1** sets out a proposed approach, which has been discussed and approved by CLT. The approach is designed around four key stages, which will operate as follows:
 - Stage 1 - the Head of Internal Audit works with CLT to identify the Key Lines of Enquiry (KLOEs) to be included in the map. The KLOEs should represent the most important aspects of governance on which CLT and the Governance & Ethics Committee wish to receive assurance. Appendix 1 includes the three initial KLOEs that CLT has proposed to pilot in 2018/19. Each KLOE will be broken down into a number of sub-KLOEs to more tightly define the issues for which assurance is required. Once agreed, the proposed KLOEs would be presented to the Governance & Ethics Committee for review and approval. It is proposed that this part of the process should be carried out between April and June each year.
 - Stage 2 – the Head of Internal Audit liaises with Service Directors and Group Managers across the Council to map all the sources of assurance the Council currently receives for each of the KLOE's. This would draw on each of the 'three lines of defence' (as depicted in the second part of Appendix 2), incorporating day-to-day assurance from front-line

management controls, from routine internal reporting and monitoring arrangements (for example regular reports to Committees, regular monitoring activity by Resources Dept staff, etc), and from independent sources such as Internal Audit and external inspectors. At this stage, any gaps or duplication in assurance sources should become apparent. This stage might be carried out between July and September each year.

- Stage 3 – the Head of Internal Audit works with Service Directors and Group Managers to gather evidence from each of the available sources of assurance for the current year to date (or possibly the preceding 12 month period). This exercise would be allocated an appropriate number of days in the Annual Audit Plan to allow the Internal Audit service to co-ordinate this activity. The data gathered would be presented to departmental leadership teams for discussion, review and any follow-up actions needed. This stage is likely to be the most time-consuming part of the process and would need to be completed by the end of December each year.
 - Stage 4 – the Head of Internal Audit co-ordinates the drafting of an annual report on the assurance map. The Head of Internal Audit's initial draft might set out the results from the evidence-gathering exercise at Stage 3, and each Corporate Director, with the assistance of their Leadership Teams, could then provide a commentary on the levels of assurance suggested by the evidence along with proposed actions for the coming year to address any areas of concern. This part of the process would need to be completed by mid-March each year, to allow the outcomes to feed in to the AGS. In effect, this process would serve as an enhancement to the Corporate Director assurance statements which were introduced this year to support the 2016/17 AGS.
5. The annual report would be scheduled for an appropriate meeting of the Governance & Ethics Committee and it would make recommendations in relation to the following:
- Proposed actions to address areas of weakness
 - Proposed items to be included in the Governance & Ethics Committee's work programme for the coming year, to allow the Committee to monitor progress with action plans
 - Proposed actions to better co-ordinate assurance in areas where duplicated effort has been identified

Other Options Considered

6. Alternative approaches to assurance mapping were researched by the Head of Internal Audit, drawing on the experience and practice at other councils. The approach propounded here is considered to be appropriate for the needs of this Council and will be piloted using a small number of KLOEs in the first instance. This will enable the process to be reviewed and improved before widening its scope.

Reason/s for Recommendation/s

7. In order to provide a structured and co-ordinated approach for the delivery of assurance in key areas of governance to senior management and Members.

Statutory and Policy Implications

8. 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.

Assurance mapping may potentially have a positive impact on all of the above considerations, as it seeks to co-ordinate and improve assurance levels over the areas that matter most to the Council.

RECOMMENDATION/S

- 1) The Committee approves the proposed pilot approach to assurance mapping in the Council and, in particular, the suggested role of the Committee in the procedure.

Nigel Stevenson

Service Director – Finance, Procurement and Improvement

For any enquiries about this report please contact: Rob Disney, Head of Internal Audit

Constitutional Comments [SLB 15/01/2018]

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

Financial Comments [RWK 15/01/2018]

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

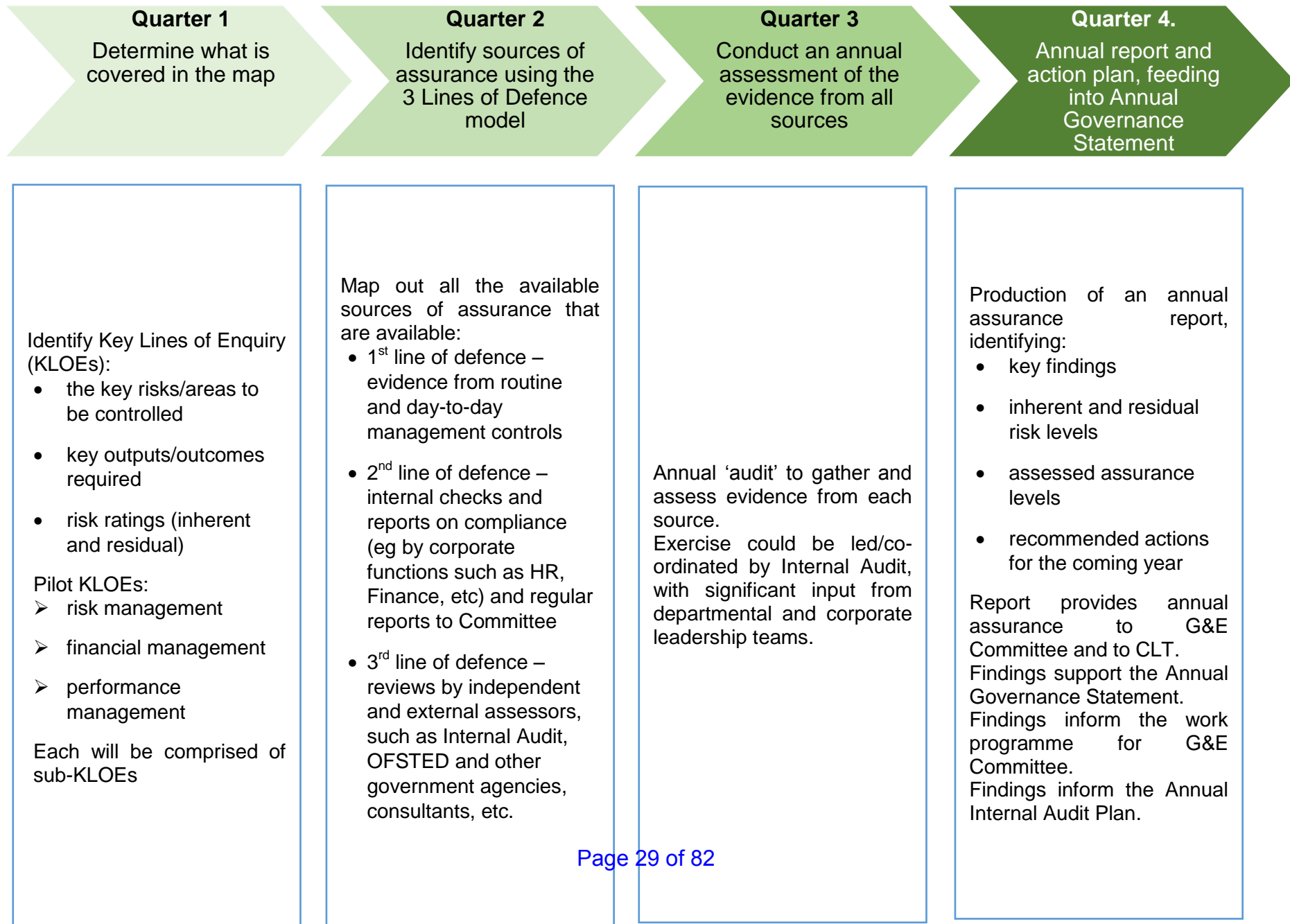
Background Papers and Published Documents

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.

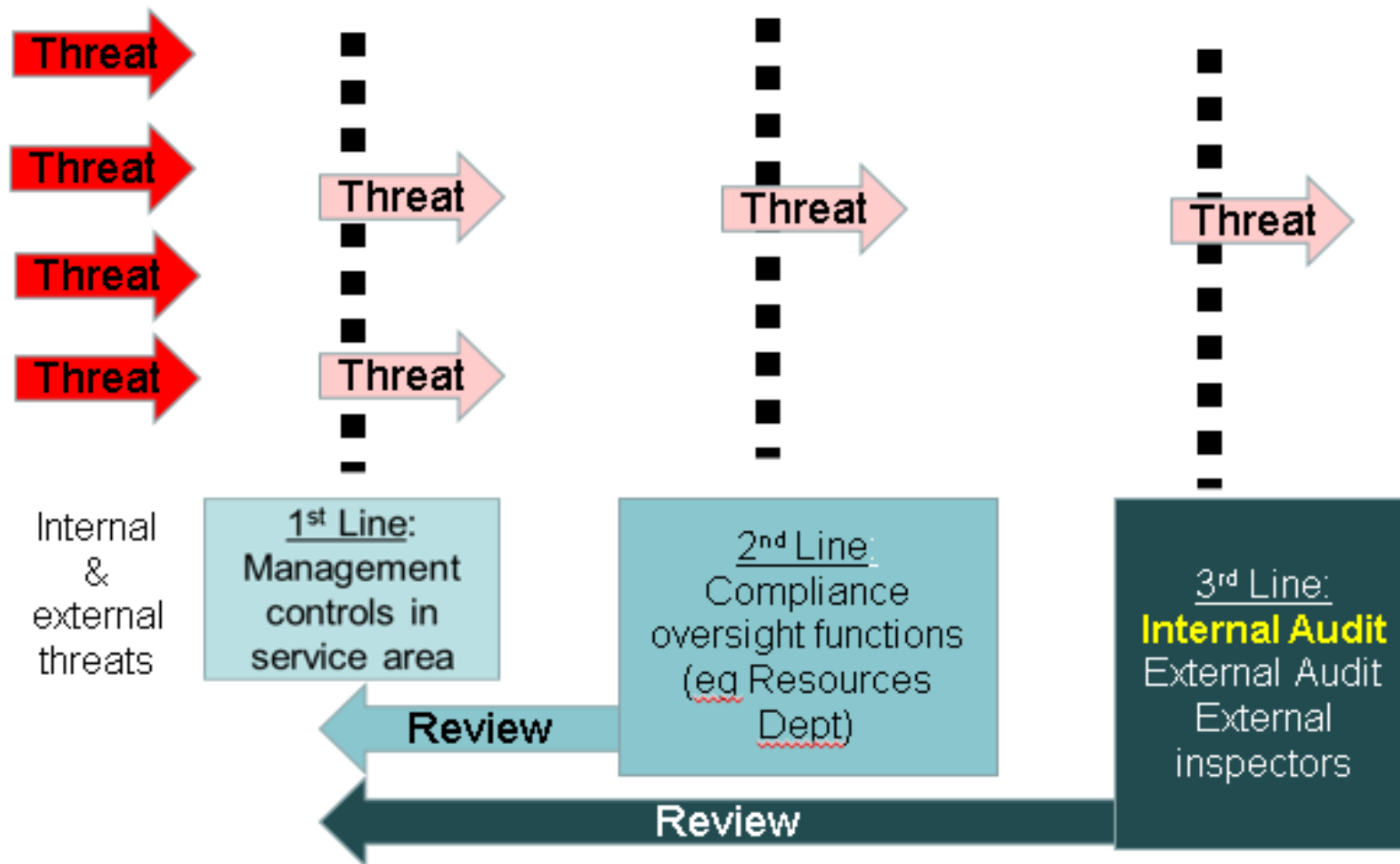
- None

Electoral Division(s) and Member(s) Affected

- All



Three Lines of Defence



1 February 2018

Agenda Item: 6

REPORT OF SERVICE DIRECTOR, FINANCE, PROCUREMENT & IMPROVEMENT

FOLLOW-UP OF INTERNAL AUDIT RECOMMENDATIONS

Purpose of the Report

1. To report progress with the implementation of agreed management actions to address Internal Audit recommendations.

Information

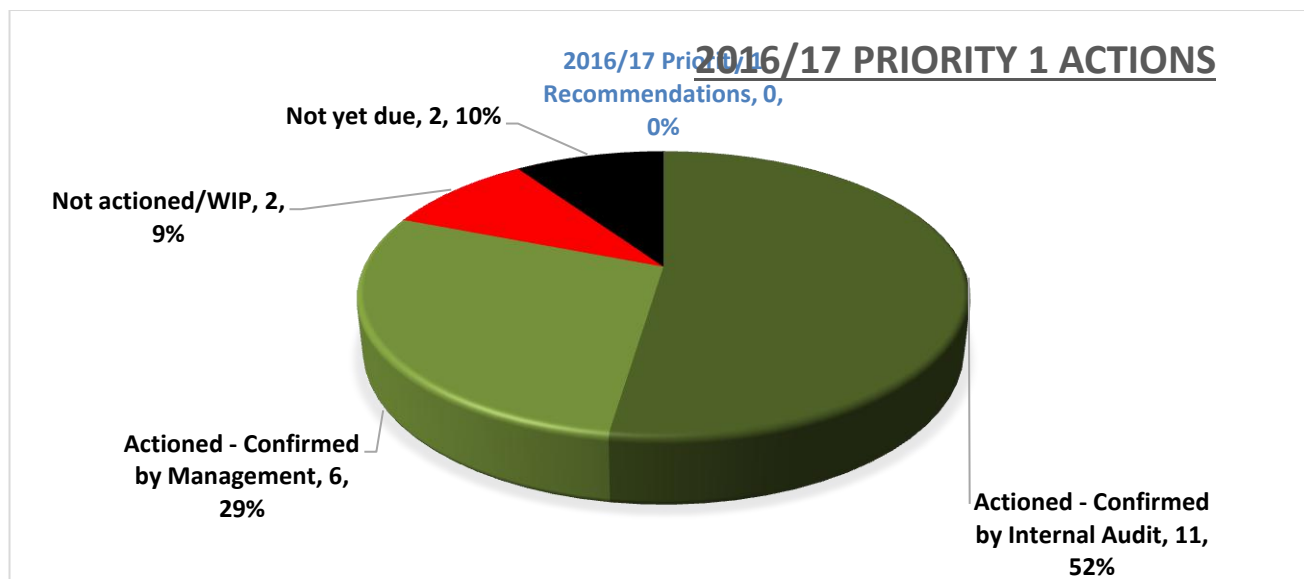
2. Internal Audit carries out regular follow-up work to obtain assurance that the actions proposed by management in response to Internal Audit's recommendations are being taken. This assurance is obtained in two phases, as set out below:

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

3. During each quarter, Internal Audit carries out the following work to provide an update on progress:
 - For recommendations agreed in audit reports issued since the date of the previous meeting, seeking assurance from management that agreed actions have been taken in accordance with the proposed timescales
 - For actions previously confirmed to have been taken by management, carrying out compliance testing to confirm satisfactory implementation.

Priority 1 Actions

4. **Appendix 1** sets out the updated position with the Priority 1 actions that are being cleared through the follow-up process. This sets out details of the agreed management actions, the management assurances received and the outcome of Internal Audit's follow-up testing to date. The appendix also indicates the proposed timing for follow-up testing by Internal Audit in future quarters. It has been updated since the previous update to Committee as follows:
- Actions confirmed as implemented by Internal Audit have been removed
 - New actions agreed in recently issued reports have been added.
5. The current status of the Priority 1 actions from 2016/17 audits is summarised in the following chart:

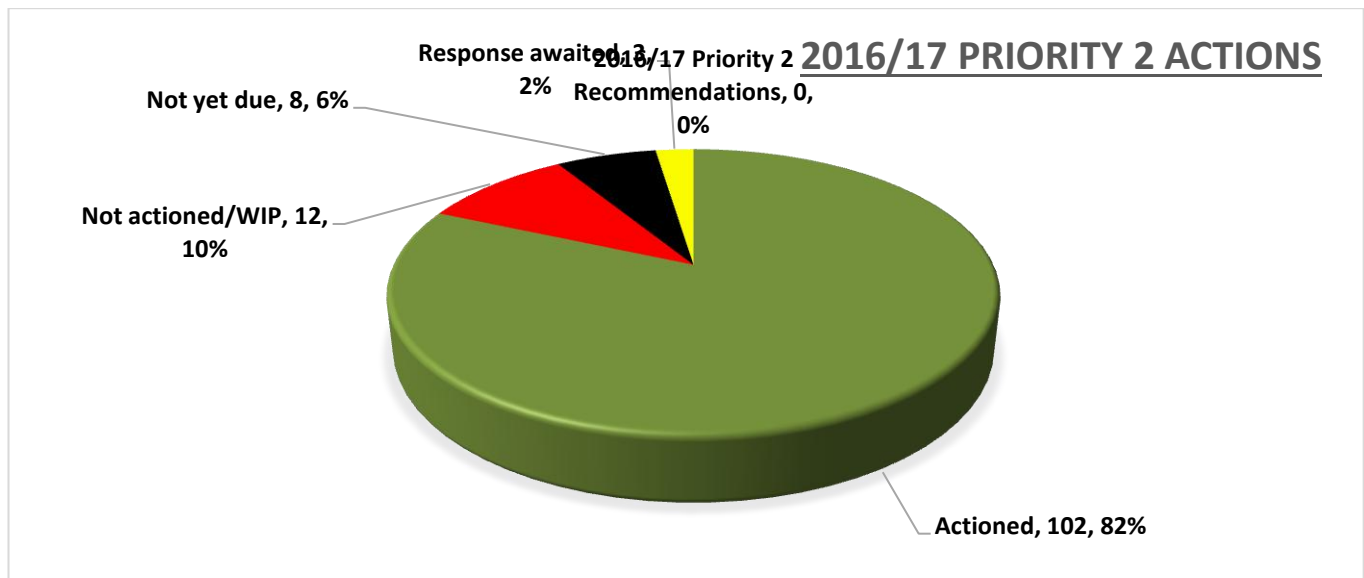


6. Follow-up testing and management assurances since the previous update in September 2017 have focused on the following:
- Children & Families Department (C&F): Special Educational Needs & Disability (SEND) transport budget management – testing confirmed that management responsibility for this budget has now transferred to the Travel & Transport Service in the Place Department. A suitable forecasting model has been developed and this is now being used as a basis for budget forecasts.
 - Place Department: Catering Service – the agreed action to implement sample testing of supplier invoices against delivery notes has been implemented in respect of supplies for the catering service on the West Bridgford campus, but it remains outstanding in respect of supplies for the service in schools. Good progress is being made to move the goods receipting process on to an electronic basis, for both schools and non-schools supplies; this will enable the efficient verification of all deliveries. Further follow-up testing by Internal Audit will be scheduled once the electronic checking process is in place.
7. Priorities for follow-up actions in the next quarter, and for reporting in the next update to Committee in May 2018, are the following:
- Adults, Social Care & Health (ASCH) Dept: Procurement of Interim Homecare
 - Children & Families (C&F) Dept: External Placements – this action is linked to a waiver of the Council's procurement regulations for a specified period to enable a Direct Purchasing System to be developed. A condition of the waiver is that the Governance &

Ethics Committee should be updated with progress at its meeting in March 2018, and this has been added to the Committee's work programme. Internal Audit's follow-up work will be scoped following the Committee's consideration of the update report.

Priority 2 Actions

8. Progress with implementation of these recommendations is summarised in the following chart.



9. The position above relates primarily to the assurance updates received from management and this continues to provide a positive level of assurance that improvements to the Council's system of internal control are being made as a result of Internal Audit's work. Internal Audit's follow-up testing of selected Priority 2 actions identified one action that has not been implemented. This concerned the separating out on the accounting system of personal budgets for SEND transport, and management advised it will now be put in place.

Management updates to the Governance & Ethics Committee

10. Arising from the details presented in this report, the Committee may consider that it requires further updates and assurances from management at its next meeting in relation to one or more of the areas in which agreed actions remain outstanding.

Other Options Considered

11. No other options for obtaining the required assurances were considered at this time.

Reason/s for Recommendation/s

12. To enable the Governance & Ethics Committee to consider whether it has received sufficient assurance that actions in response to Internal Audit's recommendations are being

implemented as agreed, or whether it considers that further and more detailed updates from management are required.

Statutory and Policy Implications

13. 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.

Many of Internal Audit's recommendations are made with specific financial implications in mind. Such recommendations, and the associated management actions, are designed to secure effective governance, internal control and risk management.

RECOMMENDATION/S

1) The progress detailed in the report and its appendix are considered, and the Committee determines whether it wishes to receive further and more detailed updates on progress from relevant managers in any of the areas of activity covered by this report.

Nigel Stevenson

Service Director – Finance, Procurement and Improvement

For any enquiries about this report please contact: Rob Disney, Head of Internal Audit

Constitutional Comments [SLB 15/01/2018]

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

Financial Comments [RWK 15/01/2018]

15. 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

Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
Department: Adults' Social Care, Health and Public Protection				
Service Area: Homecare				
Audit: ASC1706 Procurement of interim homecare service				
Competitive tendering: Staff should discuss contract requirements with the Market Management Team (in ASCH&PP Dept) and with Corporate Procurement (Resources Dept) to find a solution for each service area. A waiver from tendering requirements should be applied for as a last resort.	A re-procurement exercise is currently in progress for a 'Hospital Discharge Service South' which is a remodelled interim homecare service and (as at 20/3/17) is in the evaluation stage. The preferred provider will be announced w/c 20/3/17 and it is planned to award contract by 1 st April – there will be an implementation/transition phase between April to start of the new service on 1 st July 2017. The new contract will be under a Framework agreement for initially 2 years.	Testing scheduled for Q4, 2017/18		Confirmed by management (AMBER)
Partnering approach between Corporate Procurement and departments, and monitoring arrangements: Establishment of the Contracts and Payments Overview Group to improve communications between the department and Corporate Procurement and to keep procurement activity under review.	The Contracts and Payments Overview Group is meeting regularly to ensure appropriate procurement of contracts.	Testing scheduled for Q4, 2017/18		Confirmed by management (AMBER)
Service Area:				
Audit 2016-50: Direct Payments				
Nominated or authorised account holders - propose a change in policy and update policy, agreement, factsheets, and guidance for both clients and staff	Management update to be obtained for next quarterly report	To be scheduled following management update		
Escalation procedure - design and implement an escalation process to cover all areas of non-compliance. Seek approval for and appoint a senior auditor to apply the procedure.				
Repeat recoups - allocate additional resources to monitor follow-up actions to ensure more accurate costing of DP budgets. Implement DP calculator.				
Recoupment of funds - update procedures to ensure formal invoices are issued if the issue of initial letters does not result in the return of funds or satisfactory explanations				
Recoupment of funds - continue to look for solutions to resolve unmatched credits				
Service Area:				
Audit: Short Breaks				
Action plans & service improvement plans - use supervision with unit managers to ensure quality assurance action plans and improvements plans are completed effectively and followed up.	Management update to be obtained for next quarterly report	To be scheduled following management update		

Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
Provider Information Return - include areas for improvement in the unit's plan and involve teams in keeping records of progress up to date	quarterly report	update		
Service Area:				
Audit: Procurement of suppliers and providers				
Suppliers not properly procured - tackle areas of non-compliance through the Contracts and Payments Overview Group.				
Suppliers not properly procured - monthly contract status report from procurement to senior departmental managers				
Notifying Corporate Procurement of procurement exercises over £10,000 - through the Contracts and Payments Overview Group and liaison between commissioners and the Category Manager				
Arrangements when Reed cannot meet a request for temporary staff - under review between the Category Manager Resources and the Group Manager HR				
Out of county care support and enablement - A Care, Support and Enablement Framework Agreement has been tendered to capture out of County Services				
Day services transport - This is under review with the Category Manager – Place who is looking at procurement approaches	Management update to be obtained for next quarterly report	To be scheduled following management update		
Equipment for care and support centres - This is being explored through the Contracts and Payments Overview Group				
County Enterprise Foods: specialist food products - This is under review with the Category Manager – Place who is looking at procurement approaches				
Live-in carers Inherited from a service user with direct payments - This is being explored through the Contracts and Payments Overview Group				
Telecare monitoring service - This is under review and procurement plans are being put in place with the Category Manager. A tender process is scheduled, Procurement are waiting for the commissioners specification				
County Enterprise Foods: packaging for meals - This is under review with the Category Manager – Place who is looking at procurement approaches				

Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
Department: Children & Families				
Service Area: Access to Resources				
Audit: CFCS1612 External Placements				
Compliance with Council tendering regulations through use of the following hierarchy of options: 1 Internal provision; 2 use of existing framework contracts; 3 issue contracts for specialist placements and invite the providers to join the existing frameworks	A pro forma is now in place to allow requests for spot contracting to be captured, considered and approved. Meetings have been held between officers in Procurement and Social Care Placements to discuss the pro forma and all were in agreement of how it should be used. All are aware that the compliant routes for securing placements/education should be followed before asking for a spot contract arrangement. Legal Services have drafted a standard form spot contract and this will now be applied for social care placements. There has also been a Financial Regulations waiver signed off to cover this process, with Procurement reporting back at the end of the financial year on how many of these contracts have been put in place.	Complete	Further follow-up testing will be scheduled for Q4 in 2017/18	Confirmed by management (AMBER)
Service Area: Special Educational Needs				
Audit: 2015-04 SEND Budget Management				
Budget holder: Responsibility for the budget for SEND transport to be transferred to Transport & Travel Services	The responsibility for the management of the budget for SEND Transport has been transferred to Transport & Travel Services at the start of the 2017/2018 financial year	Complete	Testing confirmed the budget has been transferred to Travel & Transport Services.	Confirmed by Internal Audit (GREEN)
Budget setting: Budget to be based on relevant aspects that influence expenditure; Development of a model for budgeting and forecasting.	The recommendation has been implemented.	Complete	The new model has been used for forecasting since period 7 of 2017/18. This was later than planned, so Internal Audit has not been able to observe its continuous use over a period of time. Nonetheless, the model includes all relevant, significant factors. It is being further developed to predict costs in future years, and so inform the budget setting process.	Confirmed by Internal Audit (GREEN)

Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
Department: Place				
Service Area: Catering & Facilities Management				
Audit: E&R1617 Catering (County Hall & Trent Bridge House)				
Confirmation of goods received prior to paying invoices to suppliers: Re-introduce checks of consolidated invoices on the basis of a 10% ratio	Checks are made on consolidated invoices. These are then signed off and recorded. No discrepancies have been found. The checks are from September 16 onwards.	Further testing to be scheduled	Ordering and receipting is now being carried out on an electronic platform. Procedures for using the data as a basis for checking consolidated invoices are being devised and tested.	Implementation in progress (R&E)
Service Area:				
Audit: Innovation Centres				
Contract variation - all future variations to contract are lodged with Legal Services and minuted accurately by the Strategic Management Board	Management update to be obtained for next quarterly report	To be scheduled following management update		
KPI Validation - ensure adequate resources are devoted to periodically obtaining independent assurance as to the accuracy of information reported by the contractor in any future management contracts				

Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
Department: Cross-Cutting				
Service Area: Agency Staff & Consultants				
Audit: XC1602				
Automation of management information: Build into future tendering exercises for this service the requirement to differentiate between the nature of agency placements	The future procurement exercise will have this built into the invitation to tender.	To be scheduled	We confirmed that the existing contract has been extended for one year until November 2018 and the new requirements are to be included in the tender documentation.	Pending new contract
Service Area: Information Governance				
Audit: XC1701				
Corporate awareness of the security of information - Completeness of the Information Asset Register (IAR): The IAR has been compiled by the Information Asset Managers and is under review. The Information Manager will write to all Information Asset Owners to confirm that they have checked the entries in their areas and are satisfied that the register is substantially complete.	Review has been implemented as planned and a number of revisions have been agreed with Information Asset Owners (IAOs). Work is ongoing with IAOs to identify Information Sharing Agreements in relation to Information Assets (IAs) and to ensure all relevant IAs are included in the Register.	Internal Audit is involved in the work of the Information Governance Groupe and will schedule further testing as progress is made		Implementation remains in progress (RED)
Corporate awareness of the security of information - assessment of business impact levels and security classifications: The Information Manager is reviewing all aspects of the IAR, including Business Impact Levels and security classifications				Implementation remains in progress (RED)
Corporate awareness of the security of information - Risk assessments for high business impact information assets: As part of the review of the IARs the Information Manager will liaise with the relevant Information Asset Managers to review the Business Impact Level rating and with ICT to ensure all Information assets with a Business Impact Level of 4 or higher is subject to a risk assessment (currently 92 assets).				Implementation remains in progress (RED)
Corporate awareness of the security of information - On-going review of risk assessments for high business impact information assets: Owners of information with a BIL of 4 and above will be identified during the review and made aware of the need for an annual review and will be asked to return a checklist signed by the Information Asset Owner each year to confirm this has been done.				Implementation remains in progress (RED)
Service Area: Strategic Risk Management				
Audit: XC1602				
Risk register for Place department - to be implemented		To be scheduled		
Updated information on risk registers - review risk registers to ensure information is up to date	Management update to be obtained for next quarterly report	following management update		

1 February 2018**Agenda Item: 7****REPORT OF THE MONITORING OFFICER****LOCAL GOVERNMENT OMBUDSMAN DECISIONS NOVEMBER AND
DECEMBER 2017****Purpose of the Report**

1. The purpose of this report is to inform the Committee about the Local Government Ombudsman's (LGO) decisions relating to the Council in the period November – December 2017.

Information

2. The Committee has asked to see LGO decisions regularly and promptly after the decision notice has been received. This report therefore gives details of all the decisions received since the last report to this Committee in December.
3. The LGO provides a free, independent and impartial service to members of the public. It looks at complaints about Councils and other organisations. It only looks at complaints when they have first been considered by the Council and the complainant remains dissatisfied. The LGO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the LGO finds that something has gone wrong, such as poor service, service failure, delay or bad advice and that a person has suffered as a result, the LGO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGO publishes its decisions on its website (www.lgo.org.uk). The decisions are anonymous but the website can be searched by Council name or subject area.
5. A total of 9 decisions relating to the action of this Council have been made by the LGO in this period (attached at annex A). In 6 cases no maladministration was found, or the LGO decided he could not add to the investigation already conducted by the Council. Half of these related to Adult Social Care and Health, and the other 3 to the Place Department. In addition 1 case was deemed to be out of the jurisdiction of the LGO, as it related to matters considered in court.
6. In the remaining 2 cases some maladministration was found and remedies recommended. The first of these was a complex Adult Social Care case, in which there were 7 points of complaint. The LGO found "no fault" in relation to 6 of these, and in relation to the 7th recommended an apology, which has been offered. The final case relates to adult learning provision provided by Inspire on behalf of the Council. The LGO found that the complainant had to wait longer to receive training than he could reasonably have expected. Although a

provider was found, it was not, at that stage, the complainant's preferred option; so Inspire, on behalf of the Council, agreed to pay the complainant £880 so he can arrange his own training.

7. There were no themes highlighted within the complaints; the issues were individual to circumstances of each case and reflect the diversity and complexity of the services provided by the Council.

Statutory and Policy Implications

8. 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

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

Financial Implications

10. One payment of £880 has been made to allow a complainant to source his own training and was made from existing budgetary provision.

Implications for Service Users

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

RECOMMENDATION/S

That members consider:-

1. Whether there are any actions they require in relation to the issues contained within the report.

Jayne Francis-Ward
Monitoring Officer and Corporate Director Resources

For any enquiries about this report please contact:

Jo Kirkby, Team Manager – Complaints and Information team

Constitutional Comments SLB 05/01/2018

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 05/01/18)

The financial implications are set out in the report.

Background Papers and Published Documents

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

- None

Electoral Division(s) and Member(s) Affected

- All

Complaint reference:
16 011 497

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Council acted in line with safeguarding procedures when responding to allegations made by Ms B and against her. A senior officer also acted in line with a standard authorisation when advising Ms B not to take her father Mr C out of his care home. There was a deprivation of Mr C's liberty for two weeks in July 2015 which was not covered by an authorisation. This is fault. The Council has agreed to apologise to Ms B and Mr C for the avoidable distress.

The complaint

1. Ms B complains about Nottinghamshire County Council (the Council). She complains about the way the Council responded to allegations about her late father, Mr C. Ms B says:
 - a) The Council did not check the accuracy of information it received from other parties
 - b) Despite the allegations being unfounded, the records state she is an alleged perpetrator. She has not received an apology
 - c) She was not interviewed as part of the safeguarding investigation
 - d) A standard authorization was backdated
 - e) She was prevented from visiting her father at the care home
 - f) She was only permitted to contact one officer in the Council
 - g) There was a failure to address her concerns about the care regime at the care home

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. If there has been fault, we consider whether it has caused an injustice and if it has, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. If we are satisfied with a council's actions or proposed actions, we can complete an investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

4. I considered Ms B's complaint to the Ombudsman and supporting documents. I also considered the Council's responses to her complaints and some of the

Council's records on Mr C. I have taken into account comments from the parties on a draft of this statement.

What I found

Relevant law and guidance

5. The Mental Capacity Act 2005 is the legal framework for acting and making decisions for people who lack the mental capacity to do so themselves. The Act and the Code of Practice 2007 describe the steps a person should take when dealing with someone who may lack capacity. It describes when a person's capacity to make a decision should be assessed, how to do this, and how to make a decision on behalf of somebody who is unable to make a decision themselves.
6. A council must assess someone's ability to make a decision, when a person's capacity is in doubt. The action needed to assess capacity may vary depending on the complexity of the decision.
7. A key principle of the Mental Capacity Act 2005 is that any act done for, or any decision made on behalf of a person who lacks capacity must be done, or made, in that person's best interests. Section 4 of the Act provides a checklist of steps that decision makers must follow to determine what is in a person's best interests. The decision maker also has to consider if there is a less restrictive option available that can achieve the same outcome. If there is a conflict about what is in a person's best interests, and all attempts to resolve the dispute have failed, the court of protection might need to decide what is in the person's best interests.
8. A Lasting Power of Attorney (LPA) is a legal document, which allows people to choose one person (or several) to make decisions about their health and welfare and/or their finances and property, for when they become unable to do so for themselves. The 'attorney' is the person chosen to make a decision, which has to be in the person's best interests. There are two types of LPA:
 - Property and Finance LPA – this gives the attorney(s) the power to make decisions about the person's financial and property matters, such as selling a house or managing a bank account.
 - Health and Welfare LPA – this gives the attorney(s) the power to make decisions about the person's health and personal welfare, such as day-to-day care, medical treatment, or where they should live.
9. An Independent Mental Capacity Advocate (IMCA) is a legal safeguard for people who lack capacity to make decisions about where they live and serious medical treatment options. An IMCA supports the person and represents them in discussions, provides information to help work out what is in their best interests and presents the person's views to the decision maker.
10. The Deprivation of Liberty Safeguards (DOLS) framework protects people who lack capacity to consent to being deprived of their liberty in a care home or hospital and who are not detained under the Mental Health Act 1983. People are instead detained by a standard or urgent authorisation. The care home or hospital applies to the supervisory body (a team in the local authority) which carries out six assessments including an assessment of best interests to decide whether to approve a standard authorisation. An urgent authorisation can be put in place by the care home or hospital itself until the local authority has carried out the relevant assessments for a standard authorisation.

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11. A relevant person's representative (RPR) can be a paid professional or a lay person who knows the person subject to a standard authorisation. Their role is to:
 - Keep in contact with the person being deprived of their liberty;
 - Represent and support the person, including by using complaints' procedures or applying to the Court of Protection.
 12. If a council has reasonable cause to suspect abuse of an adult who needs care and support, it must make whatever enquiries it thinks is necessary to decide whether any action should be taken to protect the adult. (*Care Act 2014, section 42*)
 13. I have summarised relevant parts of the Council's safeguarding policy below:
 - Section 42 enquiries (see paragraph 12) have stages including: initial discussions, assessing risks agreeing actions for agencies to take, protection plan, review, closure. Not every case goes through every stage.
 - Attendance at meetings limited to those who need to know and who can contribute to the decision-making process.
 - The Council may signpost to other processes and organisations where this would be a more proportionate and appropriate response
 - The safeguarding manager gives feedback to the referrer.

Key facts

Background

14. Mr C had Parkinson's disease and dementia. Ms B's complaint covers 2014 and 2015 when Mr C was mainly in hospital. Mr C had mobility problems after surgery which Ms B claims was negligent. Mr C's care was arranged and funded by the NHS and not by the Council. Ms B registered powers of attorney for health and welfare and finances for Mr C in January 2015.
15. Before hospitalisation in 2014, Mr C lived at home with his wife Mrs C who has mental health problems. They had a joint package of home care.
16. Mr C remained in hospital for many months after surgery and had rehabilitation. Nursing staff monitored him closely as he had poor awareness of the risks of walking without assistance and many falls were documented in the records.
17. In October 2014, there was a safeguarding referral to the Council by an occupational therapist (OT). The OT said he observed Ms B slapping her mother in June 2014. The Council wrote to the OT to say there would be a strategy meeting under its safeguarding procedures. I have no documentation to suggest a meeting or discussion took place when the safeguarding referral was made. It appears that no action took place under safeguarding procedures at the time.
18. Mr C went home with a care package in October 2014. He had a fall in January 2015 and was readmitted to hospital. The ambulance crew made a safeguarding referral because they found the house was cold and thought Mrs C was 'delusional'. The Council considered this information and decided there should be a further social care assessment when Mr C was ready to be discharged.
19. In March 2015, ward staff made a safeguarding referral saying Ms B not acting in her father's best interests. Ms B was alleged to have been abusive to hospital staff. She was alleged to have taken Mr C off the ward in a wheelchair against

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- staff advice. The Council's safeguarding team decided to take no further action as the referral did not meet the threshold for a safeguarding investigation.
20. On 16 June 2015, the ward submitted an application for a standard authorisation to deprive Mr C of his liberty. Mr C was receiving close observation and supervision by nursing staff at all times. Meantime, the hospital granted itself an urgent authorisation to 22 June which was extended to 29 June.
 21. There was no authorisation to deprive Mr C of his liberty from 29 June as the assessments for a standard authorisation had not been completed.
 22. A best interests' assessor (BIA) assessed Mr C as lacking capacity to consent to care and treatment. The BIA spoke to Ms B on 29 June. The BIA noted Ms B was broadly in agreement with Mr C remaining in hospital, but had concerns:
 - about the deprivation of liberty, saying this was not necessary;
 - about the length of time he had been in hospital and wanted her father to be discharged home. Ms B felt he did not need a standard authorisation; his care had not changed so it was unclear why the hospital was seeking an authorisation;
 - that her father's mental health had deteriorated in hospital;
 - that the orthotic department and physiotherapists gave her conflicting information about whether Mr C should walk or not. She felt staff were stopping him from walking.
 23. The Council sought legal advice given Ms B's concerns and objections. The advice was if the relevant criteria were met, then the authorisation should be granted.
 24. The BIA noted Ms B told her not to continue with the process of applying for a standard authorisation. I have seen the email and consider it contained an indirect threat against the BIA. The BIA noted Ms B told her not to ring, but to email or write.
 25. A best interests' assessment dated 28 June recommended a standard authorisation to come into force as soon as possible. The BIA concluded close observation of Mr C was a proportionate response to the likelihood of harm and was the least restrictive option. The other assessments needed for a standard authorisation took place at the beginning of July. The standard authorisation document was dated 16 July and was to last until 2 November.
 26. On 10 July, the BIA emailed Ms B with information about the role of the RPR (see paragraph 11). She also updated Ms B about the assessments she had been doing (see previous paragraph). The BIA asked Ms B if she wanted to be Mr C's RPR. She explained Ms B could have an advocate to support her.
 27. Ms B responded to the BIA's email. I have seen a copy of the email and its content may have caused the recipient BIA distress. Ms B did not directly reply to the BIA's question about whether or not she was willing to be Mr C's RPR.
 28. It appears from the records the BIA planned to recommend Ms B as Mr C's RPR (there is a form naming Ms B as the RPR) but then on 16 July, the ward manager told her Ms B could not visit the ward.
 29. The BIA emailed Ms B on 16 July to say she had completed her assessment and would send Ms B a copy of the standard authorisation. The BIA said she had requested a paid RPR because of restrictions on Ms B visiting her father on the ward.

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30. The following day, Ms B emailed a manager to complain about not being appointed RPR. She said there were no problems with her contact arrangements with the ward. She said she felt bullied and not consulted.
31. On 21 July, the hospital made a safeguarding referral. It said:
- Ms B was unrealistic about her father's care needs and her access to the ward had been limited;
 - Ms B felt her father could mobilise and had capacity to refuse support;
 - The discharge team said Mr C needed 24-hour support but Ms B felt this was not necessary.
32. The Council decided further safeguarding enquiries were required as Ms B had been abusive to ward staff and there was a risk she may be abusive to carers visiting the home. And a further risk Mr C's wife may not allow carers into the property. There was a concern Ms B may not be acting in her father's best interests.
33. A service director responded to Ms B's complaint (see paragraph 30) saying the records showed the BIA had spoken with Ms B several times and Ms B had not replied to the BIA's question about her being RPR. The service director said if Ms B wanted to take on the role, she should contact the team manager.
34. The Council wrote to Ms B at the end of July saying she was now Mr C's RPR.
35. On 14 August, there was a further safeguarding referral from hospital staff. A member of the public reported seeing a woman hit a man in a wheelchair in the face and kick the wheelchair. Officers from the Council's safeguarding team discussed the referral and decided to review the CCTV and liaise with the police. The outcome was no investigation was required as the informant told the police she had not actually witnessed an assault.
36. Ms B wrote to a service manager saying there was an unauthorised deprivation of her father's liberty in June and at the beginning of July. She said she had questioned ward staff and they were not aware that authorisation was required.
37. On 14 September, Mr C moved to a care home. This was funded by the NHS. There is no evidence the Council funded the placement, although the DOLS team was aware of it as the hospital sent them a form saying the standard authorisation expired when Mr C left hospital.
38. The care home granted itself an urgent authorisation on 15 September. This was to last a week and was then extended for a further week.
39. On 16 September, the care home made a safeguarding referral saying Ms B wanted to transfer Mr C to a different care home and the manager had received an email intended for the other care home. A social worker spoke to staff at the care home. Staff from the NHS organisation funding Mr C's placement had spoken to Ms B and she had agreed he would stay at the care home for 4 weeks. The Council took no action under safeguarding procedures.
40. On 29 September, the care home made another safeguarding referral saying a member of the public had called the care home to say they had seen Ms B shout at Mr C and hit him.
41. A standard authorisation was signed on 5 October, and dated to come into force on 2 October. It authorised a deprivation of Mr C's liberty for 6 weeks. The best interests assessment documents Ms B's views in detail: she felt the authorities

were overriding her, she pointed out her father owned the house, felt her mother would tolerate carers and believed her father would get better care on a one to one basis. The BIA decided it was in Mr C's best interests to remain in the care home (which was a locked unit where he was under close supervision) until care at home could be arranged. The authorisation was for 6 weeks and the BIA recommended the Council and NHS applied to the Court of Protection if a home care package could not be organised within 6 weeks – unless Ms B was happy for Mr C to continue to remain at the care home.

42. Ms B made a safeguarding referral on 6 October saying during one of her visits, her father did not open his eyes for half an hour while awake and that the Trust had illegally overridden her as the power of attorney by placing Mr C in the care home. A safeguarding officer discussed this with Mr C's social worker who said the issues were not safeguarding concerns and that Ms B could visit Mr C, just not take him out of the care home. The decision was there were no safeguarding issues. The Council wrote to Ms C confirming there would be no further action under safeguarding procedures as her concerns did not amount to neglect.
43. On 7 October, a group manager wrote to Ms B to tell her the police had received an allegation that she had assaulted Mr C. The letter advised Ms B that a standard authorisation was in place and at present she should not take Mr C out. She could visit and phone him. The letter said the Council and NHS would apply to the court of protection for guidance on Mr C's future care because she had asked for her father to be moved and professionals did not consider this was in his best interests at the moment. The group manager asked Ms B to communicate with the complaints team.
44. Ms B replied to the group manager's letter saying she had not been able to see her father for a week. She raised concerns about the standard authorisation being backdated. She asked if she could take her father out if another person was present. She said she agreed to the placement at the care home continuing as a temporary option until Mr C could be discharged home.
45. The Council appointed Ms B as Mr C's RPR and wrote to her to inform her of this on 20 October. Ms B wrote back asking the DOLS team to send copies of the urgent and standard authorisations. She pointed out errors in the paperwork including factual errors like Mr C's date of birth. She queried backdating of the authorisation.
46. On 28 October, Ms B made another safeguarding referral. She alleged her father was over sedated. A social worker made enquiries of the care home and found out Mr C was prescribed a sedative. She asked staff to get the GP to review his medication. Staff said they had served notice. The social worker spoke to Ms B who told her the heating was too high, residents were not fed nutritional diets and staff were not interested in residents. The Council later wrote to Ms B saying it was not progressing with a safeguarding investigation as there was no evidence to suggest lasting harm or distress and Ms B should discuss any further concerns with Mr C's social worker.
47. Mr C went home on 9 November. The standard authorisation expired.
48. On 24 November, there was meeting of professionals including safeguarding social work staff, the NHS organisation funding Mr C's care package and an officer from the Public Guardian (the public guardian oversees attorneys). The purpose of the meeting was to discuss all the previous allegations about Ms B. The minutes noted:

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- There had been five safeguarding referrals involving Ms B;
 - Ms B had spoken to a team manager the week before the meeting. She denied hitting her father. She agreed a discussion became heated when the OT was present but denied hitting her mother. She said she had slapped Mr C's hand to make him let go of a handrail and kicked the wheelchair brake to get him back inside. Before the incident outside the care home, Ms B said her father had bashed her over the head with drink so she threw the bottle down in front of him. Ms B said she had complained to the Trust about a surgical error and felt hospital staff were making malicious allegations;
 - The Public Guardian's Office was looking into Mr C's finances and had asked Ms B for documents;
 - The outcome of the safeguarding investigation was inconclusive: there had been a number of allegations made but there was no evidence to substantiate any of them;
 - Mr C was now at home with one to one care so there was no future risk.
49. The Council's investigation of Ms B's complaints found:
- There was no fault in the way the safeguarding investigation was conducted;
 - Temporary restrictions on her visits to Mr C were reasonable;
 - It was not appropriate to appoint her as RPR while safeguarding investigations were ongoing;
 - Allocating a single point of contact was appropriate because Ms B had contacted several council officers.

Was there fault?

Complaint: The Council did not check the accuracy of information it received from other parties

50. I am satisfied the Council made appropriate checks with the police about the alleged assaults and other incidents involving Ms B. A senior officer also spoke to Ms B before the professionals' meeting in November 2016 and this gave her the chance to put her side of the story. This information was taken into account by professionals at the meeting who decided not to substantiate the allegations.
51. There was no witness evidence to corroborate assaults (either the witnesses were not willing to give statements or they confirmed that they had not actually witnessed an assault) and so no further action was taken. This is in line with the Council's safeguarding procedures which make it clear that not all cases go through every stage. There is no fault.
52. The hospital OT was a member of NHS staff. There appears to have been a delay in the OT reporting an alleged assault (whether the report was in October 2015 as suggested in the case conference minutes, or October 2014, as correspondence suggests). The OT was not acting for the Council and so I have no power to criticise the delay.
53. I do not uphold the complaint because I consider the Council took steps to check the information, including checking with Ms B to get her side of the story. Having done appropriate checks, the Council decided there was insufficient evidence to take any further action. The Council acted without fault.

Complaint: Despite the allegations being unfounded, the records state she is an alleged perpetrator. She has not received an apology

54. It is correct to say the records refer to Ms B as an alleged perpetrator as this is what she is – someone who has had allegations made against her. However, the records make it clear that abuse was not substantiated. There is no fault.

Complaint: She was not interviewed as part of the safeguarding investigation

55. The minutes of the case conference noted a manager spoke to Ms B on 17 November about the allegations, before the professionals met to discuss the allegations. There is no fault.

Complaint: A standard authorization was backdated

56. The Council accepted in the complaint response that it should not have backdated the second standard authorisation (at the care home). It has apologised.
57. There was also a two week period from 29 June 2015 when an urgent authorisation expired and 16 July when a standard authorisation came into force. This means Mr C was deprived of his liberty without the protection of a standard authorisation. This is not in line with the Deprivation of Liberty Safeguards and is fault.

Complaint: Ms B was prevented from visiting her father at the care home

58. According to Ms B, she was prevented from visiting her father at the beginning of October. I see no evidence that the Council had any involvement in preventing a visit and so I do not uphold this complaint against the Council. I cannot comment on the care home's actions as Mr C's care was arranged and funded by the NHS. Ms B has complained to the Parliamentary and Health Service Ombudsman which has power to investigate complaints about NHS funded healthcare.
59. The Council had written to Ms B saying she could not take him out of the care home. This was in line with the standard authorisation which deprived Mr C of his liberty and so there is no fault.

Complaint: Ms B was only permitted to contact one officer in the Council

60. There are two direct records of inappropriate comments from Ms B to council staff. There is no fault in the Council deciding she should only contact one officer. I consider this was an appropriate means of managing her contact.

Complaint: There was a failure to address Ms B's concerns about the care regime at the care home

61. Officers in the safeguarding team considered Ms B's concerns about the care home and decided they did not meet the appropriate threshold to be dealt with as safeguarding issues. This is in line with council safeguarding policy which makes it clear that not all concerns raised are appropriate to deal with through safeguarding. The Council acted in line with section 42 of the Care Act 2014 and there is no fault.

Did the fault cause injustice requiring a remedy?

62. The Council recognised it should not have backdated the second standard authorisation and has apologised to Ms B for the distress to her. That is an appropriate remedy.
63. There was also a two week period before the first standard authorisation came into force. This may have caused Ms B distress. Ms B was certainly caused

avoidable distress because there is evidence she raised concerns in writing about the lack of a standard authorisation with the Council (see paragraph 36).

Recommended action

64. To remedy the avoidable distress to Mr C and Ms B described in the previous paragraph, the Council will apologise to them within one month of my final decision.

Final decision

65. The Council acted in line with safeguarding procedures when responding to allegations made by Ms B and against her. A senior officer also acted in line with a standard authorisation when advising Ms B not to take her father out of the care home.
66. There was a deprivation of Mr C's liberty for two weeks in July 2015 which was not covered by a standard authorisation. This is fault. The Council has agreed to apologise to Mr C and Ms B for the distress caused.

Parts of the complaint I did not investigate

67. Mr C's care was arranged and funded by the NHS so complaints about the standard of care in hospital or in the care home are for the Parliamentary and Health Service Ombudsman to consider.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 011 847

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: We will not investigate this complaint as it is unlikely we can add to the Council's own investigation or achieve the outcome Mr Y seeks.

The complaint

1. The complainant, whom I shall call Mr Y, complains he was harassed at a Council waste depot when he visited it to deposit garden waste.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe the injustice is not significant enough to justify our involvement, or it is unlikely we could add to any previous investigation by the Council, or it is unlikely further investigation will lead to a different outcome, or we cannot achieve the outcome someone wants (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

3. I have considered what Mr Y said in his complaint.

What I found

4. Mr Y complains he was shouted at by a Council employee in front of other members of the public when he attended a waste depot to deposit garden waste. Mr Y says the employee told him he could not unload his garden waste as he had tools in his van implying that Mr Y was trying to deposit trade waste.
5. Mr Y says the same employee approached him last year in a similar way. Mr Y feels this is harassment. Mr Y is also unhappy that the Council in its early complaint responses said that he had refused to fill in a disclaimer form.
6. The Council says that any CCTV footage at the site is unlikely to provide evidence to support Mr Y's complaint as it does not record sound. The Council says that as Mr Y's account and staff accounts are conflicting, it cannot make a determination of what happened. The Council now acknowledges that Mr Y did not refuse to fill in a trade waste disclaimer form as its staff did not ask him to do so on this occasion.

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7. The Council explains that residents must sign a trade waste disclaimer form if asked to do so and that such requests might be made when a resident takes large loads to the depot or makes frequent visits or when there are tools in a vehicle. The Council explains it is not wrong for its staff to enforce this policy and does not accept that Mr Y has been singled out. The Council says it accepts Mr Y has a large garden and that there is no need to make a visit or that a visit would change how it applied its rules.
 8. Mr Y remains of the view that he has been badly treated. He wants the Council to apologise and to visit his home to see that his large garden does generate the large volume of garden waste that he takes to the depot.

Analysis

9. It is unlikely we can add to the Council's own investigation or determine what happened during the incident that Mr Y complains about without any independent, corroborating evidence. Even if we could, while we appreciate Mr Y remains unhappy, any outstanding injustice caused to him is not at a level that would warrant our involvement. We would not generally investigate a complaint just to secure an apology.
10. The Council is entitled to refuse to visit Mr Y's property and we cannot make it do so.

Final decision

11. We will not investigate this complaint as it is unlikely we can change the outcome of the complaint or achieve the outcome that Mr Y seeks.

Investigator's decision on behalf of the Ombudsman

Complaint reference:

LGO reference: 16 017 845

PHSO reference: 2014194

Complaint against:

Nottinghamshire County Council (the Council)

Nottingham North and East Clinical Commissioning Group (the CCG)

The Ombudsmen's final decision

Summary: Mr X complains about the Council and CCG's decision to refuse funding for a care package at home. The Ombudsmen do not find fault with this decision as it took the decision based on the risks to Mr X if he returned home. The Council and CCG are considering alternative options in discussion with Mr X.

The complaint

1. Mr X complains about the care services the CCG and Council have provided for him. In summary:
 - Mr X disagrees with the Council and CCG's decision in October 2016 to refuse funding for a home care package.
 - Mr X considers the Council and CCG have failed to explore residential placement alternatives if a return home is not possible.

The Ombudsmen's role and powers

2. The Ombudsmen have the power to jointly consider complaints about health and social care. Since April 2015, these complaints have been considered by a single team acting on behalf of both Ombudsmen. (*Local Government Act 1974, section 33ZA, as amended, and Health Service Commissioners Act 1993, section 18ZA*).
3. The Ombudsmen investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship (*Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended*).
4. If it has, they may suggest a remedy. Our recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.
5. If the Ombudsmen are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, they can complete their investigation and issue a decision statement. (*Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I have discussed the complaint with Mr X. I have also made enquiries of the Council and CCG. I have considered the responses and supporting case notes, correspondence and assessments.
7. I have taken into account relevant law and guidance before coming to a view. I have also issued a draft decision on the complaint and invited comments from the parties.

What I found

Key facts

8. Mr X has multiple sclerosis with associated long-term conditions. He is not mobile and requires assistance with most activities of daily living. He has lived in a Neurodisability unit (the Unit) since 25 July 2016.
9. The Council completed a review for Mr X on 26 July 2016. It completed the review by telephone as Mr X had been hospitalised for pneumonia and had moved to the Unit the previous day on a trial basis.
10. The Council wrote to Mr X on 25 October 2016. The letter explained that the Council had decided a return home was not appropriate. This was based on the fact Mr X's previous care packages at home had repeatedly broken down. The Council considered it would be putting Mr X at risk if it supported him to move home. As it was likely any further care packages at home would break down, leaving Mr X without support.
11. Mr X's advocate complained on his behalf. The Council replied in December 2016. It reiterated that it considered Mr X would be at risk if he returned home.

Relevant law and guidance

12. Sections 9 and 10 of the Care Act 2014 require councils to carry out an assessment of any adult who appears to need care and support. They must assess anyone, regardless of their finances or whether the council thinks they have eligible needs. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must involve the individual and where appropriate their carer or any other person they might want to be involved.

Analysis

13. The 2016 assessment confirmed Mr X needs assistance in most areas and this could have a significant impact on his wellbeing. The assessment concluded he required 11.5 to 12 hours support during the day and support from a second carer for six to six-and-a-half hours a day. The assessment noted a multi-disciplinary team would review his placement at the Unit in 10 weeks. It recorded Mr X's needs had increased.
14. The assessment records Mr X's care package is funded jointly by the Council and the CCG. I have therefore treated the Council's actions being partly on behalf of the CCG.
15. Mr X clearly has very complex needs. The Council and CCG have a duty to meet those needs in a way that is appropriate. While I appreciate Mr X wishes to return home, I cannot conclude the Council is at fault in taking the decision Mr X's needs should be met in the Unit. [Page 6 of 12](#) The Council made its decision based on evidence

available to it relating to the likelihood of a care package at home breaking down. It has explained its decision to Mr X. I therefore do not consider there is evidence of fault.

16. Since making the complaint, the Council and CCG have entered into further discussions with Mr X about his care needs. The following events have occurred in the intervening period that are relevant to this complaint:
- On 16 June 2017 a social worker and occupational therapist met with Mr X to discuss his care needs. They determined he required a live-in carer in order to meet his complex needs.
 - Mr X previously lived in a one-bedroom property. On 20 June 2017 Mr X's housing provider advised there was no accommodation for carers on the property.
 - On 14 July 2017 Mr X's social worker decided to speak with Mr X to determine whether he would consider a move to an alternative property in the community that would accommodate a live-in carer. However, she also considered that Mr X may wish to arrange his own care in his current property. The note explains there would be a joint discussion with the CCG to consider a care package for Mr X at home. However, given previous arrangements had broken down due to Mr X's behaviour, a care package at home would leave him at risk.
17. Mr X wishes to return home. I am satisfied that the Council and CCG are in ongoing discussions with Mr X to determine whether this is appropriate. Based on the events since this complaint, I am satisfied the Council and CCG are reconsidering this possibility – including this risks to Mr X. I am therefore satisfied with the actions the CCG and Council are taking to resolve the matter. I am also satisfied there are ongoing discussions about an alternative if Mr X is unable to return home. I therefore do not consider there is evidence of fault as there is evidence alternative options are in discussion should Mr X be unable to return home.

Final decision

18. I do not consider there is evidence of fault in the Council's initial decision to refuse to support Mr X to return home. It made its decision based on the high level of risk this would pose to Mr X. It explained this to Mr X.
19. The Council and CCG are in ongoing discussions with Mr X about the most appropriate way to provide for his needs. I am therefore satisfied with these actions and have completed my investigation on this basis.

Investigator's final decision on behalf of the Ombudsmen

Complaint reference:
16 017 763

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mr B complains that the Council has unreasonably delayed in dealing with a Definitive Map Modification Order for a Right of Way over a nearby Green Lane. The Ombudsman has closed his investigation into the complaint because he considers that the Council has dealt with the application in accordance with its procedures.

The complaint

1. Mr B complains that there has been unreasonable delay by the Council in processing a Right of Way application for a nearby "*Green Lane*". He says the path has been blocked since 2013 and feels that the Council has failed in its duty to keep open a Right of Way which has been used for over 100 years.
2. Mr B has not used the path often so the personal injustice to him is limited. But he considers that its closure has caused an injustice to many people living close to the path who used it and signed a petition. He also considers it in the public interest that the Council deal with Right of Way applications promptly.

What I have investigated

3. I have exercised discretion to investigate Mr B's complaint about delay from the time of the making of the Order in April 2015.

The Ombudsman's role and powers

4. We investigate complaints about "*maladministration*" and "*service failure*". In this statement, I have used the word "*fault*" to refer to these. We 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*)
5. 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*)

How I considered this complaint

6. I have considered Mr B's written complaint and spoken with him. I have made enquiries of the council and considered its response. I have also sent Mr B and the Council a draft decision and invited their comments.

What I found

Recording Rights of Way

7. Every County Council or Unitary Authority in England (except the inner London boroughs) must prepare and keep up-to-date a “*Definitive Map*”. This shows every Right of Way (RoW) in an authority's area and the nature of the rights over the paths shown.
8. To record a RoW on a Definitive Map, it is necessary to apply for a Definitive Map Modification Order (DMMO). If an authority decides that a “*reasonable allegation*” can be made, it must make an Order to record the RoW. If no objections are received, it will then confirm the Order and record the RoW on the Definitive Map.
9. However, if it receives objections, it must send the Order to the Secretary of State (in practice the Planning Inspector) for a decision. An Inspector will then either consider written evidence or hold a Planning Inquiry. The Inspector may either confirm or not confirm the Order, or support the Order in a modified form, in which case there would be further consultation and consideration of the evidence.
10. There is no statutory timetable to submit an Order or refer an Order to the Secretary of State. However, six weeks must be allowed for each statutory public consultation.

What happened

11. Mr B lives close to a short Green Lane that runs between two roads, Road 1 and Road 2. The upper part of the Green Lane runs alongside a corner plot on Road 1, which a developer has bought and has been seeking to develop.
12. Mr B has explained that, in 2013, the developer put a fence across the top of the Green Lane, blocking access. He understands that the property deeds say that the developer owns land up to the centre of the Green Lane. But he says the deeds also say the landowner must keep the Green Lane open and not hinder passage. However, the Green Lane has been closed for four years.
13. In November 2013, an interest group filed a DMMO application to register the Green Lane as a RoW. The Council carried out pre-consultation in February 2014. After further research and internal approvals, it made a DMMO in April 2015. It then undertook the statutory consultation during which it received representations both in favour and against the making of the DMMO.
14. Mr B had previously contacted the Council about the DMMO but had not heard anything further since an update letter from the Council in December 2014. In March 2017, he complained to the Council about delay in dealing with the DMMO.
15. The Council explained that it had made the Order in April 2015 and received objections but, due to several internal issues, matters had not progressed significantly since then. Recently, however, officers had contacted objectors to confirm if their objections remained. If so, the Council would proceed with preparing a submission to the Secretary of State.
16. Mr B complained again to the Council about excessive delay in dealing with the DMMO. The Council reiterated the reasons for the time taken to deal with the application, which included staff shortages, increased workload and giving priority to other casework with set timescales. It explained that it had kept the applicant informed of developments.
17. The Council apologised for the time taken, and recognised that this was an unreasonably long process for Mr B, but considered that it had followed its

procedures correctly. It explained that it now had a fully staffed Team, it was preparing the report for the Secretary of State and it should now be able to reduce the backlog of cases.

My assessment

Delay in dealing with the DMMO

18. Mr B has complained of unreasonable delay in dealing with the DMMO which he considers to be clear evidence of fault by the Council.
19. There are no statutory timescales for the Council to follow in processing a DMMO apart from the six-week statutory consultation period. However, councils have a duty to prepare and keep up-to-date the Definitive Map.
20. The Council has explained that from 2015 onwards, its RoW Team experienced severe staffing pressures:
 - the Senior Definitive Map Officer left the Council and was not immediately replaced due to budget uncertainties;
 - there was a lengthy period of staff sickness;
 - in July 2016, the Government brought in compulsory searches from District and Borough Councils – this increased searches from around 1,400 to over 9,000 a year, and took staff away from other roles;
 - also in 2016, many Council Highways functions, and relevant staff, were transferred to a new company, so the remaining Team had to re-organise and recruit suitably qualified and experienced staff;
 - uncertainty over how the transfer to the new company would affect workload, and changes to budget allocations, meant that it was not possible to recruit staff earlier - the Team has only recently reached full capacity.
21. The Council says that, during this period of change, the Team had to prioritise work with statutory timescales for completion, such as legal orders from Highways England, Planning Authorities, compulsory searches from District Councils, and issues affecting residents' safety.
22. However, there were no periods where work on DMMOs stopped. Instead, in accordance with its procedures the Council processed applications in order of receipt with some exceptions. It followed the same procedure where it received objections.
23. One exception is where a regularly used path is fenced off, as in this case. However, the Council would also normally prioritise routes such as rural paths where there is no suitable alternative route. In this case, although the Council accepts that the closure of the Green Lane causes inconvenience to residents, there is a suitable alternative along publicly adopted highways.
24. That said, the Council has increased this case's priority and employed a consultant to prepare a detailed Statement of Case to send to the Planning Inspectorate. This will require further research, interviewing witnesses and preparation of proofs of evidence. When the Council has completed this process and referred the case, the Planning Inspectorate will provide a date for an inquiry to be held locally. There will be a strict timetable for all parties to submit evidence.
25. I have considered whether the way the Council has dealt with matters would constitute fault. This process has taken a long time to reach this point, and I appreciate that this has caused Mr B some frustration.

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26. It seems to me, however, that the Council has faced significant resourcing issues and changes to both its staffing and workload over this period. Although it has had to deal with these factors, it has prioritised its work according to its procedures. It has also continued to prepare DMMOs to update the Definitive Map. On balance therefore, despite the time taken to deal with the DMMO, I am not persuaded that the way the Council has acted constitutes fault.

Action to unblock the path

27. Mr B has also complained that the Council has allowed the path to remain blocked and has not acted to reopen it.
28. The Council has explained that under section 130(1) of the Highways Act 1980 *“it is the duty of the Highway Authority to assert and protect the rights of the public to the use and enjoyment of any highway”*. Section 130(7) of the same Act states that *“proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is not found to exist”*.
29. So, a Highway Authority can take action on an unrecorded path if it has reasonable and proper belief that it is a highway. But in the Team Manager’s experience, this would be a unusual and only with very strong evidence.
30. In this case, the Council has reasonably alleged that a public highway exists, hence its making a DMMO. But it has also received objections and the consultant is undertaking research and interviews before sending the Council’s case to the Planning Inspectorate. The Council needs to act proportionally when considering enforcement action and be confident of the strength of its evidence. Besides in this case there is an alternative route for members of the public on foot. Therefore, the Council has no current plans to take enforcement action.
31. I see no fault in the way the Council has considered this, so it is not for me to question the Council’s decision not to take action.

Final decision

32. I have closed the complaint because I consider that the Council has dealt with the DMMO in accordance with its procedures.

Parts of the complaint that I did not investigate

33. Mr B considers that I should investigate the way the Council has dealt with these matters since early 2014. He says he did not complain to the Ombudsman earlier because he understood the matter was progressing.
34. Mr B was aware that the path had been blocked since 2013 but had heard nothing from the Council since December 2014. I appreciate that he may not have known that limited progress was being made on the DMMO, but had he contacted the Council or the Ombudsman earlier, he could have found out where matters stood. Although I have exercised discretion to consider events since the Order was made in April 2015, I see no good reason why Mr B could not have complained earlier. So I have not investigated matters prior to April 2015.

Investigator’s decision on behalf of the Ombudsman

Complaint reference:
17 006 110

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: There was fault by the Council and its contractors in not adequately anticipating the needs of the people who would be likely to apply for the course. This meant the complainant had to wait longer to receive the training than he could reasonably have expected. The Council will, within one month of the date of this decision, pay Mr B £880.

The complaint

1. Mr B complains the Council did not meet its duties under the Equality Act 2010 to meet his needs as a disabled person. He applied for a home computer tuition course for disabled people. The Council and the agents it employed were not able to meet his needs and deliver the course.

The Ombudsman's role and powers

2. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I considered the complaint and spoke to Mr B. I asked the Council for its comments on the complaint and additional information. I sent a copy of a draft of this statement to Mr B and the Council and invited their comments.

What I found

Background

6. In the summer of 2015 the Council's then contractor, provider X, advertised a home-based training scheme to provide up to 24 training hours in computer skills and the use of the internet. The course was for people who because of their disability were either unable to attend a course outside their home or found it very difficult to do so. Two of the conditions were that the person had a disability and be in genuine need of ICT training in their home. The course was to provide a 12 hour introduction to ICT. It was to focus on basic ICT skills (if needed) including the use of the internet and email. It could be followed by a further 12 hours if the learner wanted.
7. Mr B is registered blind. He applied for the course and was accepted. Mr B has some very limited sight and wanted tuition to assist him in using adaptive technology.
8. The Council no longer uses provider X so it has been unable to provide any information about any discussion that was had with Mr B about the suitability of the course to meet his desired outcomes. Nor has it been able to provide any information about the steps taken by provider X to find a suitable tutor for Mr B. But by June 2016 a suitable tutor had not been found.
9. In August 2016 the Council appointed a new provider, provider Y. In summary a tutor was found who started work with Mr B in late October. By Christmas it was clear the tutor did not have the necessary knowledge of the particular software and technology that Mr B needed. By February the Council had identified a charity that worked with blind and visually impaired people to provide the training. Mr B did not want to proceed on this basis because the times offered were not convenient because of his business commitments.
10. Mr B complained to the Council. The Council's first response offered 10 hours tuition by the charity. The second response upheld parts of Mr B's complaint and offered 16 hours tuition provided by the charity.

Assessment

11. The providers who offered the course were acting on behalf of the Council. Under the Equality Act the Council should anticipate the needs of any disabled person who might use the services it provides.
12. The Council has said that it and its subcontractor "had anticipated meeting the needs of a visually impaired person, by commissioning and developing a model of training delivery that did not require the learner to access a venue outside of their home." I do not consider this went far enough. It would be reasonable to think that a visually impaired person would apply for the training offered. That person may well need special equipment or training. The fact that no trainer could be found for a year and when one was identified they did not have the degree of knowledge required shows the Council and its contractors had not adequately anticipated the needs of a visually impaired person. This is fault.
13. This failure meant Mr B did not get the training the Council's agents had agreed to provide for 18 months. He bought a computer with the adaptive technology which he has not been able to use.
14. The Council now identified a trainer it considers can meet the training needs of Mr B. I have seen nothing that suggests that this provider could not meet Mr B's needs. I understand that [this is not new](#) Mr B's preferred option. The Council has

agreed to pay Mr B £880 being the cost of the training so he can arrange his own training. I consider this is a satisfactory resolution of the complaint.

Agreed action

15. Within one month of the date of this decision the Council will pay Mr B £880.

Final decision

16. There was fault by the Council and its contractors in not adequately anticipating the needs of the people who would be likely to apply for the course. This meant the complainant had to wait longer to receive the training than he could reasonably have expected. The Council will, within one month of the date of this decision, pay Mr B £880.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 011 659

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint that the Council's cleaners removed and damaged items belonging to the complainant. This is because he cannot add to the Council's response and there is no meaningful outcome he could achieve.

The complaint

1. The complainant, whom I refer to as Mrs X, says the Council's cleaning team removed and damaged items during a deep clean. Mrs X wants the Council to reimburse her for the lost items.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start an investigation if we believe:
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants, or
 - there is another body better placed to consider this complaint.

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

How I considered this complaint

3. I read the complaint and the Council's response. I invited Mrs X to comment on a draft of this decision.

What I found

What happened

4. The Council arranged for its cleaning team to clean Mrs X's house. The Council says it told her, in advance, that the cleaners would remove any item that was detrimental to health.
5. Mrs X subsequently contacted the Council to say that many items were either missing or damaged. For example, she reported that a lot of alcohol and clothes were missing.

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6. In response, the Council interviewed the cleaners who said they only removed items which were detrimental to health. This included items which had perished or were heavily soiled. The Council inspected the bags of rubbish and did not find any of the reported missing items. The Council said it could not consider the complaint further but it passed the case to its insurers.

Assessment

7. I will not start an investigation because it is unlikely I could add to the Council's response. The Council has spoken to the cleaners and searched the rubbish. But, it has been unable to find evidence to support Mrs X's complaint. Given that I did not witness the events, and could not do any more than what that the Council has done, then it is unlikely an investigation would lead to a different outcome.
8. In addition, the Council has acted appropriately by passing the case to its insurers. The insurers, not the Ombudsman, will assess if the Council is liable for any losses.

Final decision

9. I will not start an investigation because it is unlikely it would lead to a different outcome and because it is appropriate for the insurers to assess the claim.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 012 319

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mrs A's complaint about the Council's decision to treat her mother in law, Mrs B, as depriving herself of assets. This is because there is not enough evidence of fault with the actions taken by the Council to warrant an investigation by the Ombudsman.

The complaint

1. The complainant who I shall call Mrs A says the Council should not treat her mother in law, Mrs B, as depriving herself of assets for the purpose of avoiding care costs, because when Mrs B gifted her house to her sons in 2010 she could not have known she would need residential care in 2017.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants.

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

How I considered this complaint

3. I considered the information provided by Mrs A and the Council. I sent Mrs A a copy of my draft decision and considered her comments on it.

What I found

4. Mrs A is unhappy with the Council's decision to treat the house Mrs B owned but gifted to her three sons in 2010 as capital. Mrs A says Mrs B has not deprived herself of assets so she doesn't have to pay for her care. Mrs A says Mrs B did not know she would have needed residential care seven years after gifting her house.

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- 5.
 6. The Council says when it interviewed Mrs B's son and Power of Attorney, he signed a financial assessment to say the house was transferred 'to protect it from being used to fund care fees'. The Council says the house was transferred to Mrs B's sons in April 2011.
 7. The Council says its records from 2011 show Mrs B fell twice and requested hand rails and equipment to help her get in and out of the bath. It also says Mrs B had, had several health problems and was unable to maintain her personal hygiene.
 8. The Care Act 2014 says a Council should consider:
 - whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
 - did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?
 9. The Council decided Mrs B should have known she may need care in the future and should not have gifted her house.
 10. Mrs A has not provided the Council with an alternative reason why Mrs B decided to gift her house to her sons in 2010. The Council has explained solicitors or financial advisors arranging a deed of gift or transfer of property have an obligation to advise their clients of the possibility that a Council may consider a person has deprived themselves of assets for the purpose of avoiding care costs. The Council says Mrs B could have left her property to her son's in her will to ensure they received any inheritance she wanted them to receive.
 11. If Mrs A has additional information about the reason why Mrs B transferred her house to sons in 2010 the Council has not seen she should ensure she provides it with this information so it can consider it further. The Ombudsman could not say the Council's actions have been taken with fault.

Final decision

12. The Ombudsman will not investigate Mrs A's complaint. This is because there is not enough evidence of fault with the actions taken by the Council.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 010 801

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: There was no fault in the Council's decision to refuse home to school transport for the complainant's daughter. There are no grounds to ask the Council to consider a further appeal.

The complaint

1. The complainant, whom I have called 'Mr B', is unhappy the Council has refused successive requests to provide his daughter (Child X) with free home to school transport.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. Before issuing draft decision statement I considered:
 - Mr B's written complaint to the Ombudsman and further information provided in telephone conversations with this office and further email submissions.
 - Information provided by the Council including Mr B's application for Child X to receive free home to school transport and later appeals. I also considered correspondence sent to Mr B by the Council where it refused his request and gave its reasons for that decision.
 - The Councils free home to school transport policy for all children and its transport policy for children with special educational needs and disabilities; both of which are on its website.
 - The law as referred to in the text below.
 - Comments made by Mr B in response to a draft decision statement setting out my thinking about the complaint.

What I found

The law and Council policy

5. Section 444 of the Education Act 1996 says parents have a duty to make sure their children attend school.
6. To support parents in this duty, section 508B(1) and schedule 35B of the Education Act 1996 require councils to make home to school travel arrangements as they consider necessary for eligible children to attend their 'qualifying school'. The relevant qualifying school is the nearest school with places available that provides education suitable to the age, ability and aptitude of the child, and any special educational needs the child may have. The law defines 'eligible children' as those who:
 - cannot walk to school because of their special educational needs, disability or mobility problem;
 - cannot walk to school safely because of the route;
 - live outside the 'statutory walking distance' from the school (three miles for children over eight); or
 - can receive help on low income grounds.
7. Councils also have discretion under the 1996 Act to offer transport *"where they consider it necessary to facilitate the child's attendance at the school"*.
8. The Council's policy for home to school transport considers that usually the 'qualifying school' will be the child's 'catchment school'. So, it generally restricts help for secondary school children to those who attend their catchment school and only then in cases where the catchment school is more than three miles from the home address. The Council will make an exception for children who have a different preferred school closer than the catchment school but still more than three miles away. Also, to comply with the legal duty to support defined low income families the Council will sometimes fund other cases.
9. The policy also allows for some further limited 'exceptions to the rule'. It says that *"decisions to award free transport as an exception to policy are unusual but they do occasionally happen"*. It gives as examples cases such as children impacted by homelessness or those that must change schools following the Council's involvement.
10. Separately the Council publishes another policy on school transport for children with special educational needs and disabilities. It sets out the Council's legal duties and applies the same approach in expecting most children to attend their nearest catchment school. But it again explains that sometimes it will make an exception to its rules. It says there may be *"exceptional circumstances in which travel assistance may be offered"* where there are *"exceptional circumstances in individual cases"*.

The key facts in this case

11. Child X began secondary school in September 2016, meaning she is now in Year 8 of her education.
12. Child X attends a secondary school over five miles from her home address. Her nearest secondary school, which the Council defines as her catchment school, is around half a mile from her address.

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13. When Child X began secondary school, she attended with her sister, who was then in her final year of her secondary education (Year 11). Child X's sister received free home to school transport. This was under a discretionary scheme which began in 2011 but ended in August 2014 (i.e. pupils beginning secondary school after September 2014 could no longer benefit from this scheme).
 14. Mr B wanted Child X to attend the same school as her sister because she suffers from severe anxiety. Child X's sister would help her settle in at secondary school. Mr B describes Child X struggling to manage tasks independently. He says she cannot cross roads unaided. She needs constant reassurance and talks to her mother by phone several times during the school day. Mr B describes Child X receiving support from local CAMHS (Child and Adolescent Mental Health Services).
 15. Mr B first applied for school transport in August 2016. The Council turned down his request and then, in September 2016, turned down an appeal. Its decision letter said Child X did not qualify for free home to school transport because she did not attend her catchment school.
 16. In his letters of appeal Mr B has stressed the additional needs Child X has resulting from her anxiety as well as noting she suffers with epilepsy. In his view, the family had "*no choice*" but to send Child X to the preferred school so she could receive support from her sister. He has also explained that he cannot afford school transport for Child X and she has travelled on the school bus without paying since she began secondary school. Mr B is in employment but due to ill health works reduced hours. His wife is not in employment. Mr B says this is because of the time she spends talking and reassuring Child X and helping to meet her needs.
 17. Mr B pursued a second appeal, heard by a three-member panel of Council officers (including two service managers) in April 2017. They noted all Mr B described about Child X's health including that she was awaiting a possible diagnosis of autism. The Council also made enquiries of the School before deciding the appeal. It told them Child X was "*heavily reliant*" on her sister and they had concerns for how she would cope in Year 8. They explained Child X also experienced anxiety with the journey to school. It arranged support with this; for example, arranging for her to use the same seat on the school bus each day.
 18. The Panel said it was "*understandable*" Mr B chose to send Child X to the preferred school. But they decided she was not eligible for free home to school transport. This was after the Panel considered that Child X's catchment school also catered for children with additional or special educational needs. They also noted the journey to the school contributed to some of Child X's anxiety.
 19. In September 2017 Mr B again asked the Council to re-consider its decision. This followed Child X receiving a diagnosis of autism. The Council declined to consider the case again but it has given Mr B advice on Child X receiving an Education, Health and Care Plan (EHCP) because of her special educational needs. Currently Child X does not have an EHCP but is going through the procedure to get one.

My findings

20. I do not find fault in the Council's policy on home to school transport. I consider both its general policy and that specific to children with special educational needs or disabilities comply with the law. The Council has drawn those policies tightly, usually only restricting successful applications to those pupils legally entitled to

transport. But I find the Council entitled to do this. So long as it does not fetter its discretion it can choose to exercise any discretion it has sparingly.

21. When I refer to 'fettering discretion' I am referring to cases where councils refuse to make an 'exception to the rule'. The Council's policies allow it to make exceptions where it thinks there are special circumstances to do so.
22. The issue at the crux of this case is whether the Council has decided properly not to treat Child X's case as an exceptional case. To decide this the Council must take account of her individual circumstances. I found the Council's first appeal decision in September 2016 flawed because it made no reference to Child X's individual circumstances. It overlooked Mr B's stated reasons for sending Child X to the chosen secondary school given her anxiety and the impact this had on her.
23. But I cannot say the same about the second appeal heard in April 2016. The Panel minutes show that it carefully noted all the points Mr B made in his appeal. The Council also gathered information from the School which supported Mr B's statements about the extent of Child X's anxiety and the impact this had on her. The School's comments also showed Child X benefitted from the support of her sister as stated by Mr B.
24. Yet the Panel decided despite this evidence it could not treat Child X's case as a special case. In doing so, it introduced two further factors. First, that while the preferred school clearly made efforts to meet Child X's additional needs there was nothing to suggest the catchment school could not have done also. Second, that Child X also experienced anxiety with travel to school. Something that I consider confirmed by Mr B's statements also. The inference here was that attending the catchment school, with a shorter journey, might lessen some of Child X's anxiety.
25. I consider the Council entitled to introduce these factors. They were not irrelevant to its decision on whether Child X's case was a special case. I considered the Council entitled to decide these factors tipped the balance towards deciding Child X's case was not 'an exception to the rule'. They implied Mr B did have choice about where he sent Child X to school, despite his statements to the contrary. Mr B can disagree with its judgment but I consider it reasonable and soundly based on fact. As I explained above a disagreement is not a basis for me to find fault with the decision. The Council went through a proper and thorough process taking account of arguments for and against making an exception. So, I find no fault in how the Council decided the appeal.
26. I have gone on to consider whether the Council has subsequently been right to refuse Mr B a further appeal. I consider there is a gap in its policies in not explaining if there are circumstances where parents can ask the Council to consider a further application or appeal for home to school transport. I consider this would be appropriate if there are changes in circumstance relevant to a decision.
27. In this case Mr B has introduced Child X's diagnosis of autism. While this will clearly be relevant to her future education I do not consider on its own it provides grounds to ask the Council to look again at its decision on transport. At the April 2017 appeal, the Council knew Child X potentially had autism as she waited for a diagnosis. I presume the condition helps explain the difficulties she experiences with anxiety and carrying out tasks independently. But the diagnosis does not change the facts around her anxiety or independence, which Mr B used as the basis for his appeal. The Council knew and accepted in April 2017 that Child X was highly anxious and needed support to travel to school. So, while it is new

evidence I understand why the Council takes the view it will make no difference to its decision and I think that reasonable.

28. It could be that in time new facts emerge. And, as part of the EHCP procedure the Council will have to consider if Child X needs support to attend any school named on the plan. So, the Council will have to keep an open mind and might need to re-consider the position in the future. But I see no reason to fault its consideration of Child X's case up to now.

Final decision

29. For the reasons explained above I have not upheld this complaint finding the Council has not acted with fault. I have therefore completed my investigation satisfied with its actions.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 012 461

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Ombudsman cannot investigate Mr J's complaint about the content of a report for court.

The complaint

1. Mr J complains that the Council has prepared a report for court which misrepresents him, and this may affect his case for having contact with his child.

The Ombudsman's role and powers

2. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)

How I considered this complaint

3. I have considered the information Mr J provided with his complaint.

What I found

4. Mr J has applied to court to arrange contact with his child. The court asked the Council to provide a report about Mr J. Mr J is unhappy about the content of the report and has complained to us about it.
5. But this is a complaint about what is happening in court. So it is not a matter we can investigate.

Final decision

6. We cannot investigate this complaint.

Investigator's decision on behalf of the Ombudsman

1 February 2018**Agenda Item: 8****REPORT OF THE CORPORATE DIRECTOR OF RESOURCES****WORK PROGRAMME****Purpose of the Report**

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

Information and Advice

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

Other Options Considered

4. None.

Reason/s for Recommendation/s

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

Statutory and Policy Implications

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

RECOMMENDATION

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

Jayne Francis-Ward
Corporate Director - Resources

For any enquiries about this report please contact:

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E-mail: keith.ford@nottsc.gov.uk

Constitutional Comments (SLB)

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

Financial Comments (NS)

There are no financial implications arising directly from this report.

Background Papers

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

None

Electoral Division(s) and Member(s) Affected

All

GOVERNANCE & ETHICS COMMITTEE - WORK PROGRAMME (AS AT 24 JANUARY 2018)

<u>Report Title</u>	<u>Brief summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
14 March 2018			
Children's placements for residential and/or semi-independent accommodation.	To provide an update on progress in implementation of the internal audit's recommendations on this issue.	Paul McKay	Jon Hawketts / Lynn Brammer
Risk management update	Periodic update on Risk Management issues.	Derek Higton	Robert Fisher
Councillor Code of Conduct	To consider a draft revised Councillor Code of Conduct, prior to submission to Policy Committee for approval.	Jayne Francis-Ward	Sue Bearman
Member Development and Training	The first of the twice yearly updates agreed by the Committee on 8 November 2017.	Jayne Francis-Ward	Keith Ford
Update on Local Government Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council (item to be confirmed).	Jayne Francis-Ward	Jo Kirkby
Attendance at Outside Bodies	To review Members' attendance at outside bodies to which they have been appointed.	Jayne Francis-Ward	Nerys Davies
Statement of Accounts 2017/18 – Accounting Policies	To outline proposed changes to the accounting policies used for the Authority's Statement of Accounts for 2017/18 for review and approval	Nigel Stevenson	Glen Bicknell
Internal Audit Plan for 2018/19	Report from the Head of Internal Audit providing details of the planned work for 2018/19	Rob Disney	Rob Disney
External Audit Plan 2017/18	To provide information on the External Auditors' Audit Plan for their 2017/18 Audit.	Nigel Stevenson	Glen Bicknell / External Auditor
Certification of Grants and Returns 2016/17	To provide information on the External Auditors' Annual Report 2016/17 on the certification of Grants and Returns	Nigel Stevenson	Glen Bicknell / External Auditor
Information Governance Improvement Programme	To report progress of the Information Governance Improvement Programme	Jayne Francis-Ward	Caroline Agnew

<u>Report Title</u>	<u>Brief summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
2 May 2018			
Update on Local Government Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council (item to be confirmed).	Jayne Francis-Ward	Jo Kirkby
Financial Regulations Waivers 2017/18	To inform Committee of compliance with the Council's Financial Regulations in the 2017/18 financial year and any waivers in that same period.	Nigel Stevenson	Clare Winter
Follow up of Internal Audit Recommendations	To provide information on the Internal Audit's high priority recommendations	Rob Disney	Rob Disney
13 June 2018			
Internal Audit Progress report for 2017/18	To provide details of internal audit work completed to the end of March 2018	Rob Disney	Rob Disney
Update on Local Government Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council (item to be confirmed).	Jayne Francis-Ward	Jo Kirkby
Risk management update	Periodic update on Risk Management issues.	Paul McKay	Robert Fisher
Annual Governance Statement	To agree the Council's Annual Governance Statement.	Nigel Stevenson	Rob Disney
25 July 2018			
Update on Local Government Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council (item to be confirmed).	Jayne Francis-Ward	Jo Kirkby
Follow up of Internal Audit Recommendations	To provide information on the Internal Audit's high priority recommendations	Rob Disney	Rob Disney
Information Governance Improvement Programme	To report progress of the Information Governance Improvement Programme	Jayne Francis-Ward	Caroline Agnew
September 2018 (date TBC)			
Member Development and Training	Update report on Member Development and Training undertaken and planned.	Jayne Francis-Ward	Keith Ford