

## **Governance and Ethics Committee**

**Wednesday, 02 May 2018 at 10:30**

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

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### **AGENDA**

1	Minutes of last meeting held on 14 March 2018	3 - 8
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3	Declarations of Interests by Members and Officers:- (see note below) (a) Disclosable Pecuniary Interests (b) Private Interests (pecuniary and non-pecuniary)	
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## **Notes**

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.
- (2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

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

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

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

Meeting **GOVERNANCE AND ETHICS COMMITTEE**

Date **Thursday 14 March 2018 (commencing at 1.00pm)**

**membership**

Persons absent are marked with 'A'

**COUNCILLORS**

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

Nicki Brooks  
Steve Carr A  
Kate Foale A  
John Handley  
Tony Harper

Errol Henry JP  
Rachel Madden  
Phil Rostance  
Steve Vickers

**OFFICERS IN ATTENDANCE**

Rob Fisher                      Adult Social Care, Health and Public Protection

Jon Hawketts                  Children and Families  
Laurence Jones

Derek Highton                Place

Sue Bearman Glen Bicknell Lynn Brammer Heather Dickinson Rob Disney Keith Ford Jayne Francis-Ward Jo Kirkby Nigel Stevenson	}	Resources
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**OTHERS IN ATTENDANCE**

Tony Crawley – KPMG – External Auditor  
Charles Daybell – Independent Person

**1. MINUTES**

The Minutes of the last meeting held on 1 February 2018, having been previously circulated, were confirmed and signed by the Chairman.

## **2. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Steve Carr and Kate Foale.

The following temporary change of membership, for this meeting only, was reported:-

- Councillor Steve Vickers had replaced Councillor Mike Quigley.

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

None

## **4. THE CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS**

Jayne Francis-Ward (Corporate Director, Resources) introduced the report which proposed a revised Code of Conduct and procedure for dealing with conduct allegations.

Following discussions about thresholds, the following limits were agreed:-

- that the threshold value for gifts and hospitality be increased from £25 to £50 to better reflect inflationary rises since this figure was initially set;
- then the maximum number of letters to be posted out by Councillors be set at 50, with any circulations exceeding that figure to be hand-delivered;
- that the limit for numbers of photocopies which Members can do on multi-function devices be set at 99 sides, with any jobs exceeding that limit referred to Central Print to ensure maximum cost effectiveness.

Charles Daybell, as one of the Council's appointed Independent Persons, queried the extent of 'censure' available to the Council in dealing with Conduct Allegations and it was clarified that this would be dependent upon the offence, although the limited range of sanctions were recognised. Mr Daybell also queried whether it would be more appropriate in the Points of Order regarding disorderly conduct to require, rather than request, a Councillor to leave a meeting. The legal sanctions available were clarified and it was underlined that in reality a meeting would likely be adjourned to enable any such behaviour to be addressed.

### **RESOLVED: 2018/006**

- 1) That the documents and amendments described in paragraphs 4,5 and 6 of the report, including the threshold limits agreed by the Committee, be recommended to Full Council for approval.
- 2) That the Governance and Ethics Committee supports the establishment of a sub-committee in accordance with paragraph 7 of the report.
- 3) That, subject to approval by Full Council, the Committee's work programme be updated accordingly.

## **5. CORPORATE RISK MANAGEMENT STRATEGY, RISK REGISTER AND RISK MANAGEMENT POLICY**

Rob Disney (Head of Internal Audit) introduced the report which sought Committee agreement to the Risk Management Strategy and to submit the Risk Management Policy to Policy Committee for approval.

### **RESOLVED: 2018/007**

- 1) That the County Council's Corporate Risk Management Strategy be approved.
- 2) That Policy Committee approval be sought for the proposed Corporate Risk Management Policy.

## **6. STATEMENT OF ACCOUNTS 2017-18 – ACCOUNTING POLICIES**

Glen Bicknell (Senior Accountant) introduced the report which sought the Committee's views on the proposed accounting policies for creating the Statement of Accounts 2017-18.

### **RESOLVED: 2018/008**

That the revised Accounting Policies be submitted to Policy Committee for approval.

## **7. INTERNAL AUDIT PLAN 2018-19**

Rob Disney (Head of Internal Audit) introduced the report which sought the Committee's views on the Internal Audit Plan for the coming financial year.

### **RESOLVED: 2018/009**

That the planned coverage of Internal Audit's work in 2018-19 and the proposal for a revised approach to planning to be presented to Committee in July 2018 be endorsed.

## **8. PROCUREMENT OF EXTERNAL RESIDENTIAL PLACEMENTS FOR LOOKED AFTER CHILDREN**

Laurence Jones (Interim Service Director, Commissioning and Resources) and Jon Hawketts (Group Manager) introduced the report which updated the Committee on the use of Financial Regulations waivers and the plans to mitigate off-contract spend in future.

### **RESOLVED: 2018/010**

- 1) That no further actions other than those set out within the report were required to reduce the amount of off-contract spend that might otherwise be incurred in relation to specialist care and education placements for vulnerable children and young people.
- 2) That the report arising from the planned audit of external placements of looked after children and young people should include a specific update on

off-contract spend and be submitted to the Committee for consideration in Autumn 2018.

#### **9. KPMG EXTERNAL AUDIT PLAN 2017-18**

Tony Crawley (External Auditor, KPMG) introduced the report which outlined the External Auditor's Audit Plan for their 2017-18 audit.

#### **RESOLVED: 2018/011**

That the External Auditor's Audit Plan for 2017-18 be noted.

#### **10. CERTIFICATION OF GRANTS AND RETURNS 2016-17**

Glen Bicknell (Senior Accountant) introduced the report which informed the Committee of the outcomes of the External Auditor's audits of the Teachers' Pension Return and the Local Transport Plan Major Projects S31 AUD Return.

#### **RESOLVED: 2018/012**

That the findings of the Teachers' Pension Return and the Local Transport Plan Major Projects Return audits and associated audit fees be noted.

#### **11. LOCAL GOVERNMENT OMBUDSMAN DECISIONS – JANUARY AND FEBRUARY 2018**

Jo Kirkby (Team Manager, Complaints and Information Team) introduced the report which detailed the LGO complaint decisions received in January and February 2018.

#### **RESOLVED: 2018/013**

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

#### **12. INFORMATION GOVERNANCE FRAMEWORK AND KEY POLICIES**

Heather Dickinson introduced the report which sought the Committee's views on the proposed Information Governance framework and key policies and sought permission to submit these to Policy Committee for approval.

#### **RESOLVED: 2018/014**

That the Information Governance Framework, Information Rights Policy, Information Compliance Policy and Information Security Policy be recommended to Policy Committee for approval.

#### **13. MEMBER DEVELOPMENT AND TRAINING**

Keith Ford (Team Manager, Democratic Services) introduced the report which updated the Committee on the existing training offer and sources of training available, sought Members' views on possible issues to cover in future sessions and requested Members' agreement to pilot the use of e-learning training packages to help assess their suitability for use by County Councillors overall.

The General Data Protection Regulations (GDPR) e-learning package was demonstrated to Members and it was felt that this could be an appropriate means of undertaking training. Members underlined the need for further consideration of the 'timing-out' functionality of any such e-learning.

The Chairman underlined the importance of all Members being aware of the new GDPR requirements, with the possibility of making such training mandatory to be explored. The Chairman agreed to submit a report to Full Council about the implications of GDPR and the importance of all Councillors undertaking training about this.

**RESOLVED: 2018/015**

- 1) That the existing sources of training available be noted, with no further topics suggested at this stage.
- 2) That Members of the Committee agree to pilot the e-learning package about GDPR to assess the suitability of this type of training package for County Councillors overall.
- 3) That the Chairman of the Committee submit a report to Full Council about GDPR and implications for Councillors, including training needs.

**14. WORK PROGRAMME**

**RESOLVED: 2018/016**

That the work programme be agreed, subject to the addition of the following items:-

- Statement of Accounts – presentation – add to 13 June 2018
- Statement of Accounts – approval – add to 25 July 2018

The meeting closed at 2.34 pm.

CHAIRMAN





**2 May 2018****Agenda Item: 4****REPORT OF THE MONITORING OFFICER****COMMITTEE ON STANDARDS IN PUBLIC LIFE – CALL FOR EVIDENCE****Purpose of the Report**

1. To agree a response to the Committee on Standards in Public Life (CoSPL) in relation to its review of local government ethical standards.

**Information**

2. CoSPL has launched a review of local government ethical standards with a call for evidence. The review aims to examine and assess the effectiveness of the structures, processes and practices in local government in England for:
  - a. Maintaining codes of conduct for local councillors
  - b. Investigating alleged breaches fairly and with due process
  - c. Enforcing codes and imposing sanctions for misconduct
  - d. Declaring interests and managing conflicts of interest
  - e. Whistleblowing
3. The call for evidence stems from reports of intimidation of candidates and their supporters during the 2017 general election campaign, in particular on social media, in relation to which CoSPL has already undertaken a review. CoSPL heard from local councillors during the course of its inquiry and decided that a health check of local government would be timely; as well as reviewing the effectiveness of local authority arrangements, it will be noting evidence of intimidation of councillors, and making recommendations for any measures that could be put in place to prevent and address intimidation in future.
4. One issue that has already been considered is whether the current requirement for candidates standing for election as councillors to publish their home addresses on the ballot paper should be removed. The government has already said that it is looking to bring forward legislation to remove this requirement. It also intends to review its 2013 guidance 'Openness and transparency on personal interests – A Guide for Councillors'. This is to ensure all members required to declare pecuniary interests are aware of the 'sensitive interests' provision in the Localism Act, which allows for information to be declared to the local authority, but not made public.
5. The two main consultation questions are: -

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why
  - b. What, if any, are the most significant gaps in the current ethical standards regime for local government?
6. These are followed by detailed questions on codes of conduct, investigations and decisions on allegations, sanctions, declaring interests and conflicts of interest, improving standards, whistleblowing, and intimidation of local councillors. The questions, together with draft responses for Committee's consideration, are set out in the **Appendix** to the report. The closing date for responses is 18 May.
7. Individual Councillors are able to submit their own personal responses if they wish to do so. The Council's Independent Persons have also been made aware of the call for evidence.

### **Other Options Considered**

8. There is no requirement for Governance and Ethics Committee to submit a response.

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

9. To take the opportunity of contributing to a review that may influence changes to ethical standards in local government in future.

### **Statutory and Policy Implications**

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

## **RECOMMENDATION/S**

- 1) To consider what response, if any, to submit to the Committee on Standards in Public Life.
- 2) To delegate authority for the final drafting of any response to the Monitoring Officer in consultation with the Committee Chairman.

**Jayne Francis-Ward**  
**Monitoring Officer and Corporate Director Resources**

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

Sue Bearman, Senior Solicitor

[susan.bearman@nottsccl.gov.uk](mailto:susan.bearman@nottsccl.gov.uk)

0115 9773378

**Constitutional Comments (SMG 12/04/18)**

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

**Financial Comments (SES 10/04/18)**

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

**Background Papers and Published Documents**

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

- The stakeholder consultation is published  
<https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>

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

- All



## APPENDIX

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

*Response – the existing structures are limited in effectiveness due to the absence of meaningful sanctions.*

### **Codes of conduct**

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

*Response – Nottinghamshire County Council's Governance and Ethics Committee has recently recommended that the code of conduct is clarified by the introduction of a suite of protocols with specific rules, for example in relation to use of resources. It has also recommended greater committee involvement in monitoring code of conduct matters; this is for transparency but also means that councillors themselves will have more involvement in ensuring the code is adhered to. A formal councillor induction programme is in place.*

*The provisions for registering and declaring interests are appropriate as they stand, but councillors welcome the ability to register interests as 'sensitive' where necessary. It should be a matter of choice for councillors whether to publish their home addresses.*

### **Investigations and decisions on allegations**

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
  - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet

- requirements for due process? Should any additional safeguards be put in place to ensure due process?
- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
  - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

*Response - Nottinghamshire County Council's Governance and Ethics Committee has recently recommended some changes to the procedure for dealing with complaints; for example a requirement for a political group to report back where a matter is referred to them to be dealt with under group discipline. The current arrangements allow flexibility in dealing with complaints; this is essential to save unnecessary costs investigating minor issues that can be resolved informally. The Independent Person provisions are sufficient. Monitoring Officers are protected from risk by the ability to seek an Independent Person's view, and refer issues to members of Governance and Ethics Committee.*

### *Sanctions*

- f. Are existing sanctions for councillor misconduct sufficient?
  - i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
  - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

*Response - The sanctions are limited to censure and publication of findings. Additional sanctions would be welcomed; for example suspension or fines.*

### *Declaring interests and conflicts of interest*

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
  - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local

authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

*Response – clarity would be welcomed on the position for councillors who are elected at both district/borough and county level. Councillors receive an allowance from both authorities; there is a lack of clarity about including this in their declaration of interest and when they should they leave meetings as a result. For example in relation to planning decisions. Additional guidance on the circumstances when a matter 'relates to' a disclosable pecuniary interest would be welcomed. Statutory dispensation or guidance in relation to certain matters would also assist, for example meetings approving councillor allowances and approving councillor code of conduct and related procedures, as well as council tax.*

*Nottinghamshire County Council requires Councillors to declare any private interests, both pecuniary and non-pecuniary, in meetings. Councillors may still participate in the item under discussion and vote, although the Code of Conduct says that depending on the circumstances they may decide it would be more appropriate not to.*

#### *Whistleblowing*

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

*Response – the Council has a whistleblowing policy which is published on its website and is actively used. No issues have been identified in relation to current arrangements.*

#### *Improving standards*

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

*Response – local authorities can design ethical standards regimes to encourage member and political party engagement and involvement. Central government can amend legislation regarding publication of home addresses and introduce greater sanction options. Training on ethics and standards could be made compulsory.*

*Standard salaries for councillors could be set nationally; this would encourage different groups to stand for election. Conduct problems at election time may be reduced if measures were taken to reduce the level of pressure; for example exit payments if not re-elected. Currently councillors lose their income without notice if not re-elected.*

*Intimidation of local councillors*

- k. What is the nature, scale, and extent of intimidation towards local councillors?
  - i. What measures could be put in place to prevent and address this intimidation?

*Response -*



**2<sup>nd</sup> May 2018****Agenda Item: 5****REPORT OF THE MONITORING OFFICER****LOCAL GOVERNMENT OMBUDSMAN DECISIONS FEBRUARY AND  
MARCH 2018****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 February - March 2018.

**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 March.
3. The LGO provides a free, independent and impartial service to members of the public. It looks at complaints about Councils and other organisations. It only looks at complaints when they have first been considered by the Council and the complainant remains dissatisfied. The LGO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the LGO finds that something has gone wrong, such as poor service, service failure, delay or bad advice and that a person has suffered as a result, the LGO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGO publishes its decisions on its website ([www.lgo.org.uk/](http://www.lgo.org.uk/)). The decisions are anonymous but the website can be searched by Council name or subject area.
5. A total of 9 decisions relating to the action of this Council have been made by the LGO in this period (attached at annex A). Two cases were deemed to be out of the LGO's jurisdiction: one because it related to matters decided in court, the other as it concerned matters which occurred 2012. In a further case the LGO decided that the complaint did not merit any further action as further investigation by either the LGO or the Council would not be relevant.
6. In 2 of the remaining cases the LGO found that there was no evidence of fault on the Council's part. In one case although fault was found in a Care Home, the Council's only involvement had been to carry out a safeguarding investigation.
7. In the last 4 cases, some fault was found. One case related to children's social care, and concerns the support that the Council is giving a grandmother caring for her grandson. The complaint turned on whether or not the child was a "looked after child" when he entered his

grandmother's care. The Council has agreed to make some back dated payments and review the support it currently offers.

8. The final 3 cases all related to Adult Social Care. The first case concerned an assessment which ended a small personal budget. The LGO found that the process of the assessment was flawed but that the decision to end support was not. The Council has agreed to apologise to the complainant and pay her £150 to reflect distress, to offer a re-assessment of the complainant's needs, and to review the effectiveness of staff training and process guidance. These actions are in hand.
9. A further case (reference 16 017 384) is a complex case where the complainant is the mother of an adult son who is autistic with severe learning difficulties. The complaint had many strands to it including both the actions of the Council and those of the Care Home. The LGO found fault in two parts of the complaint, although concluded that there was no evidence to suggest that the fault led to significant injustice to the complainant. The Council has put a risk assessment in place and is reviewing its procedures.
10. The final case concerned a decision relating to deprivation of assets with the intention of avoiding care charges. The Council has agreed to carry out a further financial assessment, and include a fresh decision on deprivation of assets, specifically to look at the issue of motivation. It has also written to her offer a further apology for not keeping her informed in a timely way of the progress of her complaint.
11. There were no themes highlighted within the complaints; the issues were individual to circumstances of each case.

## **Statutory and Policy Implications**

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

## **Data Protection and Information Governance**

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

## **Financial Implications**

14. Payments where required were made from existing budgetary provision.

## **Implications for Service Users**

15. 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 (Standing)**

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

### **Financial Comments**

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 references:**

LGO reference: 17 003 579

PHSO reference: C2018698

**Complaint against:**

City of York Council

Tuxford Medical Centre

Nottinghamshire County Council



## The Ombudsmen's decision

Summary: The Ombudsmen find no fault in the way a care home and GP practice responded to a resident's declining health, or in the way the home tried to manage the resident's personal care needs. However, the Ombudsmen find fault in way the care home managed the resident's pressure area needs. This caused an injustice. The Ombudsmen recommend an apology and an action plan to address this.

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## The complaint

1. Mr A complains about the care, support and treatment his late mother, Mrs R, received from September 2015 until January 2016. He complains about:
  - Tuxford Manor Care Home (the Care Home), which City of York Council (York Council) arranged and funded while Mrs R stayed there
  - Tuxford Medical Centre (the Practice)
  - Nottinghamshire County Council (Notts Council), which investigated Mr A's concerns.
2. Mr A complains:
  - **The Care Home failed to investigate Mrs R's complaint of being attacked in her bedroom.** Mr A said Mrs R complained about this shortly after she moved in to the Care Home. Mr A said, because the Care Home failed to investigate, Mrs R lost trust in the professionals involved in her care. He said this, in turn, meant she stopped sharing things with them, such as the pain she was in.
  - **The Care Home and Practice failed to address Mrs R's deteriorating health during December 2015 and January 2016.** Mr A said there were clear signs that Mrs R's health was deteriorating due to treatable medical problems. Mr A complains his mother's death was painful and undignified and could have been avoided had appropriate care been provided in a timely manner. In particular, Mr A complains the Care Home and Practice failed to take proper account of Mrs R's:
    - Inability to eat and associated weight loss
    - Inability to drink and severe dehydration

- Increasing abdominal pain
- Inability to pass stool
- Increasingly restricted movement.
- **The Care Home failed to provide proper personal care for Mrs R.** Mr A said Mrs R needed help with elements of her daily personal hygiene needs. He complains the Care Home failed to provide this help. Mr A said, as a result, his mother was unable to use the toilet when she wanted to and was left in urine soaked underwear. Mr A complains this, in turn, meant Mrs R developed avoidable urine acid burning between her legs.
- **The Practice failed to recognise signs the Care Home was not providing proper personal care for Mrs R.** Mr A said the Practice should have noticed evidence of poor care during their examinations of Mrs R.
- **The Care Home failed to provide proper pressure area care.** Mr A said Mrs R developed an avoidable pressure sore on her heel because of this.
- **Notts Council failed to investigate his concerns adequately or objectively.** Mr A complains Notts Council accepted the professionals' versions of events without any scrutiny or analysis.

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

3. 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*).
4. The Ombudsmen will not generally investigate a complaint unless they are satisfied the matter has been brought to the relevant organisation's attention and that organisation has had a reasonable opportunity to investigate and reply to the complaint (*Local Government Act 1974 section 26(5), as amended and Health Service Commissioners Act 1993, section 9(5)*). However, in the case of joint complaints (i.e. those deemed suitable for investigation by the Joint Working Team operated by both PHSO and LGSCO), if one organisation has investigated and replied to the complaint but another organisation has not, the Ombudsmen may decide to exercise their discretion to investigate the complaint against all organisations, so that the issues can be considered in the round.
5. 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*).
6. When investigating complaints, if there is a conflict of evidence, the Ombudsmen may make findings based on the balance of probabilities. This means that during an investigation, we will weigh up the available evidence and base our findings on what we think was more likely to have happened.
7. 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(ii)*).

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## How I considered this complaint

8. I read the correspondence Mr A sent to the Ombudsmen and asked him about his concerns via email. I wrote to all the organisations to explain what I intended to investigate and to ask for comments and copies of relevant records. I considered all the comments and records they provided. I also got copies of records from Mrs R's previous GP surgery, and from her hospital admission in January 2016.
9. I read relevant legislation and guidance and got advice from a clinical adviser: a GP with relevant knowledge and experience.
10. I shared a confidential copy of my draft decision with Mr A and all the organisations to explain my provisional findings. I invited their comments considered the remarks and additional information I received in response.

## What I found

### Background

#### **Mrs R's living arrangements before she moved to the Care Home**

11. Until August 2014 Mrs R lived with one of her sons, Mr C, who supported her. York Council also arranged for carers to visit Mrs R three times a day. In August 2014 Mr C went into hospital and Mrs R moved in to a care home in York (the York Home) as a temporary, respite measure. However, Mr C remained unwell and Mrs R stayed in the York Home. She was registered with a local GP (the York GP) throughout this time.
12. Mr C sadly died in July 2015. Mrs R's family and professionals agreed she would not be able to cope at home on her own. Mrs R wanted to move closer to her family. Her grandson spoke to York Council and noted Mrs R wanted to move to the Care Home. The Care Home told York Council it could meet Mrs R's needs.

#### **York Council's assessment of Mrs R's needs**

13. York Council completed an assessment of Mrs R's social care needs and a support plan in August 2015. This noted, among other things:
  - Mrs R had some short term memory loss but could communicate her needs and preferences. However, it said:
    - She underestimated the amount of care she needed
    - Had difficulty retaining information and needed to be reminded.
  - Mrs R experienced some incontinence and wore pads, and needed prompting to change the pad during the day if it was wet.
  - Staff needed to prompt and assist Mrs R with personal care and hygiene tasks, including:
    - To assist her in the shower with appropriate equipment
    - To monitor her skin.
  - Mrs R needed to receive a healthy, varied diet, and staff should:
    - Include low fat options
    - Encourage her to eat healthier options
    - Monitor her weight.

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14. Toward the end of August 2015 Mrs R's grandson told York Council he was happy with its assessment. York Council sent copies of its assessment and support plan to the Care Home the following day.

#### **Mrs R's move to the Care Home**

15. Mrs R moved to the Care Home on 1 September 2015. The Practice registered Mrs R as a patient two days later.

#### **Complaint that the Care Home failed to investigate Mrs R's complaint of being attacked in her bedroom**

#### **Arrangements at the Care Home**

16. The Care Home said Mrs R's room was on the first floor of the building. It said at night there are normally three carers working, plus a senior. The Care Home said two of the carers work on the first floor.

#### **Care Home's night time care plan**

17. The Care Home completed a range of care plans for Mrs R at the start of September 2015. This included one about night care. The Care Home recorded that Mrs R wanted staff to check on her every two hours during the night. The plan also said Mrs R could let staff know when she needed support and could use the call bell.
18. The Care Home records state that night staff regularly checked on Mrs R at midnight, 2am, 4am and 6am.

#### **Care Home records about events on 8 September 2015**

19. The Care Home's records state Mrs R pushed her call bell shortly before midnight on 8 September 2015 as she was uncomfortable. Staff went to her room and inflated her mattress while Mrs R sat in a chair. Staff then helped her back to bed. Staff returned at 4am and found Mrs R to be sleeping.
20. At 6am Mrs R told a staff member that someone had come into her room in the middle of the night and pushed her to the floor. The staff member checked Mrs R for injuries and did not find any. They also told Mrs R that a carer had been upstairs all night and would have heard something if it had occurred. Later in the morning Mrs R told a different carer that somebody had been in her room at night and hit her on the back of the head and she had fell and hit the front of her head. The staff member checked the back of her head and face but did not find any marks or wounds.

#### **Contact with York Council**

21. York Council's records show the Care Home called it the next day. The Care Home told York Council what Mrs R had said, and noted that her recollection of events had changed. The Care Home noted that Mrs R's grandson's wife had checked Mrs R and it said there was no sign of any bruising or injury. The Care Home also said its staff had not heard or seen anything.

#### **Care Home records about events over the following days**

22. The records from the following days do not have any further reference to this incident, or any other concerns from Mrs R about her safety. There are entries about Mrs R asking staff to take her to her room. There are records that staff continued to regularly check on Mrs R throughout the nights and found her to be sleeping. In addition, there is evidence that Mrs R used the call bell to ask for assistance when she wanted it – for a drink, or to go to the toilet, or to complain that her bed was uncomfortable.



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23. The Care Home records do not contain references to Mrs R showing any anxiety about going to bed, or about staying in the same room. There is evidence to show that staff locked the door when she asked for this.

#### **Guidance about patient safety**

24. There are standards for safety and quality care homes need to meet, which I will call the Regulations (*The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*). The Care Quality Commission (the CQC) has written guidance to help care homes meet these standards, known as the Fundamental Standards (*Guidance for providers on meeting the regulations, March 2015*). This includes keeping people safe from risk or harm (*Regulation 12*).

#### **Analysis**

25. The Care Home's records show staff talked to Mrs R about this incident and regularly checked on her. There is also evidence that Mrs R was capable of, and willing to, ask for help when she wanted it, and of telling staff about her concerns. Mrs R did report said she had trouble sleeping after this incident, but this related to the comfort of the bed rather than any anxiety about a risk of harm. Records from later in the year show Mrs R did tell staff when she was in pain at times. Overall, given the absence of any evidence of a physical injury it was reasonable that the Care Home did not carry out an investigation of this incident. Therefore, I have not found any evidence of fault.

#### **Complaint that the Care Home and Practice failed to address Mrs R's deteriorating health during December 2015 and January 2016**

##### **Mrs R's health before she moved to the Care Home**

26. Mr A said Mrs R had Chronic Obstructive Pulmonary Disease (COPD) and was a little overweight, but was otherwise in good health. Further, he said before her move to the Care Home Mrs R had a good appetite and ate normally. He also noted that, before the move, Mrs R had complained of pains in her lower left abdomen.

##### **Events while Mrs R was in the York Home**

27. The York Home contacted the York GP in July 2015 and asked for indigestion treatment for Mrs R. The York GP prescribed medication and said the York Home should ask for a medical review if the symptoms persisted. A couple of days later Mrs R's family asked for a medical review as Mrs R had been burping and having discomfort in her stomach. The York GP saw her the following week and noted the problem had been ongoing for some time but was getting worse. They advised Mrs R to stop taking a medication and asked for an abdominal ultrasound.
28. Mrs R had the ultrasound scan in late August 2015. However, the sonographer said it had been difficult to perform the examination so the scan had limited use as a diagnostic tool.

##### **Records the Care Home kept**

29. The Care Home weighed Mrs R the day after she moved in and found her to be 104.1kg. It recorded this on a 'Weight Monitoring Chart' which it updated during Mrs R's admission.
30. The following day the Care Home started a 'Food and Nutrition Record' for Mrs R. This recorded information about the food and portion sizes it offered, and what

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Mrs R ate. It recorded this information for: breakfast; morning snack; lunch; afternoon snack; tea; and supper. Staff completed this each day.

31. Staff also made regular entries on the Care Home's 'Daily Notes'. These notes included entries about:

- Mrs R's mood
- What she did during the day
- Whether she had eaten well or not had much to eat
- The type of care and support staff gave (or offered) Mrs R
- Concerns Mrs R or staff had about her health.

#### **Relevant events in September 2015**

32. The Practice saw Mrs R for the first time in the middle of September 2015. It did not yet have the records from the York GP, other than some the Care Home provided. The Practice noted Mrs R was belching a lot and that this was an ongoing issue.

#### **Relevant events in October 2015**

33. A GP from the Practice saw Mrs R again at the start of October 2015. They noted Mrs R had occasional spasms of stomach pain and had not opened her bowels for a few days. The GP examined Mrs R and thought she might be constipated and have colic (pain in the upper abdomen). The GP prescribed Buscopan (a medication to ease stomach cramps). They also asked the Care Home to see how things developed over the next few days and, if Mrs R got more unwell, to ask for another review.
34. The Care Home weighed Mrs R again in early October 2015 and found her to be 96.9kg (a decrease of 7.2kg over 34 days).
35. On 12 October 2015 staff in the Care Home felt Mrs R seemed unwell, was not moving as well and was not eating or drinking much. They asked a GP to see her. The GP examined Mrs R but did not find anything unusual. They prescribed a laxative and asked for a blood test. A couple of days later Mrs R complained of pain in her abdomen and told staff it felt *'like her insides were twisted'*.
36. On the same day Mrs R's grandson contacted York Council and said Mrs R had not settled in well. He said she had been confused at times, as well as paranoid and fearful. He also said her mobility and balance had deteriorated. Mrs R's grandson said he felt Mrs R may need an updated assessment at some point.
37. The Care Home weighed Mrs R again the next day and recorded her weight as 93.7kg (a decrease of 3.2kg over nine days, and 10.2kg over 43 days).
38. Mrs R complained of similar pain again the following week and staff noted she had not eaten much and her mobility seemed poor. Staff spoke to a GP at the Practice and said the Buscopan had helped a lot. The GP approved another prescription.
39. Toward the end of October 2015 the Care Home contacted the Practice again. They noted Mrs R had lost weight and said the Buscopan did not seem to be working anymore.

#### **Relevant events in November 2015**

40. A GP visited at the start of November and noted the amount of weight Mrs R had lost between the start of September and middle of October. They also noted

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Mrs R was still complaining of wind and belching and was refusing to eat. The GP examined Mrs R but did not find anything to explain her symptoms. The GP referred Mrs R to a geriatrician for further investigation, to help find a cause of her continued abdominal pain and weight loss.

41. On the same day Mrs R's grandson spoke to York Council. He noted Mrs R was eating very little. He also said she was paranoid and yelled and flinched and put her hands up to her face if anyone came near her. Mrs R's grandson said Mrs R had deteriorated significantly, including her mobility and mental health.
42. York Council also spoke to the Care Home. The Care Home noted it had food and fluid charts in place and were in contact with the GP who had, in turn, referred Mrs R to a geriatrician. York Council spoke to Mrs R's grandson again and he said he felt it was appropriate to wait for the outcome of the referral to the geriatrician to see if this ruled out a clinical cause and, if it did, they could then consider a mental health assessment. York Council also noted that Mrs R's grandson was happy with the care at the Care Home and felt a move would be detrimental to Mrs R's health.
43. The Care Home weighed Mrs R again on 6 November 2015 and she weighed 91.1kg (a decrease of 2.6kg over 22 days, and 13kg over 65 days).
44. At the end of November 2015 York Council spoke to the Care Home which advised that things were pretty much the same. The Care Home said it was continuing to monitor how much Mrs R ate and drank. It also noted that Mrs R had not yet seen the geriatrician.

#### **Relevant events in the Care Home in December 2015 and early January 2016**

45. Mrs R continued to eat only small amounts of food in December 2015, and sometimes refused to eat anything. This was in the Care Home and when Mrs R went out: Mrs R's grandson took Mrs R out in early December 2015 and told staff they had encouraged her eat at their house but she had not eaten anything.
46. A couple of days later the Care Home called the Practice due to their concerns about how little Mrs R was eating. A GP said Mrs R needed to see the geriatrician as they had done as much as they could to investigate her symptoms locally. The GP said they would chase the referral.
47. On 13 December 2015 staff asked for a GP review because of general concerns about Mrs R's health. The staff member recorded in the Care Home notes that Mrs R was '*not right*'. They also recorded in the daily notes that Mrs R was still complaining of pain in her stomach and still not eating. The GP saw Mrs R the next day. They noted Mrs R's breathing was '*not as good*' and examined her. They did not find anything to explain Mrs R's symptoms and noted again that she was due to have an outpatient appointment with a geriatrician. Over the following days the Care Home noted that Mrs R periodically threw herself back and forth and complained of pain in her stomach.
48. On 21 December 2015 the Care Home called an ambulance which took Mrs R to hospital. The hospital diagnosed Mrs R as suffering from urinary tract and kidney infections and noted she was dehydrated. It gave Mrs R a course of antibiotics, encouraged her to drink and discharged her the same day.
49. The Care Home weighed Mrs R again on 23 December 2015. She weighed 82.5kg (a decrease of 8.6kg over 47 days, and 21.6kg over 112 days). The following day staff advised the Practice that Mrs R continued to eat and drink very little.

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50. The Care Home updated its care plans for Mrs R on 28 December 2015. It noted she continued to have the mental capacity to tell staff what she liked and did not like. The care plans noted Mrs R had minor problems with chewing and swallowing. It advised staff to encourage and assist Mrs R to eat.

### **Admission to hospital on 3 January 2016**

51. Mrs R went to stay with her family on 2 January 2016. They called an out of hours doctor the following evening due to Mrs R's abdominal pain. Mrs R went to hospital which noted she had an acute kidney injury and treated her with IV fluids.
52. Mrs R had a CT scan on 6 January 2016 and this showed her to be faecally loaded. The following day medics noted concerns about Mrs R's ability to swallow safely. They said she should not be given food or drink orally and asked Speech and Language Therapy (SALT) to review her. This review happened the next day and SALT recommended a pureed diet and thickened fluids.
53. Mrs R remained in hospital until she sadly died on 21 January 2016.

### **Relevant guidance**

54. Health and social care staff should presume people have the mental capacity to make choices about their own care unless there is proof to the contrary. People should not be treated as lacking capacity just because the decisions they make are unwise ones (*Section 1, Mental Capacity Act 2005*).
55. Care homes need to provide personalised care, respect peoples' wishes and ensure they only provide care and treatment with the person's consent. As part of this, care homes should assess peoples' needs, taking account of their own views and preferences, and keep these assessments under regular review (*Regulations 9, 10 and 11*).
56. Care homes also need to make sure their residents get enough to eat and drink. As part of this requirement, care homes need to keep a person's food and drink needs under review. When things change, and when a person is not eating or drinking enough, staff need to act (*Regulation 14*).

### **Analysis**

57. The Care Home's records show staff regularly checked on Mrs R and noted changes to her health and eating habits. They also show that staff were conscious of, and concerned about, Mrs R's weight loss.
58. Mrs R was never considered to lack the mental capacity to make her own choices, including about what she would or would not eat. The Care Home needed to respect Mrs R's own choices and could not force her to eat. There is evidence to show that staff tried offering different types of food, and encouraged Mrs R to eat and drink. The Care Home also sought help from medical professionals to try to find a cause for Mrs R's behaviour and pain, by involving the Practice.
59. The Practice records show GPs reviewed Mrs R in good time when the Care Home asked for this. Mrs R's weight loss was significant. There was a basic explanation for this – that Mrs R was not eating. Mrs R was also noted to be constipated and this can sometimes make people less inclined to eat. The GP requested blood tests to try to find an explanation for what was happening, but the results did not provide an answer.
60. The significance of Mrs R's weight loss meant further action was necessary. The Practice did act by referring Mrs R to a geriatrician. This was appropriate.

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61. It is established practice to allow secondary care to consider whether to undertake different types of investigations. Some can be invasive and be stressful, both physically and mentally, and it is appropriate for a consultant to weigh up the pros and cons with the person (and their family) as they have more specialist experience. Therefore, it was reasonable for the Practice to have left it for secondary care to have considered these matters.
62. However, Mrs R did not get to see a geriatrician. The Practice had asked for an appointment 'soon', as opposed to urgently. This was appropriate in the circumstances, as physical examinations and blood tests had not suggested anything sinister as a cause for Mrs R's weight loss. There are no set standards for how long it should take to get an appointment following a 'soon' referral. It can vary around the country and between disciplines. As a general guide the referrer might expect the person to be seen within four to eight weeks.
63. The Practice said when it made the referral to the geriatrician there was nothing to indicate there was likely to be a wait of more than a few weeks. It said the hospital asked it to email the original referral letter to them on 27 November 2015, and it did so. The Practice said it chased things up on 8 December and again on 29 December 2015. It said that it was at this point that the old age service indicated the waiting time was likely to be eight to ten weeks. During the complaints process the hospital noted there had been a 'clinic capacity issue' which meant it could not offer an appointment earlier than 6 January 2016. The hospital apologised for this.
64. A month after the Practice made the referral Mrs R had not shown any signs of improvement. In addition to asking the secretaries to chase things up a GP could have written a letter to geriatrician asking for the referral to be expedited as Mrs R had not improved after a month. However, throughout this time, there was nothing in the GP's examinations or the blood tests which indicated Mrs R needed an urgent, acute admission. At one point blood tests showed some renal impairment but this improved at a later test and returned to an acceptable level. A test also suggested Mrs R might be slightly anaemic but, again, this returned to a normal range at the next test. It is also notable that Mrs R went into hospital toward the end of December 2015 but it did not find she needed to stay in hospital. Therefore, there had been no indication Mrs R needed an acute hospital admission before she went at the start of January.
65. If a GP had written to the geriatrician after a month I do not know whether this would have sped things up as the geriatrician's caseload was out of the Practice's hands. Further, the investigations the geriatrician could have asked for were done during Mrs R's hospital admission and did not identify a clear cause for her problems. Mrs R was found to be constipated, but scans and examinations did not identify any other explanation for Mrs R's deterioration and weight loss. The Practice had known Mrs R was constipated in the community and they had prescribed an appropriate treatment for this. As such, while the Practice could have been more proactive in chasing the referral it made to secondary care, it is not clear this would have led to a different outcome.
66. Overall, there is evidence to show the Care Home monitored Mrs R's health appropriately and asked for suitable medical help. The Practice completed relevant examinations and tests and, again, made a suitable referral. Therefore, I have not found evidence of fault.



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## **Complaint the Care Home failed to provide proper personal care for Mrs R**

### **Records the Care Home kept**

67. The Care Home completed care plans for Mrs R a couple of days after she moved in. It noted she was occasionally incontinent of urine and may need a carer to help her to use the toilet.
68. Staff recorded the ways they supported Mrs R in the Daily Notes. This included entries about:
- Helping with personal care
  - Helping to get dressed
  - Washing
  - Helping Mrs R to the toilet
  - Changing continence pads.
69. On 21 December 2015 staff noted another full body wash and reported that Mrs R was sore and red. They applied a cream and informed a senior member of staff.
70. The Care Home updated its care plans on 28 December 2015. It noted that two members of staff needed to help Mrs R to the toilet due to poor mobility. The Care Home also noted that Mrs R needed full assistance with general bathing and personal hygiene. On the same day staff noted they were checking all of Mrs R's pressure areas every day and would report any concerns to the senior member of staff on duty who would then inform the community nurses if necessary.
71. The following day staff noted that Mrs R was still looking red and they applied more cream.

### **Relevant records from Mrs R's hospital admission**

72. On 4 January 2016 hospital staff noted two stage two sores to Mrs R's left and right buttocks, and a stage three sore on her natal cleft. A couple of days later staff noted a '*significant moisture lesion to sacrum, both buttocks*'.

### **Analysis**

73. The Care Home records show that Mrs R's need for help and support increased during her time in the Care Home. There are entries from the early part of her stay which report her going to the toilet on her own but, later, she could not manage this. The records also show that staff regularly checked on Mrs R and offered to help her wash, dress and go to the toilet. There were a number of occasions when Mrs R told staff she did not want any help. In keeping with the Regulations, staff were right to respect Mrs R's wishes.
74. Pressure sores and moisture lesions can occur very quickly, over a matter of hours. This means the evidence from the hospital does not automatically show Mrs R's sores came from her time in the Care Home. Nevertheless, Mrs R's mobility was known to have reduced, she was incontinent, sometimes refused to let staff change her pads or wash her, and had a poor diet. These are known risk factors for the development of pressure sores and moisture lesions. Therefore, on the balance of probabilities, the sores the hospital found related to the time she was in the Care Home.
75. However, this is not to say the sores only arose because of poor care by the Care Home. Entries in late December 2015 provide evidence that staff did wash Mrs R thoroughly. They took note of changes to her skin and responded to this. The Care Home updated the relevant care plan and there is evidence that staff were

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aware of the need to check on areas of Mrs R's skin which were susceptible to pressures sores. There is also evidence to show the Care Home used a pressure relieving mattress and pressure cushions. Therefore, there is sufficient evidence to show the Care Home offered appropriate support for Mrs R's needs, but she did not always want to accept it.

**Complaint the Practice failed to recognise signs the Care Home was not providing proper personal care for Mrs R.**

**Response from the Practice**

76. In response to this complaint, the Practice said the Care Home, Mrs R and the family did not advise it of any pressure sores or moisture lesions. It said GPs always saw Mrs R for a defined problem and undertook relevant examinations. It said its GPs limit their examinations to areas of the body which are relevant to the clinical concerns they are dealing with at the time.

**Analysis**

77. The Practice's response is in line with established good practice for GP visits. When GPs complete home visits the person who requested the visit advises of a problem and the GP completes a targeted examination. There is no expectation for a GP to undertake a complete, head-to-toe examination of patients every time they see them. Also, GPs generally do not get very involved in issues around skin integrity and pressure areas. Nurses have the relevant skills and expertise for these issues. Therefore, I have not found any evidence of fault here.

**Complaint the Care Home failed to provide proper pressure area care**

**Relevant events while Mrs R was in the Care Home**

78. The Care Home recorded that a community nurse saw Mrs R on 24 December 2015 and looked at a wound on her left foot. The notes said the nurse thought it looked like a blister and, as it was dry, advised against putting a dressing on it. A couple of days later a member of staff noted a '*bruised looking circle on [Mrs R's] left heel*'. They notified a senior member of staff.

**Relevant records from Mrs R's hospital admission**

79. On 4 January 2016 the hospital noted a stage three pressure sore (measuring 2.5cm by 2.5cm) on Mrs R's heel. It described this as 100 percent necrotic. A member of staff called the Care Home which said this related to a slipper.

**Guidance on pressure area care**

80. All adults are at risk of developing pressure sores and there is guidance about helping to prevent them. The National Institute for Health and Care Excellence (NICE) issued its guidance in April 2014, which I will refer to as the NICE Guidance (*NICE Clinical Guideline 179 – Pressure Ulcers: prevention and management (April 2014)*). This includes advice that staff should discuss '*with adults who are at high risk of developing a heel ulcer a strategy to offload heel pressure*' (*section 1.1.15*).

**Analysis**

81. I have not seen evidence in the Care Home records to show that it took sufficient proactive steps to help prevent this sore from forming. Records show staff were aware of a mark on Mrs R's heel. The hospital notes provide evidence that staff felt it related to her slippers. However, I have not found any entries in Mrs R's notes or care plans about taking steps to alleviate pressure on this area. This is fault. A plan, which could have included the use of specific equipment or advice about regular repositioning, could have helped to prevent the sore

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Mrs R had. The sore was painful and distressing for Mrs R, and distressing for other to see. Therefore, on the balance of probabilities, this fault led to an injustice.

### **Complaint that Notts Council failed to investigate his concerns adequately or objectively**

#### **Notts Council's investigation of Mr A's concerns**

82. Mr A contacted the Care Quality Commission (the CQC) and raised concerns about the way the Care Home had cared for his mother. In early April 2016 the CQC referred these concerns on to Notts Council as a safeguarding matter.
83. Notts Council checked whether its social care team had any previous contact with Mrs R, and checked if any safeguarding concerns had been raised earlier. It checked with its Quality Market Management Team and noted they did not have any current concerns about the Care Home. Notts Council also checked the CQC website and found the last inspection had rated the Care Home as 'Good'.
84. In the middle of April 2016 a Safeguarding Social Worker visited the Care Home. Later in the month she spoke to a GP at the Practice and asked about their involvement in Mrs R's care. The Social Worker went to the Care Home again in early May and looked at the records and spoke to the manager. The Social Worker also visited a hospital and read through the records of Mrs R's admission to hospital in January 2016.
85. Notts Council closed its safeguarding enquiry as 'inconclusive' and said it had not identified any risk.

#### **Analysis**

86. Evidence shows Notts Council obtained information from an appropriate range of sources to form an understanding of what happened while Mrs R was in the Care Home. The case notes show the Social Worker used her judgement to analyse this information. Therefore, there is evidence to show the Council followed the process appropriately and I have no reason to question the professional judgement of the Social Worker. I find no fault.

#### **Agreed actions**

87. Within one month of the date of the final decision York Council (as the organisation responsible for arranging Mrs R's care) should write to Mr A to acknowledge they did not provide suitable pressure area care in respect of Mrs R's heel. They should also acknowledge that, as a result, Mrs R developed a pressure sore to her heel which caused her and her family distress. York Council and the Care Home should apologise for this distress.
88. Within two months of the date of the final decision York Council should arrange for the Care Home to complete an action plan to ensure lessons are learned from this complaint, and to help prevent recurrences. The Care Home should share this with York Council and the Ombudsmen.

#### **Decision**

89. I have completed my investigation on the basis that:
  - There was no fault in the actions of the Care Home after Mrs R complained of being attacked in her room.



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- There was no fault in the way the Care Home and Practice responded to Mrs R's deteriorating health during December 2015 and January 2016.
  - There was no fault in the Care Home's management of Mrs R's personal care needs.
  - There was no fault on the part of the Practice in relation to Mrs R's personal care needs.
  - There was fault in the pressure area care Mrs R received in the Care Home and this led to an injustice. I have recommended an apology and action plan to address this injustice.
  - There was no fault in the process Notts Council in investigating Mr A's complaint.

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

**Complaint reference:**  
16 012 732

**Complaint against:**  
Nottinghamshire County Council

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

Summary: Miss X complains about the Council's decision to end her personal budget. The Ombudsman found the Council was at fault in the way it assessed her needs and dealt with her complaint but not in ending her support. This caused her distress so it will offer her a reassessment, pay her £150, improve the way it completes assessments and review its training.

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## **The complaint**

1. The complainant, whom I shall refer to as Miss X, complains that the Council:
  - a) failed to properly complete an assessment of her needs;
  - b) used inaccurate and out of date information when completing assessments and based its decision to withdraw her personal budget on this;
  - c) failed to deal effectively with her complaint about this; and
  - d) failed to comply with the local information sharing protocol and data protection requirements in that it:
    1. accessed her records inappropriately;
    2. did not advise her about all the places where her information was recorded;
    3. inappropriately shared her information between the health service and social care.
2. Miss X says this has had a substantial negative effect on her mental health and wellbeing and would like the Council to complete an accurate assessment.

## **What I have investigated**

3. I have investigated parts a – c of Miss X's complaint listed above. My reasons for not investigating part d of her complaint are at the end of this decision statement.

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## The Ombudsman's role and powers

4. We investigate complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. 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

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

## What I found

### Background

8. Sections 9 and 10 of the Care Act 2014 require councils to carry out an assessment for any adult who appears to need care and support. They must provide an assessment to all people regardless of their finances or whether they think the person has eligible needs. The assessment must consider the person's needs, the impact on their wellbeing, and the results they want to achieve. It must also involve the individual and their carer or any other person they might want involved if appropriate.
9. The statutory guidance says:
  - In carrying out a proportionate assessment local authorities must have regard to:
    - a) The person's wishes and preferences and desired outcomes. For example, an individual who pays for their own care may wish to receive local authority support with accessing a particular service, but may not want the same interaction with the authority as someone who wants greater support.
    - b) The severity and overall extent of the person's needs. For example, an individual with more complex needs will require a more detailed assessment, potentially involving a number of professionals. A person with lower needs may require a less intensive response.
    - c) The potential fluctuation of a person's needs, both adults and carers. For example, where the local authority is aware that an adult's needs fluctuate over time, the assessment carried out at a particular moment may take into account the adult's history to get a complete picture of the person's needs. (6.42)
  - "Each local authority may decide to use an assessment tool to help collect information about the adult or carer and details of their wishes and feelings and their desired outcomes and needs. Where a local authority has decided that a person does not need a more detailed assessment, it should consider which elements of the assessment tool it should use and which are not necessary". (6.43)

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10. The Care and Support (Eligibility Criteria) Regulations 2014 set out the eligibility threshold for adults with care and support needs. The threshold is based on how a person's needs affect their ability to achieve relevant outcomes, and the impact on their wellbeing. The eligibility criteria are applied after the assessment and without regard to whether a carer is meeting needs at the time. To have needs which are eligible for support, the following must apply:
1. The needs must arise from or be related to a physical or mental impairment or illness.
  2. Because of the needs, the adult must be unable to achieve two or more of the following:
    - a. Managing and maintaining nutrition.
    - b. Maintaining personal hygiene.
    - c. Managing toilet needs.
    - d. Being appropriately clothed.
    - e. Being able to make use of the adult's home safely.
    - f. Maintaining a habitable home environment.
    - g. Developing and maintaining family or other personal relationships.
    - h. Accessing and engaging in work, training, education or volunteering.
    - i. Making use of necessary facilities or services in the local community including public transport, and recreational facilities or services.
    - j. Carrying out any caring responsibilities the adult has for a child.
  3. Because of not achieving these outcomes, there is likely to be, a significant impact on the adult's well-being.
11. Where local authorities determine a person has eligible needs, they must meet these needs. When a local authority decides about a person's eligibility, it must give the person a copy of its decision. If a person has no eligible needs it must provide information and advice about what is available to prevent, meet or reduce needs that are not eligible.
12. The following requirements of the Care Act 2014 (the Act) are also relevant to this case. Councils must:
- assume the individual is best placed to judge their wellbeing;
  - focus on the person's needs and outcomes they want to achieve;
  - take a person centred approach to assessment and balance the person's own view with that of others;
  - offer supported self assessments if the person is willing and able. The person should be in control and should complete the assessment; and
  - "Where a person has both health and care and support needs, local authorities and the NHS should work together effectively to deliver a high quality, coordinated assessment". (*Care and support statutory guidance 6.78*)
13. The Council's "Assessment, Eligibility, Support Planning & Personal Budgets Guidance" says:
- "We have a duty to offer a supported self-assessment" (4.1).

- “We continue to have a duty to involve the service user in their assessment” (4.1).
- “We have a duty to ensure the assessment is in proportion to the presenting needs”. “[The system] will automatically pull through information to the care and support assessment and this must be used as the starting point for further work. You are not expected to go over the same information again” (4.2).
- “In order to make sure the assessment is **appropriate**, it must be person-centred, collaborative and involve a transparent and understandable process” (4.3).

### What happened

14. Miss X has difficulties with anxiety and depression. This affects her day to day life and restricts her activities significantly. She has been unable to work for some time and received a personal budget which she used to pay for someone to accompany her to a weight advice group.
15. On 7 December 2015, Officer 1 from the Council assessed Miss X’s social care needs. On 16 December Officer 1 advised Miss X that she had decided not to award her a personal budget and the support she had been receiving would therefore end.
16. Following several telephone calls between Miss X and Officer 1, Miss X complained about the assessment in April 2016. The points she raised included:
  - Officer 1 did not offer her the opportunity to complete a self-assessment.
  - She disagreed with some of the information and how Officer 1 had decided the outcome. However, Officer 1 did not change it or give her the opportunity to discuss it, or the outcome, before she completed the assessment.
  - The form said Miss X did not need independent support at the time of the assessment. Miss X says her mother provides daily support without which she could not have attended the assessment.
  - The form included information about a problem she had over twenty years previously; this was not relevant to the assessment.
  - The form says “any differences of opinion will be recorded in the Assessment Summary”; there is a space headed “Differences of opinion” in this section. None of the information entered at this point addressed Miss X’s differences of opinion and introduced further information with which Miss X disagreed.
  - Miss X says that Officer 1 did not offer her mother a carer’s assessment and did not check whether she was willing to continue providing support.
  - Officer 1 provided Miss X with details of groups and resources that would be suitable to meet her needs. Miss X says she had already been to several of these but most were not suitable. She says she cannot access those that might help without support.
  - Miss X also asked Officer 1 why she had not spoken to anyone else involved in her care for example, her therapist.
17. Having already completed the assessment and told Miss X the outcome, Officer 1 contacted her therapist. The therapist advised Officer 1 that Miss X found the support useful and asked if she could extend the funding for three months so she could help Miss X cope without. Officer 1 said this was not possible. The therapist noted “the effect of the withdrawal of the financial support has been to leave

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[Miss X] feeling disregarded and judged”. Officer 1 recorded this and her other comments on the assessment form, though she had advised Miss X it would not change the decision. In response to my draft decision, the Council said it would have changed the decision if the information had been significant. It says the assessment was proportionate to the two and a half hours weekly support provided to Miss X.

18. Officer 1 ticked the box that said “I confirm that I have checked and approved the contents of this assessment”. Miss X says she did not approve and had not had the opportunity to check the contents before it was completed.
19. On 18 May 2016, the Council responded to Miss X’s complaint. It offered her a reassessment which Officers 3 and 4 carried out on 17 August 2016. The Council says Officers 3 and 4 are senior practitioners trained in mental health and based in a community mental health team. These officers also failed to offer a supported self assessment (SSA) in line with the Care Act. The Council says it is rare for SSA’s to be completed for mental health users who usually prefer face to face assessments. It will apologise to Miss X for this.
20. The reassessment found she could not meet two or more of the outcomes without support but there would be no significant impact on Miss X’s wellbeing if support were not provided. Officer 3 wrote “Our professional view is that there is not evidence that [the personal budget] is having a significant impact on [Miss X’s] wellbeing”.
21. On 20 October 2016, Officer 3 telephoned Miss X asking questions about issues they had discussed. Miss X says she felt this could have been done sooner than two months after the reassessment.
22. On 27 October 2016, Miss X and her mother met with Officer 1’s manager, Officer 2, and an officer from the Council’s complaints team, to discuss her complaint about the earlier assessment. Miss X listed 42 points to discuss and says the Council just selected some and did not ask her which points. However, as the meeting would be two hours, the Council advised her this would be too many points and asked her to choose the most important, which she did. The meeting had both the full list and priority list of points and discussion did not keep strictly to the agenda but responded to Miss X’s points as she raised them.
23. On 1 November 2016, the Council advised Miss X of the outcome of her reassessment which was that she was not eligible for a personal budget. Miss X was unhappy with this outcome and complained. She said:
  - Information she had previously said was wrong or inappropriate was carried forward from the previous assessment and this must have influenced the assessors. It also included more excessive and irrelevant information. Her mobile telephone number was wrong even though she had advised one of the officers. The wrong medication was also listed.
  - Officers 3 and 4 had taken support into account when answering some of the questions and had not considered the impact of her mental health condition.
  - The length of time between the reassessment and her being advised of the outcome was unacceptable (two months in total).
24. The Council responded to Miss X’s complaint and advised her on several occasions she could complain to the LGO. Miss X was unhappy with its response and on 17 January 2017 she wrote to the Council and said she would complain to the LGO. Miss X does not believe those dealing with her complaints properly

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considered or dealt with her concerns because they accepted the view of the assessors. She says they did not consider whether there was any substance to Miss X's view.

25. The Council says all assessment staff attended a one day training course on the Care Act in 2015. An e-learning package is available and used by staff. Assessment also formed part of training delivered in 2017. It is currently developing assessment skills training.

**Was there fault which caused injustice?**

26. The Council decided Miss X was not eligible for support using the eligibility criteria set out in paragraph 10 above. There was no fault in this.
27. Its first assessment was flawed. It contained contradictory information, did not provide enough evidence for this decision and did not reflect Miss X's views. The Care Act and the Council's own guidance require a supported self assessment to be offered but it was not. The standard of this assessment fell below acceptable standards and did not comply with the Care Act 2014. This was fault and caused Miss X significant and avoidable distress. However, the Council completed a reassessment which was a suitable remedy for this injustice.
28. The reassessment form again contained out of date and inaccurate information. It did not clearly consider needs before the support Miss X says she received although I am satisfied the assessor did this. The form also failed to set out Miss X's own views and differences of opinion properly, and we cannot therefore, be certain they were properly considered. It also took two months to decide the outcome which is excessive. However, the reassessment included a reasoned written decision by the assessor, which I am satisfied was sound and, despite the flaws, unlikely to change.
29. Historic information is often pulled through into new forms to save entering the same information; this is standard practice and aids a proportionate assessment. The Council's guidance (paragraph 13) says assessors are expected to use the information pulled through and are not expected to go over the same information again. However, assessors are responsible for the content of the form. If information pulled through by the system is not relevant or is wrong, the assessor must remove or correct it. This was fault which also caused Miss X distress.
30. Both assessments included undated and irrelevant information and failed to properly reflect Miss X's views. Offering to have comments added to the record is a suitable remedy where information is disputed but a poor substitute for what should have happened in this case. It is essential that assessors include all relevant information and ensure information is accurate before assessments are completed. I cannot say however, that the outcome would have been any different.
31. Although the Council offered a suitable remedy for the injustice caused by the first assessment, it did not properly consider the issues she complained about. Miss X did submit numerous points of complaint which were difficult to address, but there were a few core issues it could have dealt with effectively and without delay. These included:
- How the form was completed and whether the options selected were accurate.
  - Out of date and inaccurate information pulled through from previous assessments.
  - Why Miss X was not offered a self assessment.



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- Why her view was not reflected despite having communicated this clearly.
32. Had it addressed these issues adequately, they should not have been repeated with the reassessment, but they were. This was fault and caused Miss X significant and avoidable distress.

### **Agreed action**

33. To put right the injustice the Council caused Miss X, I recommended it take the following action:
- Within one month of the final decision:
    - a) Apologize to Miss X setting out the faults identified above.
    - b) Pay Miss X £150 to reflect the distress it caused.
    - c) Offer Miss X a reassessment which should consider the findings above.
    - d) Add a copy of the final decision statement to Miss X's social care record (SCR).
    - e) Provide evidence of these actions to the Ombudsman. Suitable evidence would be a copy of the letter and payment, confirmation of the reassessment date, and that the final decision has been added to the SCR.
  - Within three months of the final decision:
    - a) Take action to ensure supported self assessments are offered when appropriate, that information is relevant and current, and that the person's views are accurately reflected on the assessment.
    - b) Review the effectiveness of staff training and process guidance relating to the assessment form and ensure consistency and understanding of the process.
    - c) Provide evidence of these actions to the Ombudsman. Suitable evidence would include a copy of the action plan.

### **Final decision**

34. I have completed my investigation and uphold Miss X's complaints that the Council:
- a) failed to properly complete an assessment of her needs;
  - b) used inaccurate and out of date information when completing assessments and based its decision to withdraw her personal budget on this; and
  - c) failed to deal effectively with her complaint about this.
35. I am satisfied that the actions the Council has agreed will put right the injustice it caused as far as possible.

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

36. I did not investigate the following parts of Miss X's complaint that the Council:
- d) failed to comply with the local information sharing protocol and data protection requirements in that it:
    - 1. accessed her records inappropriately;
    - 2. did not advise her about all the places where her information was recorded;



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3. inappropriately shared her information between the health service and social care.
37. This is because Miss X has taken these complaints to the Information Commissioner and the NHS Information Governance unit who are better placed to consider these.

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

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

Summary: The Council is at fault for the way it decided to restrict Ms X's contact with her adult son, Mr Y. However, I cannot say this has caused Ms X a significant personal injustice. There is no evidence of fault in the way Mr Y's care home investigated Ms X's complaint or that it is not meeting Mr Y's care needs. The Council has accepted certain case notes referring to Ms X do not make it clear what is professional opinion and what is fact. The Council has apologised and reiterated its guidance to the staff concerned, I consider this a suitable remedy.

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## **The complaint**

1. Ms X has defined her complaint as:
  1. The manager at her adult son, Mr Y's, care home raised a malicious safeguarding alert against her, and:
    - the Council failed to take appropriate action when she warned it she was about to have access between herself and Mr Y restricted unnecessarily. She says the Council should have allowed her to make the challenge before the next arrangement to see Mr Y. Therefore the Council did not act appropriately to prevent an unnecessary infringement of Ms X and Mr Y's human and family rights;
    - when the Council's investigation revealed the care home manager was the decision-maker and the Council had misdirected Ms X about this, the Council failed to apologise to her, recognise the distress this had caused her or take steps to prevent this happening again; and
    - the Council misinformed Ms X about who had responsibility for the decision to restrict access in the way it was carried out.
  2. The investigation carried out by the care home's manager into the above events was flawed. This is because it was biased and failed to address the evidence and issues raised. The Council's review endorsed the bias by failing to discuss Ms X's views or consider the documents she submitted or offered to submit and failed to recognise the lack of objectivity in the care home's report. As a result, Mr Y remains at risk in the care home.
  3. Ms X has evidence which shows the care home manager is failing in her duty of care towards Mr Y. She says the Council's actions are inadequate because it has refused to consider this evidence in its entirety. In addition, senior managers and the director are failing to communicate with her and are

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inappropriately referring her to the complaints system about issues she needs to raise in relation to her Mr Y's care. This is leading to an inefficient, complicated and unworkable relationship with the Council.

4. Notes made by the social worker and the care home manager, which she has received as part of her subject access request, contain lies which is impacting on decisions made by other professionals. However, the Council is refusing to appropriately investigate her concerns.

## **What I have investigated**

2. I have investigated the actions of the Council and Mr Y's care home.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. *(Local Government Act 1974, sections 26(1) and 26A(1), as amended)*
4. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. *(Local Government Act 1974, section 34(3), as amended)*
5. 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**

6. I have spoken with Ms X and considered information she has sent in and her written complaint. I have also considered the Council's response to my enquiries.
7. I considered information from the council responsible for safeguarding Mr Y.
8. Ms X and the Council have had an opportunity to comment on my Draft Decision.

## **What I found**

### **Safeguarding vulnerable adults**

9. Councils play the lead role in co-ordinating work to safeguard adults. Anyone who has concerns for the welfare of a vulnerable adult should raise an alert. The Council's policy sets out the responsibilities of the people involved and the timescales for action.
10. The purpose of the safeguarding process is to:
  - Find out the facts about what happened; and
  - protect the vulnerable adult from the risk of further harm.
11. The Council's safeguarding policy and procedures set out how the Council will respond to allegations and concerns about abuse.
12. When someone raises a concern with the Council, it should undertake an initial enquiry to decide how to respond. If the Council does not resolve the concern

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through initial enquiries it will need to investigate to decide on the most proportionate response.

13. If it decides to investigate the Council appoints a safeguarding investigating officer to find out what happened and to collate information from all the relevant parties. From this they prepare a safeguarding investigation report for discussion at a case conference. This is a multi-agency meeting, with all interested parties, to consider the findings of the investigation. The case conference will decide on the findings and whether abuse or neglect has occurred, assess risk, what future actions are needed and how these should be monitored.
14. It is not for the Ombudsman to reinvestigate the safeguarding referral but to consider whether the Council conducted a suitable investigation in line with its safeguarding procedures and the Care and Support statutory guidance.

### **Mental Capacity Act 2005**

15. The Mental Capacity Act 2005 sets out five principles:
  - A person must be assumed to have capacity unless it is established that they lacks capacity.
  - A person is not to be treated as unable to decide unless all practicable steps to help them to do so have been taken without success.
  - A person is not to be treated as unable to decide merely because they make an unwise decision.
  - A decision made on behalf of a person who lacks capacity must be made in their best interests.
  - Before deciding, the decision maker must have regard to the option least restrictive of the person's rights and freedom of action.
16. The Act also says the test of someone's capacity to decide is on the balance of probabilities and is decision and time specific. When someone makes a best interests decision on behalf of an adult who lacks capacity, they must consider the person's wishes, feelings, beliefs and values and those of family and friends.
17. If the Council feels an adult may not be able to decide about their care, it should carry out a Mental Capacity Assessment. This will assess the adult's capacity to make a particular decision at the particular time it needs to be made.
18. As part of the Mental Capacity Assessment the Council may consider appointing an Independent Mental Capacity Advocate (IMCA) to support the person to take part as fully as possible in decisions about their life.

### **Deprivation of Liberty Safeguards (DoLS)**

19. The Deprivation of Liberty Safeguards (DoLS) provide legal protection for individuals who lack mental capacity to consent to care or treatment and live in a care home, hospital or supported living accommodation.
20. The DoLS protect people from being deprived of their liberty, unless it is in their best interests and there is no less restrictive alternative. The legislation sets out the procedure for getting authorisation to deprive an individual of their liberty.
21. Without authorisation, deprivation of liberty is unlawful. It is the responsibility of the care home or hospital to apply for authorisation. The 'managing authority' of the care must request authorisation from the 'supervisory body' (the Council). There must be a request and an authorisation before a person is lawfully deprived of his or her liberty. [Page 44 of 158](#)

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22. There are two types of authorisation. Urgent authorisations are made by the managing authority of the care home, for seven days, pending application for a standard authorisation. Standard authorisations are made by the Council.
  23. On application, the supervisory body must carry out assessments of the six relevant criteria: age, mental health, mental capacity, best interests, eligibility and 'no refusals' requirements. A minimum of two assessors, usually including a social worker or care worker, sometimes a psychiatrist or other medical person, must complete the six assessments. They should do so within 21 days, or, where an urgent authorisation has been given, before the urgent authorisation expires.
  24. When an authorisation is given, a Relevant Person's Representative (RPR) must be appointed and put in writing. The RPR must be in regular contact to make sure decisions are made in the person's best interests. The supervisory body must advise the RPR of the reasons for the authorisation and the duration.

### **What happened**

25. Ms X's adult son, Mr Y, is autistic and has severe learning difficulties. Mr Y has lived, as an adult, in a care home setting since 2003. In 2013 he moved to his current care home, the care home. Mr Y usually stays with Ms X at her home every third weekend and meets her for lunch in between visits. The Council commissioned Mr Y's care and is responsible for the actions of the care home. However, the home is outside of the Council area so the council where the home is located, the Safeguarding Council, is responsible for Mr Y's safeguarding.
26. Mr Y has been assessed as having no mental capacity to decide about his care or where he lives. Because of this a DoLS authorisation is in place for Mr Y. In May 2016 a new DoLS was authorised and Mr Y's father, who is separated from Ms X, was appointed as Mr Y's representative.
27. On 15 July 2016 the care home manager reported an incident to the Council. She said Mr Y had an abscess and had a dentist appointment booked. The manager had called a doctor to discuss pain relief for Mr Y. Mr Y's case notes show the doctor issued a prescription for reduced strength codeine. Mr Y had taken paracetamol at 3pm so the doctor said Mr Y should not take the codeine until 5pm.
28. The manager relayed this information to Ms X. Ms X became concerned the manager was not giving Mr Y the correct dosage which would have meant Y was at risk of an overdose. The manager confirmed to Ms X and the Council she had delivered the prescription as prescribed.
29. Following Mr Y's dental appointment the manager contacted the Safeguarding Council to raise a safeguarding alert. The manager was concerned about Ms X's ability to care for Mr Y. The manager cited several historical incidents which caused her concern and said today Ms X had ignored dental advice to have Mr Y's tooth removed, causing Mr Y pain.
30. The Safeguarding Council's case notes say it told the manager that the care home had a duty to ensure Ms X was meeting Mr Y's care needs when visiting her home. If the home felt Mr Y was at risk of harm it could refuse to discharge its care duties to Ms X, for the home visits, until it completed a risk assessment. The notes also say the Safeguarding Council told the manager that if the home decided to do this it would need to put an emergency DoLS in place. This was because restricting home visits would not be covered by the existing DoLS authorisation.

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31. The Safeguarding Council then contacted the Council. The Council's case notes say the Safeguarding Council made the following recommendations:
- The Council and care home carry out a risk assessment in conjunction with Ms X.
  - The Council should make an application for an emergency DoLS to *"prevent Mr Y seeing Ms X until the risk assessments are in place"*.
  - Ensure there is a clear rationale for any decisions preventing Mr Y having contact with Ms X.
32. The Council then spoke to the care home manager. The manager said she was meeting with her area manager to begin the risk assessment tomorrow. The manager also said she would apply for the emergency DoLS. The Council said any restriction to Ms X's contact with Mr Y needed to be the least restrictive option.
33. On 17 July 2016 the manager emailed Ms X to tell her about the safeguarding referral. The manager explained as there were no risk assessments in place for Mr Y's home visits they needed to complete them before any other visits took place. The manager offered to meet with Ms X that week to discuss the matter further. Ms X contacted the Council on 18 July 2016 to challenge the manager's decision.
34. On 21 July 2016 the Safeguarding Council spoke to the care home. It said Mr Y's father may not be a suitable representative for the DoLS as he was not objective. It also repeated that if the home felt Mr Y was at risk from home visits then *"visits to mum should be stopped"* and a risk assessment carried out. The Safeguarding Council also said the home should seek to preserve Mr Y's contact with Ms X through supervised visits.
35. On the same day Ms X asked the Council to review Mr Y's DoLS authorisation. She also asked the home why Mr Y could not visit her. The manager said she was following instructions from the Safeguarding Council. The next day Ms X contacted the Council asking it to take action to prevent the home restricting her access to Mr Y. The Council responded saying it was sorry the Safeguarding Council had decided to restrict access and it would contact the Safeguarding Council to discuss the legal basis for the restriction. Ms X had a supervised visit with Mr Y on 25 July 2016.
36. On 26 July 2016 the Council agreed to review Mr Y's DoLS authorisation and ask the assessor who was best placed to be Mr Y's representative. The Council decided an independent best interests assessor should carry out the review. The care home manager completed a DoLS 10 form to alter the conditions attached to Mr Y's current authorisation. On the form the manager gave details of her concerns about Ms X's behaviour and history of mental health problems.
37. On the same day the manager also told the Council that supervised contact between Ms X and Mr Y was in place and was working well. The Council agreed to find an advocate for Mr Y following a recommendation from the Safeguarding Council.
38. On 28 July 2016 the Council wrote to Ms X explaining the Safeguarding Council had to look into the safeguarding concerns and *"make temporary and appropriate arrangements during this period"*. On 1 August 2016 Ms X spoke to the Safeguarding Council. She said she wanted other people to supervise her contact



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with Mr Y as this was the least restrictive option. The Safeguarding Council said it would need the names of who Ms X was proposing.

39. The following day the Safeguarding Council spoke to the care home, the Council and Ms X to gather information about the safeguarding referral. Following this the Safeguarding Council decided to take no further action. It told the care home the issue of Ms X's contact with Mr Y needed to be resolved between Ms X, the home and the Council. It also recommended each party come together to establish a better working relationship.
40. The Council agreed Ms X's unsupervised contact with Mr Y should resume but it should still ensure that Mr Y was safe in Ms X's care. It also confirmed the DoLS review should continue to decide who was best place to be Mr Y's representative.
41. On 2 August 2016 Ms X contacted the Council. She asked who had taken the decision to restrict her access to Mr Y and on what legal basis. The Council responded on 5 August 2016. It explained the difference between the DoLS process and safeguarding. It said the Council had not placed restrictions on access between Mr Y and Ms X and not made any temporary changes to Ms X's contact with Mr Y. The Council said it believed the Safeguarding Council requested measures to reduce the risks following safeguarding concerns. Any decision on temporary suspension of contact remained the Safeguarding Councils.
42. As Ms X remained unhappy the Council said it would investigate the issues as a formal complaint. The Council spoke to Mr Y's social worker and asked who had decided to restrict Ms X's access to Mr Y. The social worker said the Safeguarding Council had strongly advised an emergency DoLS authorisation to completely restrict Ms X's access to Mr Y. The social worker said this had seemed excessive and supervised access was more suitable.
43. The Council responded to Ms X on 9 September 2016. It said the Safeguarding Council made clear recommendations to the care home and the Council to prevent Mr Y from seeing Ms X until suitable risk assessments were in place. The Council said the Safeguarding Council must consider the least restrictive option for contact and had recommended a complete restriction under an emergency DoLS. The Council did not see the need for an emergency DoLS as an existing authorisation was in place and decided on supervised access. Its social worker and the care home manager had acted on the instructions of the Safeguarding Council and not made any decision to restrict contact.
44. During this time Mr Y needed more dental treatment and Ms X was on holiday. Ms X discussed the best course of action for the treatment with the care home manager. Ms X disagreed with Mr Y's treatment, she said she had spoken to the dentist and his account of events didn't match the care home managers. The Council said it would look into the matter.
45. On 14 September 2016 the Council completed its DoLS review. It recommended Mr Y have an independent representative. It also recommended mediation between the care home manager and Ms X. It confirmed the DoLS process could not be used to alter contact arrangements between Ms X and Mr Y.
46. The Council wrote to Ms X on 16 September 2016 inviting her to a meeting with itself and the care home. It said it had identified anomalies in the accounts of Mr Y's dental treatment and wanted to discuss these along with Mr Y's needs. On 27 September Ms X complained direct to the care home about the manager's conduct.

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47. On 29 September 2016 the Council sent copies of the outcome of the DoLS review to Ms X, Mr Y's father, Mr Y and the care home. The Council included the DoLS 10 form with the review, which included the care home manager's view of Ms X's ability to care for Mr Y. The Council logged this as a data breach on 6 October. On the same day Ms X called the Safeguarding Council. She said she had concerns about the care home manager and she did not believe Mr Y was safe in the care home. The Safeguarding Council advised her to speak to the Council and then raise a safeguarding alert if she still felt Mr Y was in danger.
48. Ms X called the Council on 7 October. She said she was concerned the Council had not questioned the accuracy of the information on the DoLS 10 form. The Council said it would address Ms X's concerns through its complaints process. For clarity, the Council also sent Ms X a letter which set out what aspects of Mr Y's care it was responsible for, what the home was responsible for and what the Safeguarding Council was responsible for.
49. Ms X made a subject access request for information on Mr Y's care on 27 October 2016, including seeing his care plan. The Council carried out a mental capacity assessment of Mr Y and decided he did not have the capacity to decide if Ms X could see his care plan.
50. The Council responded to Ms X's complaint on 22 November 2016. It said while the DoLS 10 form contained safeguarding concerns about Ms X, it was not the cause of the safeguarding referral, which the home had already raised. The DoLS 10 was completed following Ms X's request for a review of the DoLS authorisation. The Council said the views expressed on the form did not impact the review, which was based on an independent best interests assessment. The Council said the form could be retracted if Ms X wanted.
51. On the same the day the Council carried out a review of Mr Y's care and support. It said Mr Y's placement was successful and allowed Mr Y to manage in a home environment with minimal 1:1 support. The review did identify that Mr Y was not always getting all the 1:1 support in his plan, with only one member of staff supervising all 4 residents after 8pm. The Council said this needed further discussion but it was satisfied the care home was meeting Mr Y's needs.
52. On 23 November 2016 the care home took Mr Y to hospital after he slipped outside. The hospital identified a possible hairline fracture and applied a cast. Ms X called the Safeguarding Authority to say she had continuing concerns about the care home. She relayed the painkiller incident from July. The Safeguarding Council said there were no issues of substance for it to investigate at this stage. Ms X said she would wait for the outcome of the care provider's investigation.
53. In December the Council decided it was not in Mr Y's best interests for Ms X to have copies of his care records, as the data belonged to Mr Y. It said it would allow Ms X access to redacted versions of documents that referred to her. This decision was later overturned and the Council gave Ms X access to redacted copies of Mr Y's records.
54. The care provider responded to Ms X's complaint about its manager on 12 December 2016. It agreed the wording used in the DoLS 10 form was unacceptable and unprofessional. The care provider apologised and said it would also send the apology to anyone else who had sight of the form.
55. The provider said in restricting Mr Y's contact with Ms X the manager was acting on advice from the Safeguarding Council. It said the manager had discussed the issue of supervised contact with the Council social worker. The provider said it



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had also investigated the manager's care of Mr Y and decisions she had taken in Mr Y's best interests. There was no evidence to show the manager had given Mr Y incorrect medication, or acted against any medical and dental advice. The provider said the manager had acted appropriately in raising safeguarding concerns.

56. The Council sent Ms X a further complaint response on 21 December 2016. It repeated its position the DoLS had not impacted on the safeguarding referral or the DoLS review. It accepted its communication with Ms X had been poor and apologised. It confirmed the DoLS 10 would be withdrawn.
57. On 6 February 2017, following a request from Ms X, the Council carried out a review of the care provider's response to Ms X. It said it was satisfied with the care provider's scrutiny of the complaint and it had addressed each point in full. It was also satisfied that Mr Y had suitable care in place and the issues were now personal ones between the manager and Ms X. The Council recommended a meeting between the two but said there was little more it could do.
58. Ms X disputed the Council's reply and raised the issue of Mr Y's 1:1 support. The Council clarified the issue with the care home and told Ms X it was satisfied this support was in place and the home was meeting Mr Y's needs. It referred Ms X to the Ombudsman.
59. Following this Ms X made a safeguarding referral to the Safeguarding Council about the care home manager. Ms X raised several issues but the Safeguarding Council said most of them were not safeguarding concerns. Following a strategy meeting the Safeguarding Council investigated Ms X's allegation the care home manager had overdosed Mr Y in July 2016. Following the investigation, in June 2017, the safeguarding council decided the claims were not substantiated.
60. After reviewing Mr Y's care records, Ms X complained to the Council the care home manager had made several false claims about Mr Y's care. She said the manager's decision making was biased due to Ms X's history of mental health issues. She repeated her complaint the safeguarding allegations made by the manager against her were false.
61. The Council decided to bring forward Mr Y's care review to confirm his placement at the care home remained suitable. It said any safeguarding complaints had to go to the Safeguarding Council but it would investigate the other claims. The Council wrote to Ms X in July 2017 apologising that its records did not make it clear what was opinion and what was fact. It said it would ensure the Council's guidance on this was better applied in future. Ms X remained unhappy and complained to the Ombudsman.
62. Ms X also contacted the Safeguarding Council on 20 July 2017. She said Mr Y was growing increasingly anxious and she was concerned for his safety. The Safeguarding Council spoke to the Council. It said Mr Y did not appear anxious but it was in the process of carrying out occupational therapy and psychological assessments of Mr Y to decide any changes needed in his care. The Safeguarding Council decided no further action was necessary. Ms X continued to contact the Council and said she had evidence her son was at risk.
63. A best interests meeting was held, following the occupational therapy and psychological assessments of Mr Y. It decided to continue a behavioural assessment of Mr Y over time, while staff should attend sensory awareness training. Ms X contacted the Safeguarding Council again in August saying she had evidence which proved the manager was a risk to Mr Y.

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64. In September 2017 the Council completed Mr Y's DoLS assessment. It agreed with the findings of the DoLS review, that Mr Y's placement was a positive one, although Ms X disagreed. The Council took a best interests decision for Mr Y to remain at the home and awarded the maximum DoLS period of 12 months. An independent representative was appointed on 18 September 2017. In November 2017 the Council reviewed Mr Y's care and decided the placement continued to meet his needs.

## **My findings**

### **Complaint 1: Safeguarding alert against Ms X**

65. There is conflicting information over who decided to restrict Ms X's contact with Mr Y. The Safeguarding Council's case notes say the care home could decide to restrict contact, pending a risk assessment, **if** it believed Ms X could not meet Mr Y's care needs. It goes on to say **if** the care home decided to do this it would need to apply for an emergency DoLS as the standard authorisation would not cover any restriction of contact.
66. Evidence from the care home and the Council shows they believed the Safeguarding Council had recommended an emergency DoLS to completely restrict Ms X's access to Mr Y. However, the Council's case notes also say the Safeguarding Council recommended a risk assessment.
67. There is no evidence to support the Council's view the Safeguarding Council directed it and the care home to carry out an emergency DoLS to restrict Ms X's access to Mr Y completely. The Safeguarding Council did discuss the choices open to the care home and the Council but there is no evidence to say it recommended they restrict Ms X's contact with Mr Y. The case notes are clear this was a decision for the Council and the care home, pending a risk assessment.
68. Despite this the care home and the Council were entitled to restrict Ms X's contact with Mr Y if they believed she could not meet his care needs. Any decision to do this would need to be supported with a clear rationale. While the care home manager and the Council discussed the choice of restricted contact, the care home put this in place without the Council's knowledge, only telling the Council once it was in place.
69. The Council and the care home believed they were acting on advice from the Safeguarding Council. Because of this there is no clear reasoning for the decision and no risk assessment. The Council is responsible for the actions of the care home, as it commissioned the care home to care for Mr Y on its behalf. While it is entitled to put restricted contact in place, it is at fault for the confused decision making that led to the decision and the lack of analysis and risk assessment.
70. Ms X's contact with Mr Y was restricted to supervised visits from 15 July 2016 to 2 August 2016. Given the frequency of Mr Y's visits to Ms X this has not caused Ms X a significant personal injustice.
71. Ms X believes the Council deliberately misinformed her about who decided to restrict the contact with Mr Y. I have reviewed case notes from both the Council and the Safeguarding Council and there is no evidence to support this. The information the Council gave Ms X appears to come from genuine miscommunication between the Safeguarding Council, the Council and the care home.

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### **Complaint 2: The care home's investigation**

72. The care home carried out an investigation into Ms X's concerns about its manager. This was carried out by a senior manager and reviewed by the Council. The investigation accepts the wording its manager used in the DoLS 10 was inappropriate. The care provider took steps to ensure this did not happen again and withdrew the DoLS 10. I have reviewed the information both the care home and the Council considered and there is no evidence the investigation was flawed. The Council is not at fault.

### **Complaint 3: Mr Y's care**

73. Ms X says she has evidence the care home manager is failing in her duty of care towards Mr Y. The Ombudsman does not reinvestigate safeguarding referrals but considers whether the Council conducted a suitable investigation in line with its safeguarding procedures and relevant guidance. It is the Safeguarding Council who is responsible for investigating any risk to Mr Y.
74. So far the Safeguarding Council has considered information presented by Ms X and decided what action to take. This complaint is not about the Safeguarding Council and I have not investigated its actions. If Ms X is unhappy with the Safeguarding Council it is open to her to complain to the Safeguarding Council and then the Ombudsman if she remains unhappy.
75. The Council is responsible for Mr Y's care needs. It carried out a review of Mr Y's care in November 2017 and said the care home continued to meet his needs. As well as this Mr Y has had occupational therapy, psychological and behavioural assessments recently. No professional involved with Mr Y, including his representative, has raised any concerns about his care. There is no evidence the care home is failing in its duty of care towards Mr Y. The Council is not at fault.

### **Complaint 4: The Council's notes about Ms X**

76. Care notes inevitably contain the views of professionals involved in the case. The Council has guidance in place for its staff on distinguishing between what is fact and what is opinion. In July 2017 the Council wrote to Ms X and accepted certain case notes did not make it clear they were expressing an opinion, or give reasons that opinion. The Council apologised and said it would reiterate its guidance to those concerned.
77. I am satisfied the Council's policy on this issue is suitable, and with the actions the Council took in response to Ms X raising the matter. The Council has taken appropriate steps and there is little outstanding injustice to Ms X. There is nothing more the Ombudsman can achieve.

### **Agreed action**

78. The Council has agreed, within one month, to ensure a risk assessment is in place for Mr Y's visits to Ms X.
79. Within three months the Council agrees to review its procedures for changes to contact arrangements where the person has no capacity. This is to ensure there is a robust documented decision making process in place, that reduces the likelihood of any miscommunication, and makes it clear why the decision is being made and who is taking the decision.

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## **Final decision**

80. I have completed my investigation as there is no evidence the fault by the Council has led to a significant injustice to Ms X.

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

81. I did not investigate the actions of the Safeguarding Council. If Ms X is unhappy with the Safeguarding Council she will need to raise a separate complaint after completing its complaints process.

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

**Complaint reference:**  
17 002 241

**Complaint against:**  
Nottinghamshire County Council

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

Summary: Mr and Mrs G complained the Council provided insufficient support in helping Mrs G care for her grandson, 'Child X'. The Ombudsman found fault as the Council did not recognise Child X was a 'looked after child' from the time he entered Mrs G's care. This caused injustice as Mrs G did not receive all the financial or other support the Council should have provided her. The Council has agreed a series of recommendations which aim to remedy this injustice. It will make various back-payments to Mrs G and review the support it currently offers her.

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## **The complaint**

1. The complainants, whom I have called "Mr and Mrs G" complained about the extent of support they received from the Council after Mrs G agreed to care for their grandson, whom I have called "Child X". Since the end of July 2015 Child X has lived with Mrs G. Mr and Mrs G complained the Council:
  - a) Would not recognise that Child X entered Mrs G's care as a looked after child given concerns the Council had for his welfare.
  - b) That as a result Mrs G did not receive enough financial support for Child X between July 2015 and November 2016; at which point she obtained a Special Guardianship Order (SGO) for him.
  - c) That further, because the Council did not consider Child X a looked after child, it had also provided inadequate support for Mrs G after November 2016, under the Special Guardianship Regulations.

## **What I have investigated**

2. I considered most of Mr and Mrs G's complaint to be within the Ombudsman's jurisdiction to investigate. However, I did not consider I could investigate the support provided by the Council to Mrs G between 21 November 2016 and 19 January 2017. I explain my reasons at the end of this decision statement.

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

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

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4. 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*)
  5. 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*)
  6. If we are satisfied with a council’s actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
  7. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children’s Services and Skills (Ofsted), we will share this decision with Ofsted.

## How I considered this complaint

8. Before completing my investigation and issuing this decision statement I considered the following:
  - Mr G’s letter of complaint and supporting information provided by him and Mrs G in further correspondence and telephone conversations.
  - The Council’s replies to Mr G’s complaint issued before we began our investigation.
  - Information provided by the Council in response to various written enquiries.
  - Relevant law and government guidance as referred to in the text below.
  - Past decisions and publications by the Local Government Ombudsman of relevance to this investigation. In particular, a report issued against Liverpool City Council (reference 12 006 209) and a special focus report “*Family Values: Council services to family and friends who care for others’ children*” published in November 2013.
9. I also sent both Mr and Mrs G and the Council a draft decision statement setting out my provisional thinking about the complaint. I considered comments made in response and amended the final wording of this decision statement accordingly.
10. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children’s Services and Skills (Ofsted), we will share this decision with Ofsted.

## What I found

### The Ombudsman’s jurisdiction

11. Before turning to the specific events covered by Mr and Mrs G’s complaint I needed to consider the extent to which the Ombudsman could investigate it. This was because of the jurisdictional issues set out in paragraphs 3 and 4 above.
12. I decided that to conduct an effective investigation into the complaint we had to consider events from around May 2015, three months before Child X went to live with Mrs G. I considered we had to examine the circumstances where Child X entered Mrs G’s care. Otherwise we could not form a view on what support the Council should have provided to Mrs G after she became Child X’s Special



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Guardian. The Special Guardianship Regulations provide for different support in cases where a child enters a Special Guardian's care as a 'looked after child'.

13. Second, I considered the impact of the Court proceedings which made Mrs G Special Guardian for Child X. I decided these did not prevent investigation of most of this complaint. The primary purpose of the Court hearing in November 2016 was to decide whether to make Mrs G a Special Guardian or not. But I could not ignore the order also referred to a letter given by the Council to Mrs G on 21 November 2016.
14. The letter assured Mrs G of certain support the Council would provide once the Court made Child X the subject of a SGO. This included specific commitments on financial support until 19 January 2017 at which point the support would drop to a lower level.
15. I considered we could not investigate any complaint about the content of the 21 November letter for reasons explained at the end of this statement. However, I did not consider the letter set in stone the support the Council would offer Child X beyond 19 January 2017. Because it left open the question of both financial and non-financial support for Child X after 19 January 2017. We could therefore investigate a complaint about the support given to Mrs G both before 21 November 2016 and after 19 January 2017.

### **Legal Considerations**

16. Every Council with responsibility for children's services must provide accommodation for children within their area who need it. Circumstances where the Council has this duty include where no-one has parental responsibility for a child and for lost or abandoned children. It also includes circumstances where a person who has cared for a child can no longer provide them with "*suitable accommodation or care*" (Section 20 of the Children's Act 1989). A child cared for by the Council in these circumstances becomes a 'looked after child'.
17. A Council can fulfil its duty to accommodate looked after children through placing them with family. The family member receiving the child then becomes a 'family and friends foster carer'. Being a family and friends foster carer entitles the family carer to weekly fostering payments and social work support. Any payments should be at the same rate as paid to local authority foster carers. There is no equivalent financial support for parents who arrange informally for their children to live with relatives. They are not 'looked after' children as defined above.
18. However, a Council with responsibility for children's services must also provide services for 'children in need'. The Children's Act defines these as children who need services from the Council "*to maintain a reasonable standard of health and development or to prevent harm*". Children who live with family and friends under informal arrangements can receive financial support therefore as 'children in need'.
19. Any fostering allowances paid in line with the advice in paragraph 16 should include any extra allowances the foster carer would have a right to. For example, if the Council pays an increased fostering rate to children with disabilities then a family and friends foster carer should receive that allowance if caring for a child so entitled. Councils should pay all fostering allowances at least at the minimum rate set out by government.
20. There can be dispute (as in this case) about whether a child is a 'looked after child' or has moved to a relative under an informal arrangement. In 2007 a Court

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judgment against the London Borough of Southwark provided guidance on how to decide this question. The Court held:

- That if the Council played “a major role” in arranging for the child’s move then the most likely conclusion was that it exercised its powers and duties to accommodate the child.
  - That an informal arrangement will usually be one directly between the parents and relative with no Council involvement.
  - That if the Council was simply facilitating an informal family care arrangement then it must be clear with those involved about its involvement. This would include giving clear advice to the relative caring for the child about who is financially responsible. For example, giving the relative receiving the child advice to “look to the person with parental responsibility”.
21. A relative with care of a child can apply for a Special Guardianship Order which gives them parental responsibility over the child. Such an order makes the relative the child’s ‘special guardian’. If a relative caring for a ‘looked after child’ becomes a special guardian then the child will no longer be a ‘looked after child’.
22. However, a special guardian may remain entitled to support for the child. The local authority responsible for agreeing the special guardianship order has responsibility for providing financial support for the child. It can pay a Special Guardianship Allowance to the Special Guardian. However, this is not automatic as the allowance is means tested. The Courts have held that special guardianship allowances should be in line with fostering allowances.
23. More generally, any support given to Special Guardians must be in line with the Special Guardianship Regulations 2005 (amended in 2016) and Government publishes guidance in support of those. The local authority where the special guardian lives is usually responsible for undertaking any assessment of need for the child, as well as any special guardianship support services in response to that assessment. But there is one exception. That is where a child was a ‘looked after child’ before the making of the special guardianship order. In which case, such support remains the responsibility of the authority where the child became looked after. Although where a child lives outside its area that authority can enter an arrangement with another authority to discharge its responsibilities.

#### **Did Child X enter Mrs G’s care as a ‘looked after child’?**

24. At the beginning of events covered by this complaint (May 2015) Child X lived in the Council’s area in the care of his mother who I will call ‘Ms Y’. Mrs G is Child X’s parental grandmother. She is married to Mr G but they maintain separate houses, with Mr G living in another area again around 200 miles from Mrs G.
25. Child X has several siblings. In May 2015, all were subject to Child Protection Plans. As a result, the Council children’s’ services had frequent involvement with the family. Ms Y was pregnant and expecting another baby in August 2015.
26. Child X went to live with Mrs G in late July 2015. The Council said this followed an informal family arrangement or private fostering arrangement agreed between her and Ms Y. It said that it did not play a ‘major role’ in arranging for Child X to live with Mrs G. So, it did not need to give advice to Mrs G of the kind envisaged in the Southwark judgment.
27. Mr and Mrs G said this was incorrect. Mrs G agreed to care for Child X because she understood the alternative would be that he entered local authority care. Mr



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and Mrs G argue that in effect, Child X, became therefore a 'looked after child' when he entered Mrs G's care.

28. I found the weight of evidence in this case supported Mr and Mrs G's case more than that of the Council. I noted the Council drew attention to contemporaneous references in some of Child X's case notes that referred to his move being an *"informal family arrangement"*. But simply saying this did not make it so. Having read hundreds of pages of case notes in this case I found the following picture emerged which demonstrated the Council had a 'major role' in his move to Mrs G's care.
29. First, it became clear from May 2015 onwards the Council began recording increasing concern about Child X's behaviour. It recorded him becoming *"increasingly violent when he feels unable to cope"*. It recorded him throwing and breaking items in the home. Also, it recorded his exclusion from school for assaulting staff and damaging a classroom. The Council recorded that at the time there were no plans to consider taking Child X or any of his siblings into care. But it also recorded the case needed regular review.
30. So, throughout May and June there were regular visits to Child X's home by a family support worker and social workers. They reported continuing concerns with Child X's behaviours at home and in school. A Child Protection Conference held on 13 July 2015 held the worries about the family justified increasing visits to daily from now on. On the following day, a Council worker found faeces smeared around the family home, which Ms Y attributed to Child X.
31. It appears this was the trigger point for the second phase of the Council's involvement when it began actively considering if Child X should move out of the family home. It social worker recorded an internal discussion on 14 July 2015 saying: *"we discussed [Child X] having behavioural problems and mother is unable to deal with this – discussed whether it would be worth considering [he] be accommodated for a short period of time [...] [Ms Y] was reluctant to do this but agreed as she was concerned that [Child X] would be placed in care. I had been reinforcing with [Ms Y] the concerns that had been raised about [Child X] assaulting the new born baby"*
32. I found a first mention of Mrs G in the case papers around this time. The Council recorded her speaking to its social worker on 16 July 2015. The social worker recorded Mrs G being willing to look after Ms Y's children *"to prevent them going into care"*.
33. On 20 July 2015, the Council reported Child X assaulting Ms Y. A Family Resource Worker for the Council recorded telling Ms Y of her concerns should Child X remain in her care, along the lines set out at paragraph 31.
34. Third, the Council next encouraged a move for Child X to live with Mrs G. On 21 July 2015, a social work manager said the Council provisionally supported Child X going to live with Mrs G. They advised Child X's social worker to arrange background checks on Mr and Mrs G and to visit Mrs G's home. Another note of a contact with Ms Y dated 21 July 2015 recorded her saying Child X was *"having to leave"* her care.
35. On 22 July 2015, a further child protection conference review took place. The minutes recorded Child X's social worker saying she was *"very concerned"* about Child X's behaviours. Further it records her saying: *"her manager had indicated [Child X] should be placed in local authority care because of the behaviours he displays and the risk to the new born child"*. The minutes recorded Ms Y becoming

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upset as “*she did not want [Child X] to go into care*”. The minutes then record Mrs G offering to care for Child X “*for a short time*”. Ms Y then asks the social worker “*how long*” the placement would be for and the social worker’s response is that she “*was not able to say*”.

36. If there was any doubt about the accuracy of this minute I consider this dispelled by the later statements of Mrs G and Ms Y. From 7 August 2015 onwards I found many statements on the Council’s files of Mrs G’s understanding of events. She has repeatedly said she agreed to look after Child X as an alternative to the Council beginning care proceedings. She understood the Council was on the brink of taking such proceedings on 22 July.
37. The case papers also contain references to Ms Y’s understanding of events. She has repeatedly said that if she had not agreed to Child X moving to Mrs G’s home the Council would have taken him into care.
38. I found the Council’s involvement in the case entered a fourth phase after 22 July 2015. It then began to consolidate Child X’s move into Mrs G’s care. There are references to the Council asking Ms Y to sign agreements under Section 20 of the Children’s Act to consent to all her children being put in local authority care. I understand mostly this was a purely short-term measure while she entered hospital to give birth. But there is a note on 6 August the Council wanted Ms Y to sign “*a written agreement [...] to say she now agrees [Child X] to remain with [Mrs G] long term*”. The Council recorded its social worker asking Ms Y to sign such an agreement on 11 August but she was not at home when they called.
39. The case records therefore documented the evolving and increasing involvement of the Council in Child X’s case between May and August 2015. I considered the facts set out above showed the Council had a “*major role*” in arranging for Child X to live with Mrs G. I am satisfied it actively encouraged and then consolidated his move. Even if the Council did not get to the position where it weighed up the likely success of taking Court proceedings for Child X to enter local authority care this was clearly something under consideration.
40. It was also not prepared to let Child X live anywhere. That it undertook background checks of Mr and Mrs G and Mrs G’s home show that it was concerned to place Child X in a safer environment. Further it is not the case the Council ever told Mrs G to “*look to the person with parental responsibility*” for financial support for Child X (i.e. Ms Y). On the contrary, in a case conference on 29 July 2015 the Council recorded the need to make financial support available to Mrs G. It then went on to support Mrs G financially in her care of Child X.
41. I considered the Council at fault therefore for not considering Child X a ‘looked after child’ from July 2015 onward. The injustice this caused is as follows. First there were practical consequences for the support offered to Mrs G which I discuss below. Second the Council’s actions also caused distress to both Mrs G and her husband, as it consistently failed to recognise the sequence of events which led to Child X entering Mrs G’s care. This in turn led also to Mr and Mrs G experiencing unnecessary time and trouble; both in trying to secure the services to support the care of Child X which Mrs G should have received from the outset and in pursuing complaint about this matter.

### **Was the scope of the Council’s support to Child X sufficient pre-November 2016?**

42. Soon after Child X entered Mrs G’s care the Council began providing her with financial support. This was at a rate of around £114 a week. The Council says it

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calculated this amount as equivalent to state benefits which Mrs G might receive for Child X. It says it paid Mrs G under Section 17 of the Children's Act as it considered Child X a "child in need".

43. It follows from my finding above that I did not consider these payments were enough. If Child X was a 'looked after child' and the evidence supports that he was, then it followed that Mrs G should have received fostering allowances for him. The Council was at fault for not paying those allowances.
44. So, there was a shortfall in the financial support Mrs G received from the Council in caring for Child X. The national fostering allowance for the 2015/16 financial year was £139 a week for a child of Child X's age, rising to £141 from April 2016. Mrs G therefore did not receive an amount equivalent to the difference between these amounts and the £114 a week paid by the Council. This was an injustice.
45. Beyond this I also note that before Mrs G became Child X's special guardian he remained subject to a Child in Need plan. Part of that plan required Mrs G to continue to encourage and promote contact for Child X with his birth parents. As I noted above, Mrs G does not live in the Council's area. She lives around 65 miles away from Child X's parents who live within that area. So, each contact visit made after August 2015 has involved a round trip of around 130 miles. Mrs G reports neither of Child X's birth parents willing or possibly able to travel to Mrs G or support with the costs of these trips. Further Mrs G has consistently stated to the Council that Child X's needs mean he becomes anxious and his behaviour disruptive on public transport (the minutes of Child in Need reviews for February and April 2016 refer for example). Given that Mrs G does not have her own transport this meant she paid for a taxi to make the round trip instead of using public transport.
46. Under whatever provision the Council financially supported Mrs G before she became Child X's special guardian, I consider it should have been giving more attention to this cost of promoting contact. I noted that from April 2016 Mrs G reported she could not financially maintain the visits to Child X's parents, yet there is no suggestion the Council reconsidered the amount of support it provided. I considered that was inattention and justified a further finding of fault.
47. This fault also created its own separate injustice. Because I am doubtful that even if Mrs G had received the national fostering allowance from the moment Child X entered her care, this could have met the need to also promote contact.
48. I noted Government guidance also refers to children with extra needs. It says that if a council pays an extra allowance to meet those needs, then it should also pay that allowance to the family and friends foster carer.
49. The Council has clarified it did not (and does not) have a policy to pay foster carers extra allowances if caring for children with extra needs. Instead it pays certain carers a premium based on their experience and expertise. So, I cannot find the Council should also have paid Mrs G a further allowance to reflect Child X's extra needs.
50. But the Council does still make some payments above the basic minimum fostering allowances. Its policy since April 2016, explained on its website has been to make some added payments as follows:
  - To pay a fostering supplement of £10 a week per child as well as the national minimum fostering allowances.

- To pay birthday and festivities allowances. I note Child X had a birthday in 2016 before Mrs G became his special guardian.
  - To pay a holiday allowance.
51. I saw no reason why Mrs G could not receive payments for Child X in line with the policy summarised at paragraph 50. There has been a further injustice therefore in Mrs G not receiving these payments.
- Has the support provided to Mrs G after 21 January 2017 been sufficient?**
52. In this case, as I have explained, the Council treated Child X as a 'child in need' from the time he entered Mrs G's care. Until the SGO was made it therefore maintained a support plan for his care, subject to regular review. But once Child X became subject of the SGO the Council sought to end this involvement.
53. It flows from the findings I have made above that there was fault in this approach. I do not consider the Council could close Child X's case just because he was now subject of a SGO. If Mrs G needed support services after the SGO was made then the Council had to consider what support services she needed and to arrange those.
54. I noted that in the Child in Need reviews Mrs G had challenged the Council's proposal to end its involvement. In response, the Council suggested there would be little role for its services in any event. This is because its records suggested Mrs G had engaged with local services including enrolling Child X in a local school and with GP services who referred him to Child and Adolescent Mental Health (CAMHS) services. The minutes of the reviews also detailed efforts made by Child X's school aimed at helping him with coping strategies. However, I did not think the Council could fetter its discretion not to consider if Mrs G might need further support. For example, exploring the possibility of respite or additional support to meet Child X's needs out of school hours.
55. During this investigation, in September 2017, Child X received an assessment of need from a third-party organisation which provides a useful snapshot of his current needs. I understand this followed contact between Mr and Mrs G and the Children's Commissioner. The assessment, sent to Mrs G's home authority, says Child X has a diagnosis of autism, a learning disability, mental health issues, attention deficit hyperactivity disorder (ADHD) and an attachment disorder. These contribute to severe behavioural issues of the kind described with episodes of self-harming, smearing, violent outbursts of temper towards people and property and so on.
56. I am satisfied from the statements made to me by Mr and Mrs G that caring for a child with these multiple and complex needs has been difficult for Mrs G. The assessment in September 2017 again provides a snapshot of the pressure she feels under, for example in maintaining her employment. I find this also reflected in the Child in Need minutes when the Council maintained its management of the case and in statements made in the complaint. I cannot say for sure what further social care support the Council should provide or should have provided Mrs G in the absence of an up to date needs assessment. But I consider it likely Mrs G would have an entitlement to some additional support. A further injustice she has suffered therefore is distress in the form of uncertainty; not knowing if the Council could do more to offer services to support her.
57. In support of this finding, I note Child X is currently being assessed further by Mrs G's home authority further to the third-party assessment I referred to above. I also understand a referral for Child X to have an Education, Health and Care Plan

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(EHCP) has been undertaken. I took account of these developments in making recommendations for action I wanted the Council to take to remedy this injustice, which it has agreed and which are detailed below.

58. I turn next to the financial support provided by the Council. The allowance it currently pays Mrs G follows the model published by the Government which says Special Guardianship allowances can be means tested. The start point is to use the basic minimum allowance paid to foster carers. But unlike foster carers, a Special Guardian can claim state benefits for their child and so these (along with other income) are considered when deciding on a weekly allowance. The assessment also takes account of the Special Guardian's outgoings.
59. I considered the Council's most recent assessment of the allowance paid to Mrs G which decided she could receive around £55 a week in support. While I could see no arithmetical error in the means assessment I considered the Council was at fault for potentially not including certain matters within its assessment that it could consider.
60. First, the model suggests that money used to pay loans for needs incurred by the Special Guardian resulting from becoming the Special Guardian might be included in the assessment. Mrs G declared loans on the assessment which I understand were used to buy an extra bed-settee and furniture essential for her to accommodate Child X. But the assessor asked no information about these loans and so did not consider including the payments in the assessment.
61. Second, the model says an authority can include "reasonable" child care costs in the expenses incurred by the Special Guardian. Mrs G declared child care costs on her assessment but no enquiries were made about these and they were not included in the assessment.
62. I considered the Council at fault for the oversights set out in paragraphs 60 and 61. I could not say the assessment was necessarily flawed because I did not know if the Council should have included these amounts in its assessment of Mrs G's expenses. But I considered the point arguable. So, there was further distress in the form of uncertainty and therefore an injustice.
63. I also considered there was another potential oversight. In paragraphs 44 and 45 I referred to the expectation, which the Council has always maintained, that Mrs G should maintain contact for Child X with his birth parents. I have set out above my concern the money Mrs G received before November 2016 was not enough to facilitate this.
64. Since January 2016 the Council has paid around £44 a month as a "contribution" to the costs of facilitating that contact. It follows from my earlier findings, that my concern extends to this arrangement also. This is because of Child X's needs and the comments made by Mrs G about the difficulties he encounters with public transport as a result.
65. In comments made during this investigation the Council indicated a willingness to reconsider here. It said it was committed to *"the principle it will fund two contact visits a month"*. Although it also said it had *"nothing in our knowledge"* to suggest Child X cannot use public transport.
66. I do not agree with the Council's view as Mrs G's statements on the matter must amount to some evidence of the difficulties she faces. However, I accepted the Council might want more assessment or expert opinion to inform what it should reasonably fund when it comes to Mrs G transporting Child X.



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67. Further complicating matters I understand that over time Child X's contact arrangements have changed. So, while Mrs G has arranged multiple visits for him to his birth parents these have not necessarily followed the pattern of one to each parent each month. Mr and Mrs G advise for example that in recent months Child X has wanted less contact with Mrs Y.
68. I considered it was further inattention for the Council not to have reviewed the support given to Mrs G with funding contact after January 2016. That was a fault. This caused further injustice to Mrs G in the form of uncertainty. As while I have insufficient evidence to reach a judgment on what the Council should have reasonably funded to support contact, that uncertainty is again a cause of distress.

### **Agreed action**

69. At paragraphs 41, 44, 47, 51, 56, 62 and 68 I have identified where I considered fault by the Council caused injustice to Mrs G and/or Mr G and/or (by implication) Child X. The Council has accepted this finding and has agreed to undertake a series of actions to remedy the resulting injustice. First, within 20 working days of this decision statement it will:
- a) Provide an unreserved apology to Mr and Mrs G accepting the findings of this investigation.
  - b) Pay £1000 to Mrs G in recognition of the distress identified at paragraphs 40 and 55 of this draft.
  - c) Pay £300 to Mr & Mrs G in recognition of the unnecessary time and trouble they have been put to, which I identified at paragraph 40 of this draft.
  - d) Pay the shortfall between the payments Mrs G received between 1 August 2015 and November 2016 as Section 17 payments and what she should have been paid as fostering allowances, as identified in paragraph 43 of the draft. The Council should provide an explanation for how it calculates the sum owing which I estimate will be around £1700.
  - e) Pay any allowances to which Mrs G would also have been entitled as a foster carer before November 2016 as identified in paragraph 50 of the draft. The Council should provide an explanation for how it calculates the sum owing.
70. Second, to further remedy the injustice identified at paragraph 56 the Council will contact Mrs G's home authority within 20 working days of a decision on this complaint to discuss Child X and Mrs G's care needs moving forward. The Council will enquire what support that authority is currently providing and/or what assessments it is undertaking. It will agree to take over the financing of any care needs currently being met by that authority and/or agree with that authority how Mrs G's support needs moving forward will be assessed, maintained and reviewed. The Council will agree to maintain whatever support Mrs G needs in line with Special Guardianship Regulations until November 2019. It can delegate certain tasks by agreement with Mrs G's home authority in line with the Regulations.
71. Third, within three months of a decision on this complaint I want the Council to complete a re-assessment of the financial support it currently pays to Mrs G. To complete this part of the remedy the Council will need Mr and Mrs G's co-operation to meet with its officers and provide any financial records reasonably required. The re-assessment will:

- a) Include a fresh means assessment of the SGO payments Mrs G currently receives. This will take account of the potential oversights identified in paragraphs 60 and 61 of this decision and resulting injustice at paragraph 62. Any increase in the weekly payment given to Mrs G will be backdated to 6 March 2017 (the date of the previous assessment).
  - b) To address the injustice identified in paragraphs 47 and 68 the Council should re-consider the financial support it has historically provided for Mrs G to support contact visits for Child X and what it should provide moving forward. The Council will meet with Mrs G and establish the following:
    - i. What contact has taken place since April 2016 between Child X and his birth parents; while Mrs G may not have a complete record, the Council should do its best to establish the number of such visits and any changes in the patterns of the visits over time.
    - ii. How that contact has been facilitated; i.e. has it always been a case of Child X visiting his birth parents or have they made any trips to visit him, Have visits been undertaken on public transport or by taxi. What costs has Mrs G incurred in making those visits.
    - iii. The reasons why Mrs G says she cannot use public transport for Child X.
72. The meeting referred to at paragraph 71 will take place at a neutral venue and Mrs G will be entitled to bring along support (she has suggested her local Ward Councillor in the area where she lives who has also volunteered to provide a venue from that authority's offices). If necessary, before or after that meeting, the Council can request information from third parties such as Child X's birth parents or professionals working with him; to help verify the pattern of visits or comment on the issues Mrs G reports with him using public transport.
73. Once the Council has completed its enquiries it will write to Mrs G and address the following:
- a) It will review the payments historically made to support contact from April 2016 (excluding the period 21 November 2016 to 19 January 2017) and consider if those were adequate. It will provide a financial remedy to Mrs G if it no longer considers the sums it provided to her were reasonable and an explanation for how it has calculated any amount paid. It will explain if it maintains the sum provided was reasonable.
  - b) It will consider the situation moving forward and whether it still considers it necessary for Mrs G to be providing two contact visits a month and the funding that it will provide to support with those visits.
74. Concerning the agreed action at 69d) I have noted that alternate dates appeared in the case papers about the exact date when Child X went to live with Mrs G in July 2015. But they all agreed he had lived with Mrs G from the end of the month at the latest. That is why my agreed action takes effect from 1 August 2015.
75. Concerning the agreed action at 69 e) above I do not know if the allowances referred to in paragraph 49 were also in payment for the 2015-16 financial year. The agreed action will cover at least the period from April 2016 to 20 November 2016. But if it is the case such allowances were also payable in 2015-16 then a backdated award will also be made to cover the period from 1 August 2015 to 31 March 2016 also.
76. Concerning the agreed action set out between paragraphs 71 and 73 if Mrs G is unhappy with the outcome of any further assessment she may contact this office

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again. We will consider if the Council has satisfactorily completed the agreed action and undertake any further investigation necessary to come to a view on that.

### **Final decision**

77. We have upheld this complaint finding the Council acted with fault causing injustice to the complainants. The Council has now agreed action we consider will provide a fair remedy for that injustice. Consequently, we have completed our investigation satisfied with its actions.

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

78. I did not investigate events between 21 November 2016 and 19 January 2017. This was because the Special Guardianship Order cross-referenced a letter given by the Council to Mrs G which expressly set out what support it would offer her between those dates. The Court therefore considered its contents when considering the making of the Special Guardianship Order and I understood would not make the Order without such assurances from the Council. I understood Mr and Mrs G feel the assurances may not have gone far enough but I considered that as they were considered expressly by the Court we could not re-open any discussion of the support set out in that letter which Mrs G received. So, the service given by the Council to Mrs G between these dates fell outside our jurisdiction.

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



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

Summary: Mrs X complained on behalf of her mother about the Council's decision that her mother had deprived herself of assets with the intention of avoiding charges for care she received at home. Mrs X also complained about delays in the Council's complaints process. The Ombudsman found the Council was at fault for failing to consider the deprivation of assets issue properly. We also found the Council delayed dealing with Mrs X's complaint. The Council has agreed to carry out a further financial assessment and to apologise for failing to keep Mrs X properly informed about the progress of her complaint.

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## **The complaint**

1. Mrs X complained on behalf of her mother, Mrs Y, about the Council's decision to charge her the full cost of her care at home. She also complained that the Council delayed handling her complaint about the issue and failed to update her about the progress of the complaint.

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

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

## **How I considered this complaint**

4. I have considered information from:
  - Mrs X's complaint and a telephone conversation with her; and
  - the Council's complaints procedure and its response to my enquiries.
5. I have given Mrs X and the Council the opportunity to comment on a draft of this decision.

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## What I found

### Legal background to charging for care and support services

6. The Council can make charges for care and support services they provide or arrange. When the Council arranges home care support it undertakes a financial assessment to decide how much a person has to pay towards the costs of that care. The Care and Support (Charging and Assessment of Resources) Regulations 2014 say the Council does not have to pay towards the cost of care and support in their homes for people who have over the upper capital limit of £23,250. However, once someone's capital has reduced to less than the upper capital limit, they only have to pay an assessed contribution towards the charges. The Council must assess the means of people who have less than the upper capital limit, to decide how much they can contribute towards the cost of the care fees.
7. Councils should follow the Care and Support Statutory Guidance (the Guidance) when undertaking a financial assessment. The Guidance says a deprivation of assets occurs where a person has intentionally deprived or decreased their overall assets to reduce the amount they are charged for their care.
8. The Guidance says councils should consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:
  - Whether avoiding the care and support charge was a significant motivation;
  - 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 Guidance says it would be unreasonable to decide that a person had disposed of an asset in order to reduce the charges for their care and support needs if, at the time the disposal took place, they were fit and healthy and could not have foreseen the need for care and support.
10. If the Council decides that a person has deliberately deprived themselves of assets it may charge the person as if they still had the assets.
11. The Guidance says it is up to the person to prove to the Council they no longer have an asset. If they cannot prove it, the Council must assess them as if they still had the asset. Acceptable evidence of disposal of capital assets would be a trust deed, deed of gift, receipts for expenditure and proof that debts have been repaid.

### Background

12. Mrs Y has lived in a warden-assisted Council bungalow since 2005. She has a personal alarm to call for help if a warden is not available. In 2006 the Council provided equipment to help with toilet transfers, a shower chair and grab rails. Mrs Y has received the lower rate of Attendance Allowance since 2005 and has used that money to pay for cleaning and gardening.
13. In 2014 Mrs Y went into hospital after a fall. In August 2014 the Council provided some re-ablement care when Mrs Y returned home through its Short Term Assessment and Re-ablement Team (START). The Council's notes record Mrs Y declined a financial assessment as she was hoping not to need any more than re-

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ablement services. She had support from START for two weeks and was independent again after that.

14. In March 2015 Mrs Y gave £30,000 of her savings to family members. She says she gave money to two grandchildren to help them after their mother (her daughter) had died. She also gave money to her four daughters for a family holiday.

### **Events December 2015 – March 2016**

15. Mrs X says Mrs Y's health worsened later in 2015. In December 2015 another of Mrs Y's daughter's, Mrs B, rang the Council to ask if Mrs Y could receive three care visits a day at home. The Council's notes of the call record Mrs B told the officer Mrs Y was under the financial threshold. The officer explained the Council would assess Mrs Y's eligibility for care then, if eligible, would carry out a financial assessment.
16. START provided three care visits a day from January 2016 to early March 2016. Mrs Y's health improved during this time. A Council social worker completed an assessment of Mrs Y's care needs in mid February 2016. The officer recorded Mrs Y as 10 years older than she was. The officer recorded Mrs Y had a medical history of osteoporosis, stooped posture, kidney condition, hearing impairment and being breathless on exertion. The officer decided Mrs Y should have a package of care at home. This would prevent Mrs Y having a dip in her health again and, in the long term, prevent hospital admission and discharge to a care home. The officer considered Mrs Y needed two care visits a day and some domestic help. Mrs Y started having her two visits a day on 9 March 2016.

### **The financial assessment in 2016**

17. Mrs Y completed a financial assessment form on 2 March 2016. The Council received it on 8 March.
18. The assessment form asks for details of any savings or capital investments given to other people in the last six years by transfer, gift or being placed in trust. Mrs Y said on 20 March 2015 she had gifted £30,000 to her four daughters and two grandchildren. She provided a copy of her bank statement which showed the transactions. She said when gifting this money the only health problems she had were related to old age. She said she had arthritis and reduced mobility.
19. The Council completed the financial assessment on 29 April 2016. The Council considered that, by gifting £30,000 to family members, Mrs Y had deprived herself of that capital asset to avoid paying care charges. The Council has provided no records of how it reached that decision. The financial assessment showed the Council had included the £30,000 Mrs Y had given to her family as 'notional capital'. This meant the Council treated her as having capital over the financial threshold so she had to pay the full cost of her care.
20. Mrs X spoke to a Council officer about its decision to treat £30,000 as notional capital. The Council did not ask Mrs Y or her family for any further information about the gifting of £30,000.
21. On 8 July 2016 the officer wrote to Mrs X and said she had reviewed the decision. The officer made these points:
  - She said *"It is up to the person to prove to the local authority that the capital has been legitimately spent by providing evidence that it has been spent on either of the following – a) a trust deed, b) deed of gift, c) receipts for expenditure, d) proof of debts that have been repaid. The Care Act states*

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*that if the person is unable to provide evidence, then the local authority must assess them as if they still have the asset.”*

- She said the Council could expect residents to consider the possibility of having care needs and to plan how to provide for them. So it was difficult to understand why Mrs Y would gift around two thirds of her savings at this time in her life.
- While it was appreciated that Mrs Y wanted to gift money to her family, this could have been done through seeking financial or legal advice or via a will.
- Having received Attendance Allowance since 2005 showed Mrs Y needed help with her care.

22. After this review Mrs Y paid her full care costs.

### **The financial reassessment in 2017 and Mrs Y's complaint**

23. In April 2017 Mrs Y asked the Council for a financial reassessment. The reassessment still treated the £30,000 as notional capital because of the decision on deprivation of assets. On 11 July 2017 Mrs X submitted a complaint about the decision. She said in March 2015 when Mrs Y gave money to her grandchildren she was still totally independent, seeing to her own care needs and still driving her own car. She said there was no expectation Mrs Y would be in need of support and care in nine months time. She said even after Mrs Y fell in 2014 and was entitled to six weeks of care when leaving hospital she only had two weeks care. Mrs Y was then back to being independent and looking after herself. She asked the Council to say why it decided Mrs Y had deliberately deprived herself.
24. The Council's complaints process says in most cases it will respond to a complaint within 20 working days.
25. The Council investigated Mrs X's complaint. It did not contact Mrs Y or her family for any further evidence. Between July and September the Council told Mrs X of delays dealing with her complaint only when she asked about progress. The Council responded to the complaint on 25 September 2017.
26. The officer responding apologised for the delay. The Council has explained to me the delay was caused by the need to consider the complaint fully and the staff involved being on annual leave. The officer upheld the decision about deprivation of assets. The officer went through the evidence the Council had about Mrs Y's health needs before she gifted the £30,000:
- her receipt of Attendance Allowance which is awarded to people needing help with personal care;
  - the equipment provided by the Council in 2006 to help someone with limited mobility;
  - Mrs Y's known medical conditions at the time she received re-ablement services in 2014 – hypertension, urine retention, arthritis and back problems which affected her mobility and ability to function;
27. The officer decided at the time Mrs Y gifted the £30,000 she had health needs which led to her needing personal care and support. The officer also repeated what her colleague had said the previous year, *“It is up to the person to prove to the local authority that the capital has been legitimately spent by providing evidence that it has been spent on either of the following – a) a trust deed, b) deed of gift, c) receipts for expenditure, d) proof debts that debts have been*

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*repaid. The Care Act states that if the person is unable to provide evidence, then the local authority must assess them as if they still have the asset.”*

28. In response to my enquiries the Council has said Mrs Y was aware of the need to pay for care and support. She had already been paying for some support herself and had had previous contact with Social Services. It said Mrs Y was likely to need care, as shown by her move to warden assisted accommodation with an alarm system, her medical conditions, and her receipt of Attendance Allowance since January 2005.

## **Findings**

### **Deprivation decision**

29. Mrs Y gifted £30,000 to family members and she has never tried to hide it. In coming to its decision about deprivation of assets the Council should have addressed the three key issues set out in the Guidance and set out in paragraph 8 above.
30. The Council did consider two of the issues at paragraph 5. But there is no evidence it considered properly whether, when Mrs Y gifted the £30,000, a significant motivation was an attempt to avoid care and support charges. To consider the issue of motivation properly the Council would have to speak to Mrs Y and maybe other members of the family. The Council would need their views of why Mrs Y gifted the money at that time and what consideration she gave to any potential need for care and support in the future. The Council would also need to be sure it took into account Mrs Y's correct age. The Council did not consider these issues properly and the failure to do so is fault.
31. The Guidance explains it is up to a person to prove they no longer have an asset and says what evidence can be used to do this. Mrs Y provided evidence of no longer having the £30,000 at the start of the first financial assessment. But twice the Council quoted the Guidance wrongly to Mrs X as if Mrs Y had failed to provide some important evidence (see paragraphs 18 and 22 above). That suggests, in coming to its decision about deprivation of assets, the Council took into account irrelevant information and that is fault.

### **Complaints procedure**

32. The Council has explained why it delayed responding to Mrs X's complaint and it has apologised for the delay. The Council kept in touch with her during the delay but largely only in response to her requests for information about progress. The Council was at fault for not proactively advising Mrs X of changes in how long it expected to take to respond to her complaint.

## **Agreed action**

33. Within two months of a final decision the Council will carry out a further financial assessment for Mrs Y, to include a fresh decision on possible deprivation of assets. The assessment will not include consideration of irrelevant information. It will cover the issue of Mrs Y's motivation in gifting £30,000 to family members. It will involve an officer speaking to Mrs Y and maybe other members of the family about why Mrs Y gifted the money at that time and what consideration Mrs Y gave to any potential need for care and support in the future. If the Council comes to a different decision on deprivation of assets it will adjust the charges for Mrs Y's care accordingly.

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34. Within one month of a final decision the Council will provide a further apology to Mrs X for failing to keep her properly informed about the progress of her complaint.

### **Final decision**

35. I have completed my investigation because the Council's actions will remedy the injustice caused by its fault.

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

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

Summary: The Ombudsman will not investigate this complaint about the Council's response to malicious child protection allegations made against the complainant. This is because we cannot achieve the outcomes that the complainant seeks.

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## **The complaint**

1. The complainant, who I refer to here as Mrs N, says that the Council:
  - Has handled poorly safeguarding procedures following an allegation about the care provided by her for their grandchildren;
  - Should have taken into consideration the history of malicious and untrue allegations instigated by the children's paternal grandparents;
  - Has refused to remove the allegation from her file; and
  - Has not fully complied with a Subject Access Request made by the her and her husband.

## **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 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 N and I have sent her a draft decision for her comments.

## **What I found**

4. Mrs N and her husband care for their grandchildren. In August 2017 a child protection referral was made to the Council regarding Mrs N's care.
5. The Council investigated the allegation under its safeguarding procedures, and found it to be unsubstantiated.



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6. Mrs N complained, as she said there had been a number of malicious referrals and allegations instigated by her grandchildren's paternal grandparents. All had been shown to be untrue, and Mrs N felt that the Council should have taken this history into consideration in investigating the latest referral.
  7. The Council has responded to the complaint, explaining that it has a statutory duty to carry out safeguarding checks in accordance with section 47 of the Children Act 1989, where there is an allegation that a child may be at risk of significant harm. This duty cannot be set aside or considered in the context of previous allegations. Each referral must be considered on its own merits.
  8. Mrs N responds that even if the Council did have to investigate this new allegation, it handled it badly. She says there was initial delay in responding, followed by a refusal to wait to interview the child involved until after her 11+ test. She feels that the Council followed some procedures without adequate thought for the effect on the child and the family.
  9. The Ombudsman will not investigate the complaint further, however.
  10. There is no fault in the Council following up the referral. As it rightly says, it cannot ignore any referral even if there have been previous unsubstantiated allegations from the same source. I recognise that repeated use of the safeguarding procedures would be frustrating or distressing to Mrs N and her family, but we cannot affect or change the fact that the Council must respond to the allegations, even if it suspects they may be malicious.
  11. None the less, the Council may wish to consider whether the way it follows up allegations is sufficiently sensitive to the situation and the likely effect on the children involved. I cannot say that its timing of the interview with the child involved affected her performance in the 11+ test, as Mrs N believes, or that it has caused injustice that would warrant further investigation. However, the possibility of causing injustice through an over rigid application of the safeguarding protocols should be a consideration that is taken into account in any future dealings with Mrs N's family.
  12. Mrs N has also asked the Council to remove the allegation from her file, and is dissatisfied with its refusal to do so. However, we cannot achieve this outcome, as the Council must keep an accurate record of the allegations triggering the safeguarding procedures. Mrs N does have the right to have the outcome correctly recorded, and to have her own comments added to the file.
  13. Additionally Mrs H has complained to the Council that it has not fully complied with an SAR. This complaint is for the Information Commissioner's Office to consider.
  14. Finally, Mrs H regards it as unacceptable for the children's paternal family to continue to fabricate allegations. This is not something that the Council either condones or can prevent. Mrs H could consider referring the matter to the police.

## **Final decision**

15. The Ombudsman will not investigate this complaint. This is because there is insufficient evidence that the Council's actions have caused injustice, and we cannot achieve the outcomes that she is looking for.



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

Summary: The Ombudsman will not investigate this complaint that a social worker ignored the complainant's concerns about her mother returning to live with her father after she suffered a wrist injury in 2012. This is because the Ombudsman cannot investigate matters the complainant has been aware of for more than 12 months, unless we decide there are good reasons.

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## **The complaint**

1. The complainant, whom I refer to as Mrs B, says a social worker ignored her concerns about her mother returning to live with her father after she suffered a wrist injury. Mrs B says her father was then able to take her mother abroad, where she passed away, and he did not arrange for her to be brought home to be buried.

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

2. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

## **How I considered this complaint**

3. I have considered Mrs B's complaint to the Ombudsman. I also gave Mrs B the opportunity to comment on a draft version of this statement.

## **What I found**

4. In my view, the restriction detailed in paragraph 2 above applies to Mrs B's complaint. This is because I understand the events occurred in 2012, and I am unaware of any reasons why Mrs B was prevented from complaining to us sooner. I therefore do not consider the Ombudsman should investigate Mrs B's complaint.

## **Final decision**

5. The Ombudsman will not investigate this complaint. This is because the events occurred more than 12 months ago, and I have seen no grounds to exercise discretion to consider this late complaint now.

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

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

Summary: The Ombudsman cannot investigate Mr A's complaint about the actions of social workers because it concerns matters which have been decided in court.

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## **The complaint**

1. The complainant, who I will refer to as Mr A, complains about the actions of social workers relation to the care of his children.

## **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*)
3. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

## **How I considered this complaint**

4. I have considered what Mr A has said in support of his complaint.

## **What I found**

5. Mr A's children have been the subject of private law proceedings. He complains about the quality of the Section 7 reports prepared by social workers for the court. He also complains that the Council has failed to take proper account of his concerns about his children, who he has been prevented from having contact with.
6. The Ombudsman cannot investigate Mr A's complaint because it concerns matters which have been decided in court. A Section 7 report is produced for the court and the Ombudsman cannot investigate anything relating to its content.
7. Contact with Mr A's children is a matter for the court. If Mr A has concerns about the arrangements for the care of his children or his contact with them he may ask the court to make new orders. The Ombudsman cannot intervene.

## **Final decision**

8. The Ombudsman cannot investigate this complaint because it concerns matters which have been decided in court.

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## Investigator's decision on behalf of the Ombudsman

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

Summary: The Ombudsman will not investigate Mr B's complaint about the Council refusing to investigate the conduct of a child protection conference at stage two of its statutory procedures for Children Act 1989 complaints. This is because in all the circumstances an investigation could not achieve a worthwhile result, so it is not warranted. It would be reasonable for Mr B to apply to court for contact with his children, and challenge in court any evidence he disputes which may be put forward by the council in whose area the children now live.

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## **The complaint**

1. The complainant, whom I shall call Mr B, says the Council refuses to investigate his complaints about the conduct of a child protection conference in October 2016 at stage two of its statutory procedures for Children Act 1989 complaints. Mr B wants a stage two investigation to expose what he believes are flaws in the Council's actions before he begins court action to restore his contact with his children.

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

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We investigate complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse effect on the person making the complaint, which we call '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 could add to any previous investigation by the Council, or
  - it is unlikely further investigation will lead to a different result, or
  - we cannot achieve the result someone wants.

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

## **How I considered this complaint**

4. I considered what Mr B said in his complaint and discussed it with him by telephone. I also gave Mr B an opportunity to comment on a draft before reaching a final decision, and considered his comments.

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## What I found

5. Mr B complained to the Council that a Child Protection Conference wrongly decided to recommend the Council make Child Protection Plans (CPP) for his children. He says the decision was made before the second part of the conference, which he was to attend. He says the conference therefore pre-judged the matter, before hearing the evidence and allowing him to challenge allegations made by his wife and son.
6. Mr B also says there is evidence his wife, who attended the first part of the conference, had previously made false allegations about him and been charged with wasting police time. So he believes the Council was wrong to treat her evidence as credible without giving him chance to challenge it.
7. The Council has refused to investigate Mr B's complaint at stage two of its procedures. It says an investigation cannot achieve for him the result he wants. Mr B wants the Ombudsman to recommend the Council investigate the complaint as required by law.
8. The Ombudsman does not usually investigate or comment on a council's complaint handling if we are not investigating the underlying matter which is the subject of the complaint. So, regardless of whether the Council is at fault for not carrying out a stage 2 investigation according to the statutory procedures, I must consider whether there would be grounds for us to investigate Mr B's underlying complaint about his dissatisfaction with the Council's original actions. If not, there is no basis for the Ombudsman to recommend the Council carry out a stage two complaint investigation, even if it was at fault in not doing so.
9. The underlying events include:
  - Mr B's wife and two of his children moved into a different council area soon after the events he complains of, which means this Council's involvement with them ended then.
  - One of Mr B's daughters remained living with him, but the Council stopped her CPP after some work by a social work team which led it to conclude the plan was no longer necessary.
  - This Council therefore has no continuing responsibility or involvement with Mr B's family for which the Ombudsman could achieve any worthwhile action by the Council if we investigated.
  - Mr B says his wife left with two of the children and has not stayed in contact with Mr B. He believes she would not have done this if the Council had not told him and his wife one of them must leave the marital home to prevent the Council having to consider more formal action around the children. The Ombudsman cannot, however, know what was in Mr B's wife's mind or what caused her to act as she did.
  - From the correspondence Mr B sent with his complaint it is clear he believes the Council had no basis to act as it did, but the Council is satisfied otherwise. A complaint investigation, whether by the Council or the Ombudsman, would not examine the underlying information the Council was considering, nor would it question the merits of social work decisions and professional judgements. But even if it did, it remains the case there is no action the Ombudsman could recommend or the Council could take which would affect Mr B's family now.
  - Mr B wishes to apply for contact with the two children, and believes a formal decision about the Council's actions towards his family would help his case. If

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Mr B wishes to challenge the evidence this Council relied on for its actions and for what may remain on file in the council area where his children now live, he can do so as part of the court's hearing of any application he chooses to make for a child arrangements order, eg to achieve contact with his children. It would not be proper to use public money to investigate simply to provide evidence for use in a private court action. It would be reasonable to expect Mr B to use the court procedure to achieve what he wants, as provided by law. A complaint investigation at stage 2 of the Council's procedures or by the Ombudsman would not be relevant to the matter.

10. There would be no basis for the Ombudsman to investigate the matters which underlie Mr B's complaint, so we shall not investigate or make recommendations about its complaint handling.

### **Final decision**

11. The Ombudsman will not investigate this complaint. This is because in all the circumstances an investigation could not achieve a worthwhile result, so it is not warranted. It would be reasonable for Mr B to apply to court for contact with his children, and challenge in court any evidence he disputes which may be put forward by the council in whose area the children now live.

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

**2 May 2018****Agenda Item: 6****REPORT OF SERVICE DIRECTOR, FINANCE, PROCUREMENT &  
IMPROVEMENT****LOCAL CODE OF CORPORATE GOVERNANCE AND ANNUAL  
GOVERNANCE STATEMENT – 2017/18****Purpose of the Report**

1. To review the Local Code of Corporate Governance for Nottinghamshire County Council, and to seek approval for the proposed Annual Governance Statement 2017/18.

**Information and Advice**

2. The Accounts and Audit (England) Regulations 2011 require the Authority to review the effectiveness of its system of internal control and publish an Annual Governance Statement, prepared in accordance with proper practices in relation to internal control.
3. The focus of the Annual Governance Statement is to assess the extent to which the Council's Local Code of Corporate Governance has been complied with in 2017/18. The opportunity is also taken to review and update the content of the Local Code.
4. Review of the Local Code has identified that only minor amendments are required. These reflect the establishment of the revised committee structure from May 2017, publication of the Council's revised strategic plan, 'Your Nottinghamshire, Your Future', and implementation of the Planning & Performance Management Framework.
5. The Annual Governance Statement has been drawn up on the basis of a range of evidence sources:
  - The outcomes of the quarterly governance meetings of the three statutory officers (Chief Executive, the Monitoring Officer and the Chief Financial Officer);
  - Assurance statements received from Corporate Directors and other key officers regarding the operation of the governance framework during 2017/18 in their areas of responsibility
  - Other evidence supplied by relevant officers or obtained from the Council's website to support the assessment of specific aspects of the Code.

The draft Statement has been endorsed by the Chief Executive, Monitoring Officer and Section 151 Officer.

6. The Annual Governance Statement, once approved, is published alongside the Statement of Accounts 2017/18.



## **Other Options Considered**

7. The requirement to publish an annual governance statement is set out in the Accounts and Audit Regulations 2011. No other options are available.

## **Reason for Recommendation**

8. To set out how the Authority has met its governance responsibilities for 2017/18.

## **Statutory and Policy Implications**

9. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working 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 the Committee approves the updated Code of Corporate Governance
- 2) That the Committee approves the Annual Governance Statement 2017/18 and makes any comments or recommendations which it considers ought to be included in the statement.

**Nigel Stevenson**

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

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

Rob Disney, Head of Internal Audit

## **Constitutional Comments (SLB 10/04/2018)**

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

## **Financial Comments (SES 09/04/18)**

There are no specific 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



# **Nottinghamshire County Council**

## **LOCAL CODE OF CORPORATE GOVERNANCE**

### **1. Defining governance**

- 1.1. Governance is about how the Council ensures that it is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner.
- 1.2. The governance framework comprises the culture, values and duties of the Authority, supported by the systems and processes put in place to provide assurance that the culture, values and duties are complied with in practice. The Authority uses this framework to direct and control its work and ensure that it engages with, leads, and accounts to the community it serves. The framework enables the Authority to provide assurance over the achievement of its strategic objectives and to consider whether those objectives have led to the delivery of appropriate, cost-effective services within the existing legal framework.
- 1.3. The system of internal control is a significant part of that framework and is designed to manage risk to a reasonable level. It cannot eliminate all risk of failure to achieve aims and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of the Authority's aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

### **2. Annual Governance Statement**

- 2.1. Each year the Council will carry out a review of its governance arrangements to ensure compliance with this Code. The purpose of the review will be to provide assurance that governance arrangements are adequate and operating effectively, or to identify action that is planned to ensure effective governance in the future.
- 2.2. The outcome of the review will take the form of an Annual Governance Statement prepared on behalf of the Leader and Chief Executive. It will be submitted to the Governance & Ethics Committee for consideration and review.
- 2.3. The Annual Governance Statement will accompany the Council's Statutory Statement of Accounts, as required by the Accounts and Audit Regulations

### **3. Core Principles of Good Governance**

- 3.1. The County Council has adopted a Code of Corporate Governance based upon the CIPFA / SOLACE document entitled "Delivering Good Governance in Local Government: Framework." The Framework identifies seven core principles of good governance, along with a number of sub-principles. These are set out below, along with details of the actions and behaviours Nottinghamshire County Council adopts to put these principles into practice.

Key governance principles and supporting actions and behaviours:	What the Council does to apply them:
<p><b>A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law</b></p>	<p><b><i>Behaving with integrity:</i></b></p> <ul style="list-style-type: none"> <li>➤ Maintains appropriate Codes of Conduct, for both members and staff, together with a Code on Member and Officer Relationships</li> <li>➤ Operates a Conduct Committee, responsible for considering complaints relating to breaches of the Code of Conduct for Councillors and Co-opted Members</li> <li>➤ Sets out the required standards of conduct at meetings</li> <li>➤ Has in place a Member induction and development programme</li> <li>➤ Maintains a comprehensive, online staff induction programme</li> <li>➤ Maintains the Council's Constitution, setting out how decisions are made and the procedures followed to ensure that these are efficient, transparent and accountable to local people.</li> <li>➤ Incorporates in the Constitution a formal scheme of delegation, setting out the delegated powers of the Authority's most senior officers</li> <li>➤ Implements and publicises a policy and strategy for countering fraud and corruption, along with a Fraud Response Plan.</li> <li>➤ Maintains an up-to-date register of interests for members and staff</li> <li>➤ Maintains an up-to-date register of gifts and hospitality</li> <li>➤ Provides for declarations of interest at all Council and committee meetings</li> </ul> <p><b><i>Demonstrating strong commitment to ethical values:</i></b></p> <ul style="list-style-type: none"> <li>➤ Sets out its shared values in its strategic plan: treating people fairly; value for money; working together.</li> <li>➤ Sets out in the Equality Policy how the Authority aims to achieve its equality objectives, both in terms of the delivery of services and in terms of its employment practices.</li> <li>➤ Carries out equality impact assessments for change proposals, including consultation with the relevant staff networks</li> </ul> <p><b><i>Respecting the rule of law:</i></b></p> <ul style="list-style-type: none"> <li>➤ Allocates to the Head of Paid Service responsibility for reporting to Full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.</li> <li>➤ Allocates to the Monitoring Officer key responsibilities for: <ul style="list-style-type: none"> <li>• ensuring the lawfulness and fairness of decision-making. This includes responsibility, after consulting with the Head of Paid Service and Chief Finance Officer, for reporting to Full Council if they consider that any proposal, decision or omission would give rise to unlawfulness or maladministration</li> <li>• contributing to the promotion and maintenance of high standards of conduct.</li> </ul> </li> <li>➤ Includes constitutional comments in reports to Council and Committees to advise on compliance with the policy framework and the Constitution.</li> <li>➤ Allocates responsibility to the Service Director – Finance, Procurement and Improvement to highlight any proposal, decision or course of action which will involve any unlawful expenditure.</li> <li>➤ Relies on the External Auditors to bring to the attention of the Council any concerns over compliance with legislative requirements</li> </ul>

Key governance principles and supporting actions and behaviours:	What the Council does to apply them:
	<p>highlighted by the audit process</p> <ul style="list-style-type: none"> <li>➤ Conforms with the governance requirements of the CIPFA Statement on the Role of The Chief Financial Officer in Local Government.</li> <li>➤ Maintains an effective Legal Service for the provision of ongoing advice to members and officers on all matters of legality</li> </ul>
<p><b>B. Ensuring openness and comprehensive stakeholder engagement</b></p>	<p><b>Openness:</b></p> <ul style="list-style-type: none"> <li>➤ Prepares and widely publishes a Strategic Plan, identifying and communicating the Authority's vision and intended outcomes for citizens and service users. Specifically, it provides for the following: <ul style="list-style-type: none"> <li>• Providing a clear statement of the Authority's vision, priorities and values, together with a commitment to treat people fairly, provide value for money and to work together with partners and residents.</li> <li>• Enabling agreed political objectives and statutory requirements to drive the Authority's activities</li> <li>• Enabling the communication of the Authority's priorities to the community of Nottinghamshire, partner organisations and staff.</li> <li>• Providing a broad framework of objectives and performance indicators, to ensure effective performance management.</li> </ul> </li> <li>➤ Sets out on the Council's website a range of information that is freely available to the public under its publication scheme. This covers: organisational structures; priorities and performance; policies and procedures; spending and financial information; decision-making, including schedules of council meetings and supporting papers; land and property; parking; lists and registers; services provided by the council; trade union liaison.</li> <li>➤ Publishes an annual performance report</li> </ul> <p><b>Engaging comprehensively with stakeholders, individual citizens and service users:</b></p> <ul style="list-style-type: none"> <li>➤ Offers a range of communication channels which are cost-effective and targeted.</li> <li>➤ Has in place an established Social Media Policy</li> <li>➤ Operates a Citizens' Panel to engage with citizens throughout the County on a wide range of issues</li> </ul>
<p><b>C. Defining outcomes in terms of sustainable economic, social, and environmental benefits</b></p>	<p><b>Defining outcomes:</b></p> <ul style="list-style-type: none"> <li>➤ Sets out the council's intended outcomes in its strategic plan</li> <li>➤ Sets out in a Planning &amp; Performance Management Framework the Council's approach to planning, commissioning and performance management based on outcomes and intelligence.</li> <li>➤ Details in its Planning &amp; Performance Management Framework the Council's plans and the relationship between them as part of the strategic management cycle, linking the outcomes and actions of service plans, the strategic plan and key strategies. As part of this cycle Service Plans should be developed to commence from the beginning of April each year.</li> <li>➤ Regularly monitors and reports on progress against key performance indicators</li> </ul> <p><b>Sustainable economic, social and environmental benefits:</b></p> <ul style="list-style-type: none"> <li>➤ Approves and publishes a Sustainable Community Strategy, setting</li> </ul>

Key governance principles and supporting actions and behaviours:	What the Council does to apply them:
	<p>out the key priorities for Nottinghamshire over a ten year period</p> <ul style="list-style-type: none"> <li>➤ Maintains a rolling Medium Term Financial Strategy, to serve as the financial plan which underpins the Strategic Plan.</li> <li>➤ Approves the annual budget and capital programme, which includes an update of the Medium Term Financial Strategy.</li> <li>➤ Takes a regular report on the Council's financial position to the Finance and Major Contracts Committee, and submits separate progress reports to the Improvement &amp; Change Sub-Committee regarding delivery of the options for change to achieve the required cost savings the Authority needs to make to achieve a balanced budget.</li> <li>➤ Maintains a capital investment strategy and capital programme which is funded within a prudential financial framework.</li> </ul>
<p><b>D. Determining the interventions necessary to optimise the achievement of the intended outcomes</b></p>	<p><b>Determining interventions</b></p> <ul style="list-style-type: none"> <li>➤ Develops, and continues to implement, an extensive programme of change in response to the conflicting pressures the Council faces of reducing financial resources at a time of increasing demand for services. The Council's strategic plan seeks to ensure that the Council can deliver the services that the people of Nottinghamshire value in a sustainable way.</li> <li>➤ Develops and presents option appraisals to members.</li> <li>➤ Consults appropriately to ensure the Council's plans for service development are well informed by the input of stakeholders.</li> </ul> <p><b>Planning interventions</b></p> <ul style="list-style-type: none"> <li>➤ Sets out, in the Planning &amp; Performance Management Framework, the Council's planning and control cycles that cover strategic and operational plans, priorities and targets.</li> <li>➤ Aligns the Council's annual budget process with the organisation's objectives and the over-arching Medium Term Financial Strategy.</li> <li>➤ Maintains a list of key strategic services for which a business continuity plan is required to be in place. The Council's Emergency Planning Team oversees and advises on the arrangements in place for disaster recovery.</li> </ul> <p><b>Optimising achievement of intended outcomes</b></p> <ul style="list-style-type: none"> <li>➤ Uses the Medium Term Financial Strategy to balance service priorities, affordability and other resource constraints.</li> <li>➤ Operates a budgeting process that takes account of the full cost of operations over the medium and longer term.</li> </ul>
<p><b>E. Developing the entity's capacity, including the capability of its leadership and the individuals within it</b></p>	<p><b>Developing the entity's capacity:</b></p> <ul style="list-style-type: none"> <li>➤ Develops and maintains an effective Workforce Strategy to support the delivery of the Council's strategic priorities.</li> <li>➤ Undertakes regular reviews of activities, outputs and planned outcomes to identify areas for improvement.</li> <li>➤ Makes appropriate use of research and benchmarking to inform priorities for service development.</li> <li>➤ Makes appropriate use of partnerships and collaborative working where added value can be achieved.</li> </ul>

Key governance principles and supporting actions and behaviours:	What the Council does to apply them:
	<p><b>Developing the capability of the entity's leadership and other individuals:</b></p> <ul style="list-style-type: none"> <li>➤ Establishes protocols to ensure a shared understanding between members and the Chief Executive and the Corporate Leadership Team of respective roles and objectives.</li> <li>➤ Ensures the Leader and the Chief Executive have clearly defined and distinctive leadership roles</li> <li>➤ Has in place a scheme of delegation which is reviewed annually.</li> <li>➤ Maintains its standing orders and financial regulations</li> <li>➤ Maintains an effective induction and development programme both for members and officers.</li> </ul>
<p><b>F. Managing risks and performance through robust internal control and strong public financial management</b></p>	<p><b>Managing risk:</b></p> <ul style="list-style-type: none"> <li>➤ Operates a Risk, Safety and Emergency Management Board to oversee the process of risk management in the Council. The Board meets periodically throughout the year. The corporate risk register is reviewed at each of the Board's meetings, to determine whether additional steps are required to mitigate key risks.</li> <li>➤ Supports the Board through Risk, Safety and Emergency Management Groups, one for each department. The Groups are responsible for having an overview of risk management in each department and for maintaining a departmental risk register.</li> </ul> <p><b>Managing performance:</b></p> <ul style="list-style-type: none"> <li>➤ Implements and complies with a performance management framework to monitor delivery of the Council's strategy and key plans.</li> </ul> <p><b>Robust internal control:</b></p> <ul style="list-style-type: none"> <li>➤ Operates an effective Governance &amp; Ethics Committee which meets regularly during the year and fulfils the recommended core functions as set out in CIPFA's publication, 'Audit Committees – Practical Guidance for Local Authorities'.</li> <li>➤ Ensures the Council's Internal Audit service is delivered in accordance with the requirements of the Public Sector Internal Audit Standards</li> <li>➤ Reviews and publicises the Council's counter-fraud and counter-corruption strategy</li> </ul> <p><b>Managing data:</b></p> <ul style="list-style-type: none"> <li>➤ Implements a data management framework, featuring procedures and policies for the safe collection, storage, use and sharing of data. Particular emphasis is given to safeguarding personal data.</li> <li>➤ Employs a designated data protection officer with primary responsibility for promoting awareness of the Council's information management policies and procedures.</li> <li>➤ Ensures effective arrangements are in place for sharing data with other bodies.</li> </ul> <p><b>Strong public financial management:</b></p> <ul style="list-style-type: none"> <li>➤ Ensures an effective system of budgetary control is in operation at all levels of financial planning and control.</li> </ul>
<p><b>G. Implementing good</b></p>	<p><b>Implementing good practice in transparency:</b></p>



Key governance principles and supporting actions and behaviours:	What the Council does to apply them:
<p><b>practices in transparency, reporting, and audit to deliver effective accountability</b></p>	<ul style="list-style-type: none"> <li>➤ Complies with the local government transparency code and publishes all information in a timely manner</li> <li>➤ Puts in place effective, transparent and accessible arrangements for dealing with complaints</li> <li>➤ Keeps under review, publicises and reports on the Council's Whistleblowing Policy</li> <li>➤ Establishes, monitors and reports on the Council's complaints procedure</li> </ul> <p><b>Implementing good practices in reporting:</b></p> <ul style="list-style-type: none"> <li>➤ Publishes a formal, annual report covering performance, value for money and stewardship of resources</li> <li>➤ Publishes the annual financial statements in a timely manner</li> <li>➤ Prepares and publishes an Annual Governance Statement to assess the Council's compliance with this Code of Corporate Governance, identifying an areas for improvement and proposed actions to address them.</li> </ul> <p><b>Assurance and effective accountability:</b></p> <ul style="list-style-type: none"> <li>➤ Complies with CIPFA's Statement on the Role of the Head of Internal Audit</li> <li>➤ Allows its Internal Audit service direct access to members, such that assurance can be provided with regard to effective governance, risk management and control</li> <li>➤ Provides regular updates on actions taken to implement agreed Internal Audit recommendations</li> <li>➤ Ensures that the recommendations of external audit and of other regulatory bodies and inspectorates are properly considered and acted upon.</li> </ul>



**NOTTINGHAMSHIRE COUNTY COUNCIL**  
**ANNUAL GOVERNANCE STATEMENT 2017/18**

**1. SCOPE OF RESPONSIBILITY**

- 1.1. Nottinghamshire County Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards. Public money must be safeguarded and properly accounted for, and used economically, efficiently and effectively. The Authority has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The Localism Act 2011 has, among other things, established a general power of competence for local authorities.
- 1.2. In discharging this overall responsibility, the County Council is responsible for putting in place proper arrangements for the governance of its affairs, facilitating the effective exercise of its functions, including the arrangements for the management of risk.
- 1.3. This statement meets the requirements of regulation 4 of the Accounts and Audit Regulations (England) 2011 in relation to the publication of an annual governance statement.

**2. THE LOCAL CODE OF CORPORATE GOVERNANCE**

- 2.1. Nottinghamshire County Council has adopted a local Code of Corporate Governance. This Code is subject to annual review and approval by the Governance and Ethics Committee, and it is published on the Council's website.
- 2.2. The Code is based on the seven core principles of good governance, as recommended in the CIPFA/SOLACE Framework for 'Delivering good governance in Local Government' (2016 Edition).

**3. REVIEW OF EFFECTIVENESS**

- 3.1. The Authority has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework. This Statement sets out the outcome of the latest review for the financial year 2017/18. The outcomes are set out in terms of the extent to which the Council has applied in practice the seven core principles of good governance.
- 3.2. The evidence to assess effectiveness is drawn from a range of sources, notably the following:

- Quarterly, formal meetings of the Council's three statutory officers (Head of Paid Service, Monitoring Officer and Chief Financial Officer), who have responsibility for the development and maintenance of the governance environment. The Council's overall governance arrangements are kept under review at these meetings, and the Head of Internal Audit also attends to provide input. The statutory officers prepare an annual report.
- the Head of Internal Audit's annual report
- reports of the External Auditor and other review agencies and inspectorates
- assurance statements from Strategic Directors concerning the application of key governance issues in their areas of service
- review of core governance issues dealt with by the Council and its committee structure

3.3. Where any issues of concern are highlighted by the review, these issues are noted below in section 4 of the Statement, along with the key actions planned to address them.

Core Principle	Review of compliance with the Code of Corporate Governance in 2017/18
<p><b>A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law</b></p>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: Substantial</b></p> <p>The key policies, procedures and practices set out in the Local Code of Corporate Governance remained in force during 2017/18.</p> <p>Corporate Directors report, overall, a substantial level of compliance with the Council's procedures.</p> <p>Progress against the 2016/17 action plan for this aspect of governance is summarised as follows:</p> <ul style="list-style-type: none"> <li>- A need for the Member Code of Conduct to be updated – the Governance &amp; Ethics Committee recommended a revised code to Full Council for approval. The revised code will be considered by Full Council in May 2018.</li> <li>- Improving the consistency with which Equality Impact Assessments are carried out across the Council – this action remains outstanding and will be completed by September 2018 (<i>see Action Plan 1</i>).</li> <li>- Introduction of a Statutory Officers' Annual Report from the 2017/18 financial year – the annual report for 2017/18 is scheduled for presentation at the Governance &amp; Ethics Committee in June 2018.</li> <li>- A refresh of the Council's Anti Money Laundering Policy - the revised policy was approved by Policy Committee in September 2017.</li> <li>- In three departments of the Council, action to remind staff of the procedures for registering interests that should be declared – further actions are planned to bring this to the attention of all staff through its internal 'Team Talk' communication. More specific actions are planned in the Children's &amp; Families Department to further embed the departmental register (<i>see Action Plan 2</i>).</li> </ul> <p>An objection to the 2015/16 financial accounts was raised by a member of the public and this remains under investigation by the external auditor (<i>see Action Plan 3</i>).</p>
<p><b>B. Ensuring openness and comprehensive stakeholder engagement</b></p>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: Substantial</b></p> <p>The Council's revised strategic plan, 'Your Nottinghamshire, Your Future', was published to run from 2017 through to 2021. The Council complied with the requirements of the Transparency Code in 2017/18.</p> <p>Regular reports on Council performance were submitted to the Improvement &amp; Change Sub-Committee during the year. Policy Committee. The Council's Business Reporting and Management Information (BRMI) project continues to drive improvements in the timeliness and quality of performance reporting.</p> <p>Corporate Directors report, overall, a substantial level of assurance over the arrangements for stakeholder engagement with their services.</p>

Core Principle	Review of compliance with the Code of Corporate Governance in 2017/18
	<p>The Communications Policy remained in place during the year, securing stakeholder engagement through a range of pathways. The 'Designing Services for the Digital Age' project was undertaken to help steer the way that the authority approaches transformation by redesigning the delivery of services on a more digital basis. The project delivered its objectives.</p>
<p><b>C. Defining outcomes in terms of sustainable economic, social, and environmental benefits</b></p>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: Substantial</b></p> <p>The key Council policies, strategies and reporting regimes identified in the Local Code of Corporate Governance remained in place during the year, and were further developed in some areas.</p> <p>The action plan for 2016/17 included work to closely align the Council's annual budget process with the organisation's objectives and performance monitoring. This was put in place through the implementation of the Planning &amp; Performance Management Framework, which sets out the key Council Plans and how they link together. The Council Plan sits at the heart and is linked to the departmental strategies along with the Medium Term Financial Strategy and other council policies and strategies. Service Plans are a feature of the Framework, and this cascades down to individual Employee Performance and Development Reviews.</p>
<p><b>D. Determining the interventions necessary to optimise the achievement of the intended outcomes</b></p>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: Substantial</b></p> <p>The revised Council strategy, 'Your Nottinghamshire, Your Future', is supported by the departmental strategies. These contain approaches to addressing the financial challenges. A revised approach to identifying change strategies is under development, incorporating a revamped approach to business cases for service change.</p> <p>Regular update reports on the delivery of programmes, projects and savings were reported to the Improvement &amp; Change Sub-Committee.</p> <p>A new strategic plan was published in 2017. In support of this, departmental strategies were put in place and a Planning &amp; Performance Management Framework was implemented to more closely align the Council's annual budget process with the organisation's objectives and performance monitoring.</p> <p>Corporate Directors report, overall, substantial assurance that change proposals are informed by the input of stakeholders.</p>
<p><b>E. Developing the entity's capacity, including the capability of its leadership and the individuals within it</b></p>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: Substantial</b></p> <p>The Council's Workforce Strategy remains in place.</p> <p>Positive levels of assurance were received from Corporate Directors regarding arrangements for:</p> <ul style="list-style-type: none"> <li>- inducting new members of staff</li> </ul>

Core Principle	Review of compliance with the Code of Corporate Governance in 2017/18
	<ul style="list-style-type: none"> <li>- conducting regular employee appraisals. This included one department's completion of an agreed action to reaffirm expectations with all managers for EPDRs to be carried out, in addition to a Council-wide reminder to all managers on this in October 2017 through the corporate 'Team Talk' facility</li> <li>- regular reviews of activities, outputs and planned outcomes to identify areas for improvement</li> <li>- appropriate use of research and benchmarking to inform priorities for service development</li> <li>- appropriate use of partnerships and collaborative working where added value can be achieved.</li> </ul> <p>With regard to Members of the Council, a pre-determined induction programme is in place for the first six months of each new administration, and this was put into practice following the local elections in May 2017. Training is compulsory for all Members in relation to the code of conduct and standards. Training is also compulsory for certain Members on committees dealing with pensions and planning &amp; licensing. A wide range of training for Members was carried out in 2017/18, including ongoing briefings in respect of current issues.</p>
<b>F. Managing risks and performance through robust internal control and strong public financial management</b>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: <b>Reasonable</b></b></p> <p>The key policies, procedures and practices set out in the Local Code of Corporate Governance remained in force during 2017/18.</p> <p>Progress against the 2016/17 action plan for this aspect of governance is summarised as follows:</p> <ul style="list-style-type: none"> <li>- Continue with the implementation of agreed actions from the Information Commissioner's Office and Internal Audit reviews of information governance - this was a significant area of development for the Council in 2017/18 as it prepares for the requirements of the General Data Protection Regulations which come into force in May 2018. An Information Governance Improvement Programme is in place and driving improvements in this area. Corporate Directors report a mixed level of assurance that effective arrangements are in place for keeping sensitive and personal information secure (<b>see Action Plan 4</b>).</li> <li>- Report information governance updates on a regular basis to the Governance &amp; Ethics Committee – this was put in place during 2017/18 and regular updates will continue.</li> <li>- Monitor implementation of the actions relating to the internal audit of risk management – Internal Audit's follow-up procedures confirmed implementation of the agreed actions.</li> <li>- Develop a programme of development for the Governance &amp; Ethics Committee and monitor its implementation – a review of the operation of the committee has been completed.</li> </ul> <p>This latest review of compliance has identified that the Council's counter-fraud and counter-corruption strategy and fraud response</p>

Core Principle	Review of compliance with the Code of Corporate Governance in 2017/18
	<p>plan are due to be reviewed. This will be incorporated in the next Annual Fraud Report, due to be presented to the Governance &amp; Ethics Committee in June 2018 (<b>see Action Plan 5</b>)</p>
<p><b>G. Implementing good practices in transparency, reporting, and audit to deliver effective accountability</b></p>	<p><b>Assessed assurance level for compliance with the Code of Corporate Governance: Substantial</b></p> <p>The evidence collected from the sources of assurance set out above at 3.2 confirmed that the key policies, procedures and practices identified in the Local Code of Corporate Governance remained in force during 2017/18.</p> <p>Evidence from Internal Audit's follow-up procedures has continued to provide good evidence that strong action is taken across the Council to implement agreed actions.</p> <p>The Internal Audit service underwent an external quality assessment in March 2018. The action plan arising from this review will be implemented promptly (<b>see Action Plan 6</b>).</p>

**4. SIGNIFICANT GOVERNANCE ISSUES**

- 4.1. **The transformation agenda:** the revised Council Plan and departmental strategies are driving the Council's response to the challenging financial and policy environment. The Planning and Performance Management Framework seeks different ways of delivering services by looking at innovative and creative solutions. During 2017/18, a comprehensive review was carried out of the three Alternative Service Delivery Models that were implemented in 2016/17 and the outcomes from the reviews are being progressed.
- 4.2. **Budget forecasting:** Effective management of the most volatile elements of the annual budget remains a key area of focus. In 2017/18, a revised approach to the standard budget monitoring process was devised to ensure due focus is centred on those areas of the Council's budget which drive financial pressures. The improved approach will be implemented from April 2018 (*see Action Plan 7*).
- 4.3. **Retention of local business rates:** Preparatory work for this change in the local taxation framework continues to progress.
- 4.4. **Pressure on core systems of internal control:** The findings of Internal Audit continue to identify areas in which only limited assurance can be provided over the effectiveness of internal controls. Areas of concern during 2017/18 were reported through to the Governance & Ethics Committee as part of the Head of Internal Audit's progress updates. However, the follow-up procedure for Internal Audit recommendations is providing strong evidence that agreed actions are being taken across the Council.
- 4.5. **Vulnerability to fraud:** The Annual Fraud Report 2017/18 was presented to the Governance and Ethics Committee in June 2018. This identifies that the incidence of internal attacks are low, but the Council remains vulnerable to attacks from external sources. Focused efforts in high risk areas of service are identifying more cases, especially in relation to social care provision. The Governance & Ethics Committee has received update reports from key service managers on the progress being made to bolster the Council's arrangements for responding to this emerging area of fraud risk. Internal Audit will continue to follow up implementation of the agreed actions (*see Action Plan 8*).
- 4.6. **Risk of exposure to serious and organised crime:** National evidence identifies local government as a prime target for fraudulent activity to fund serious and organised crime. Internal Audit was completing a detailed review against the DCLG/Home Office recommended audit programme at the close of the year, and actions to address any areas of vulnerability will be agreed for prompt implementation. Regular liaison arrangements with Nottinghamshire Police were put in place during 2017/18 and, as part of this, data-sharing opportunities are being progressed (*see Action Plan 9*).
- 4.7. **Independent Inquiry into Child Sexual Abuse (IICSA):** A chief officers' co-ordination group is in place, embracing the County Council, Nottingham City



Council and Nottinghamshire Police. An internal Steering Board and Response Team have been established to support the work required and to co-ordinate the Council's response to assist the inquiry. Regular Member briefings have taken place and will continue during the lifetime of the enquiry. Hearing dates are scheduled to commence in October 2018.

- 4.8. **Controversial/sensitive decisions:** The risk of challenge and demonstrations at Council meetings, at which potentially controversial and sensitive decisions are to be taken, is recognised and remains under active management.
- 4.9. **General Data Protection Regulations (GDPR):** The Council has implemented an Information Governance Improvement Plan to drive forward preparations for GDPR coming into force in May 2018. Breaches in data protection represent significant reputational and financial risks to the Council. Close monitoring of progress against the improvement plan will seek to mitigate these risks.
- 4.10. **Move to the Cloud:** The council currently stores its software and programmes at the Data Centre on the County Hall campus. As part of plans to look at more cost effective ways to provide ICT services and to reduce the number of buildings we own to save money, work is now underway to provide these ICT services using a "cloud" based online approach. The Cloud Transition Team aim to move all the existing services from the Data Centre to the cloud by the end of 2018. This requires very careful preparation and planning to maintain business continuity and to minimise disruption to service users.

**5. Action Plan 2018/19**

<b>Planned action</b>	<b>Officer responsible</b>	<b>Target date for completion</b>
1. Review the consistency with which Equality Impact Assessments are carried out and report the outcome to the Governance & Ethics Committee.	Monitoring Officer	September 2018
2. Actions to raise awareness of the procedure for declaring interests: a) Issue a reminder in 'Team Talk' to remind all staff of the procedure for declaring interests. that need to be declared. b) Further work will be undertaken over the coming year to ensure the Children's & Families (C&F) Department's register of interests is updated and that it is fully understood what constitutes a declarable interest.	a) Head of Internal Audit  b) Corporate Director C&F	a) July 2018  b) September 2018
3. Respond to any recommended actions arising from the review of the objection to the accounts 2015/16.	Service Director – Finance, Procurement & Improvement	To be determined on receipt of the external auditor's report
4. Close monitoring of the Information Governance Improvement Programme's progress, through regular reporting to the Governance & Ethics Committee.	Senior Information Risk Owner (SIRO)	Regular progress reports to the G&E Committee throughout 2018/19
5. Update the Council's Counter-Fraud and Counter-Corruption Policy & Strategy, along with the Fraud Response Plan.	Head of Internal Audit	June 2018
6. Implement the agreed action plan arising from the external quality assessment of the internal audit service.	Head of Internal Audit	To be determined on receipt of the assessment report
7. Implement the revised approach to budget forecasting.	Service Director – Finance, Procurement & Improvement	From April 2018
8. Continue to monitor implementation of the agreed actions from the internal audit review of the Council's response to social care fraud.	Head of Internal Audit and key Service Directors with responsibility for social care	Periodic updates to the Governance & Ethics Committee through Internal Audit's follow-up procedure
9. Implement the action plan for addressing the threat posed by	Head of Internal Audit and key Service Directors in	Per separate action plan for

serious and organised crime.	affected areas of service	2018/19
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**APPROVAL OF THE LEADER OF THE COUNCIL AND THE CHIEF EXECUTIVE**

*The Council has adopted a robust approach to addressing these financial, demographic, technological and legislative challenges.*

*The Governance and Ethics Committee reviewed the local code of corporate governance and this statement at their meeting on 2 May 2018. We are aware of the steps that are being and will be taken to address the above significant governance issues and we are satisfied that these are appropriate. We will monitor their implementation during the course of 2018/19 and beyond.*

**Signed:.....**

**LEADER**

**Signed:.....**

**CHIEF EXECUTIVE**



**2 May 2018**

**Agenda Item: 7**

## **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**

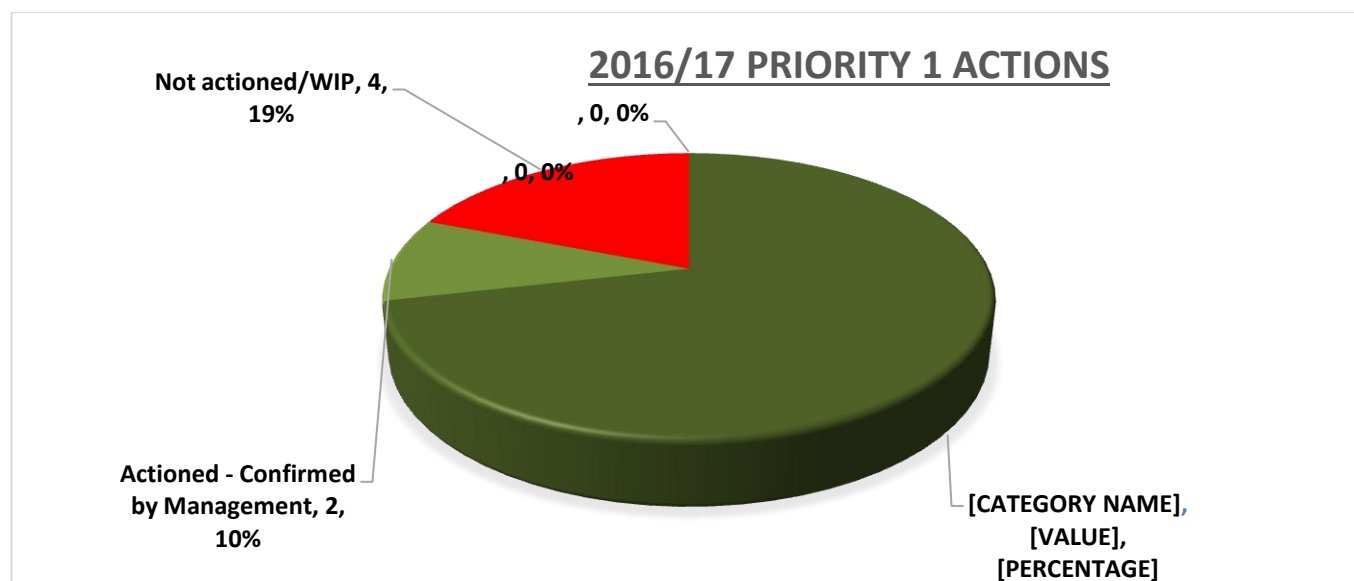
2. Internal Audit carries out regular follow-up work to obtain assurance that the actions proposed by management in response to Internal Audit's recommendations are being taken. This assurance is obtained in two phases, as set out below:

<b>Priority rating of recommendation</b>	<b>Management assurance</b>	<b>Internal Audit assurance</b>
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 final status of the Priority 1 actions from 2016/17 audits is summarised in the following chart:



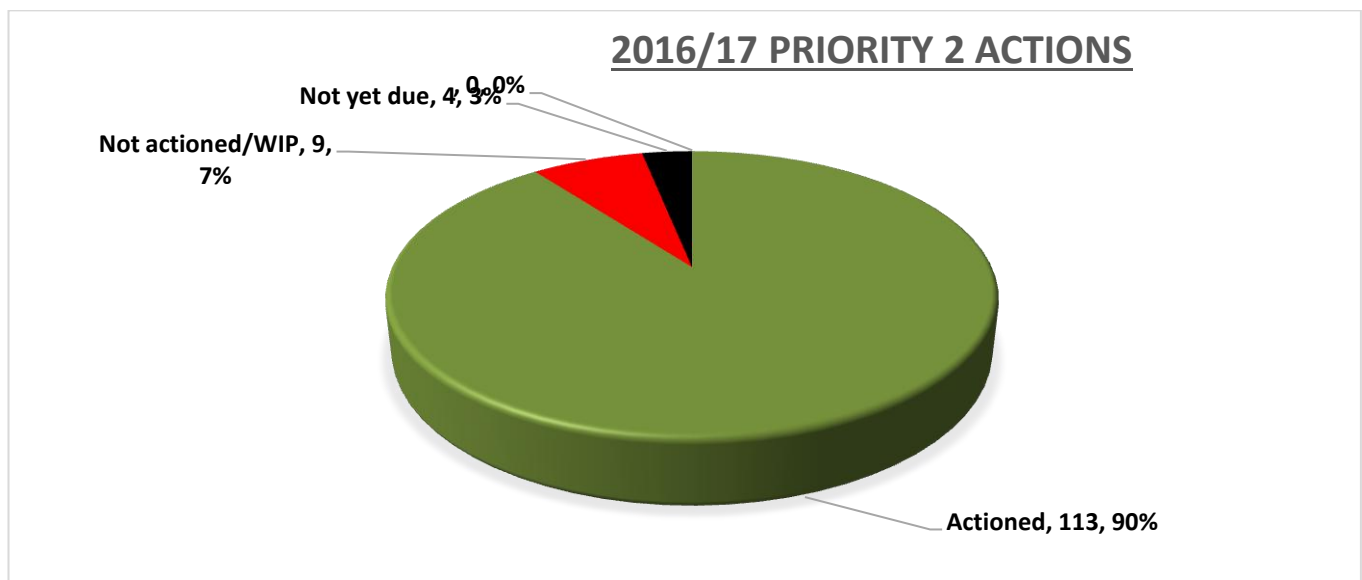
6. Follow-up testing by Internal Audit since the previous update in February 2018 was planned for the following:
- a) Adults, Social Care & Health (ASCH) Dept: Procurement of Interim Homecare – the follow-up work was completed and found that good progress has been made. The Contracts and Payments Overview Group is meeting monthly and is tackling the residual use of spot providers through a re-tendering exercise. Further follow-up testing will be carried out by Internal Audit to provide assurance that the planned action is completed.
  - b) Children & Families (C&F) Dept: External Placements – following the management update to Committee on this at the previous Committee meeting in February 2018, it was highlighted that the key action to implement a dynamic purchasing system remained in progress. Consequently, it was agreed that Internal Audit's follow-up testing should be re-scheduled for Autumn 2018, to allow a reasonable period over which the impact of the revised approach can be assessed. An update is scheduled for the 3<sup>rd</sup> quarter of 2018/19.
7. Priorities for follow-up actions in the next quarter, and for reporting in the next update to Committee, are the following:
- a) Adults, Social Care & Health (ASCH) Dept: Procurement of Interim Homecare – further follow-up testing, as identified above at 6 a).
  - b) Adults, Social Care & Health (ASCH) Dept: Short Breaks



- c) Place Dept: Catering – further follow-up testing of the electronic approach to checking consolidated invoices.

### **Priority 2 Actions**

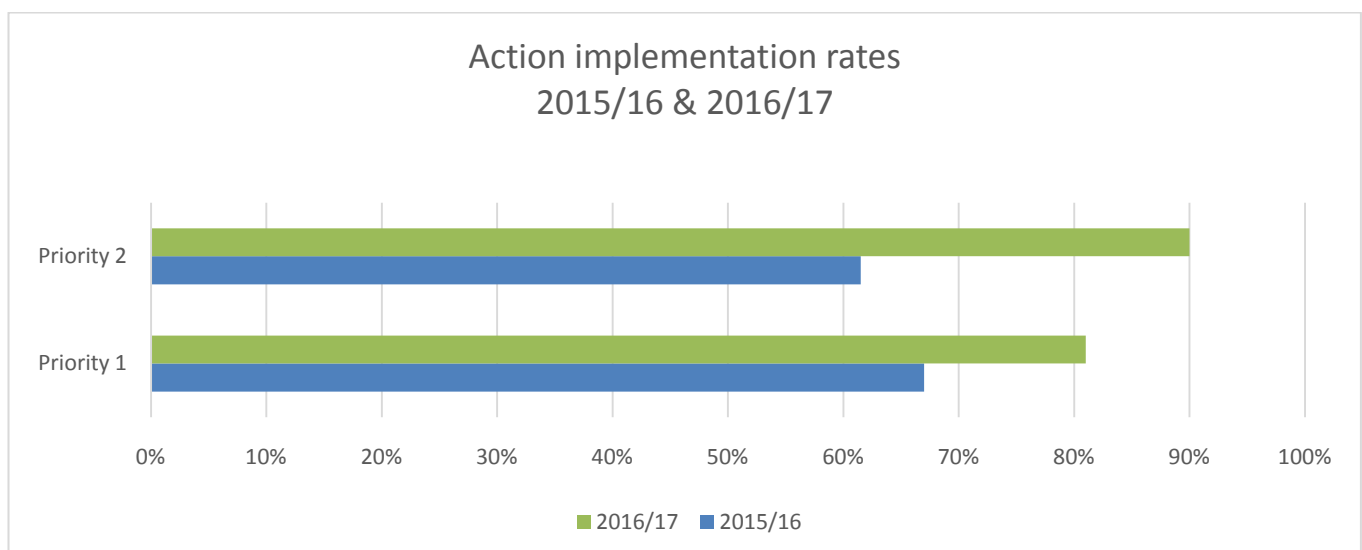
8. Progress with implementation of these recommendations is summarised in the following chart.



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.

### **Comparison with the previous financial year**

10. Internal Audit's revised approach to following up the implementation of agreed actions has now been in place for two financial years, therefore it is appropriate to compare implementation rates. These are depicted below.



11. It is pleasing to note the improved rate of implementation in 2016/17 compared with the previous year, across both priority categories. This should be seen as strong evidence that the revised approach to the follow-up of Internal Audit's recommendations, with the effective backing of the Governance & Ethics Committee, is delivering tangible improvements in the Council's control framework.

***Management updates to the Governance & Ethics Committee***

12. 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**

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

**Reason/s for Recommendation/s**

14. 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**

15. 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 10/04/2018]**

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

### **Financial Comments [SES 09/04/18]**

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

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

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

- None

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

- All



1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
2	<b>Adult Social Care and Health</b>				
3	<b>Procurement of interim homecare service</b>				
4	<b>Competitive tendering:</b> 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 <sup>st</sup> April – there will be an implementation/transition phase between April to start of the new service on 1 <sup>st</sup> July 2017. The new contract will be under a Framework agreement for initially 2 years.	Tested in Q4, 2017/18; further testing scheduled for Q2, 2018/19	The Carers Trust work was properly tendered. It is called a 'Rapid Response and Hospital Discharge Service'. The successful bidder was the Carers Trust. The contract is for two years with an option to extend for a further two years. The use of 'spot providers' still continues, used to supplement the four properly procured core providers of home based care which were unable to provide the full service. This is expected to be resolved provided home based care is successfully re-tendered, which is currently in hand.	Confirmed by Internal Audit as Partly Implemented (AMBER)
5	<b>Partnering approach between Corporate Procurement and departments, and monitoring arrangements:</b> Establishment of the Contracts and Payments Overview Group to improve communications between the department and	The Contracts and Payments Overview Group is meeting regularly to ensure appropriate procurement of contracts.	Tested in Q4, 2017/18	The Contracts and Payments Overview Group is meeting every month to help ensure all contracts are properly procured.	Confirmed by Internal Audit (GREEN)
6	<b>Direct Payments</b>				
7	<b>Nominated or authorised account holders</b> - 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	Testing to be scheduled following management update		
8	<b>Escalation procedure</b> - design and implement an escalation process to cover all areas of non-compliance. Seek approval for and appoint a senior auditor to	Management update to be obtained for next quarterly report	Testing to be scheduled		
9	<b>Repeat recoups</b> - allocate additional resources to monitor follow-up actions to ensure more accurate costing of DP budgets. Implement DP calculator.	Management update to be obtained for next quarterly report	Testing to be scheduled		
10	<b>Recoupment of funds</b> - update procedures to ensure formal invoices are issued if the issue of initial letters does not result in the return of funds or	Management update to be obtained for next quarterly report	Testing to be scheduled		
11	<b>Recoupment of funds</b> - continue to look for solutions to resolve unmatched credits	Management update to be obtained for next quarterly report	Testing to be scheduled		
12	<b>Short Breaks</b>				
13	<b>Action plans &amp; service improvement plans</b> - use supervision with unit managers to ensure quality assurance action plans and improvements plans are completed effectively and followed up.	Management has confirmed the recommendation has been actioned	Testing scheduled for Q2, 2018/19		Confirmed by management (AMBER)
14	<b>Provider Information Return</b> - include areas for improvement in the unit's plan and involve teams in keeping records of progress up to date	Management has confirmed the recommendation has been actioned	Testing scheduled for Q2, 2018/19		Confirmed by management (AMBER)
15	<b>Procurement of suppliers and providers</b>				
16	<b>Suppliers not properly procured</b> - tackle areas of non-compliance through the Contracts and Payments Overview Group.	This was confirmed as having been actioned in an update to the G&E Committee in December 2017.	Testing to be scheduled		Confirmed by management (AMBER)

1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
17	<b>Suppliers not properly procured</b> - monthly contract status report from procurement to senior departmental managers	This was confirmed as having been actioned in an update to the G&E Committee in December 2017.	Testing scheduled for Q3 2018/19		Confirmed by management (AMBER)
18	<b>Notifying Corporate Procurement of procurement exercises over £10,000</b> - through the Contracts and Payments Overview Group and liaison between commissioners and the Category Manager	This was confirmed as having been actioned in an update to the G&E Committee in December 2017.	Testing scheduled for Q3 2018/19		Confirmed by management (AMBER)
19	<b>Arrangements when Reed cannot meet a request for temporary staff</b> - under review between the Category Manager Resources and the Group	Management update to be obtained for next quarterly report	Testing to be scheduled		
20	<b>Out of county care support and enablement</b> - A Care, Support and Enablement Framework Agreement has been tendered to capture out of County Services	This was confirmed as having been actioned in an update to the G&E Committee in December 2017.	Testing scheduled for Q3 2018/19		Confirmed by management (AMBER)
21	<b>Day services transport</b> - This is under review with the Category Manager – Place who is looking at procurement approaches	This was confirmed as having been actioned in an update to the G&E Committee in December 2017.	Testing scheduled for Q3 2018/19		Confirmed by management (AMBER)
22	<b>Equipment for care and support centres</b> - This is being explored through the Contracts and Payments Overview Group	Management update to be obtained for next quarterly report	Testing to be scheduled		
23	<b>County Enterprise Foods: specialist food products</b> - This is under review with the Category Manager – Place who is looking at procurement approaches	Management update to be obtained for next quarterly report	Testing to be scheduled		
24	<b>Live-in carers inherited from a service user with direct payments</b> - This is being explored through the Contracts and Payments Overview Group	Management update to be obtained for next quarterly report	Testing to be scheduled		
25	<b>Telecare monitoring service</b> - 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	The procurement process has been paused whilst management talk to health colleagues, with a proposed implementation date extended to July 2018. This situation was set out in an update to the G&E Committee in December 2017.	Testing scheduled for Q3 2018/19		
26	<b>County Enterprise Foods: packaging for meals</b> - This is under review with the Category Manager – Place who is looking at procurement approaches	Management update to be obtained for next quarterly report	Testing to be scheduled		
27	Care home admissions and expenditure				
28	<b>Unreported deaths:</b> Following the death of an NCC-funded resident at a nursing home that the provider allegedly did not report to Adult Care Financial Services, ACFS to review the provider's procedures for completing NCC provisional payments schedules and reporting deaths and discharges.	ACFS confirmed to the provider what NCC's requirements are, and also contacted and visited its homes to confirm the actions they were taking to address the situation.	Tested in Q4, 2017/18	Recent testing undertaken by ACFS of payments for NCC-residents at the provider's homes was shared with Internal Audit. No issues were found. ACFS is satisfied that the provider is aware of its responsibilities and would report deaths and transfers promptly.	Confirmed by Internal Audit (GREEN)
29	Stop Smoking contract				

1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
30	<b>Clarification of eligibility criteria:</b> to be included in the mobilisation plan during the mobilisation period prior to the start of all new contracts, or where eligibility has changed by contract variation with an existing contract. These criteria must be in written form, and discussed face to face for clarity. It must be clear whether one, several or all criteria must be met, including residency, NHS registration and/or any other criteria such as membership of priority population groups.	Management update to be obtained for next quarterly report	Testing to be scheduled		
31	<b>Confirmation of provider plans and procedures for assuring accuracy of Payment by Results (PbR) claims:</b> to be included in the mobilisation plan during the mobilisation period prior to the start of all new PbR contracts, and will be confirmed within existing PbR contracts as they come up for review.	Management update to be obtained for next quarterly report	Testing to be scheduled		
32	<b>Agreement of the format and level of detail required of supporting data that allows for validation of claims:</b> to be included in the mobilisation plan during the mobilisation period prior to the start of all new PbR contracts, and will be confirmed within existing PbR contracts as they come up for review.	Management update to be obtained for next quarterly report	Testing to be scheduled		
33	<b>Validation of detailed claims data from the provider before payment:</b> has been implemented and is reviewed regularly within the Public Health Contracting team, balancing internal capacity with level of risk.	Management update to be obtained for next quarterly report	Testing to be scheduled		
34	County Enterprise Foods				
35	<b>Production targets:</b> targets set within the service plan to be reflected within the budget. Discussions to be undertaken between the finance department, service director and production unit to determine achievable targets to be reflected in the budget figures.	Management update to be obtained for next quarterly report	Testing to be scheduled		



1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
36	<b>Children and Families</b>				
37	CFCS1612 External Placements				
38	<b>Compliance with Council tendering regulations</b> 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	Following the management update to Committee on this at the previous Committee meeting in February 2018, it was highlighted that the key action to implement a dynamic purchasing system remained in progress	Initial follow-up complete	Further follow-up testing will be scheduled for Q3 in 2018/19	Implementation remains in progress (RED)

1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
39	<b>Place</b>				
40	HM Coroner's service				
41	Budgeted contribution: NCC to set a budgeted contribution that is both realistic and affordable. Proposals to further increase the level of council contributions to continue to be subject to scrutiny and, as far as possible, to a degree of challenge. Once the County Council is informed by the City Council of the final budget it has agreed with the County Coroner, to take 50% of that amount to be our budgeted or forecast contribution.	Management assurance received. The audit recommendation was reflected in a pressures bid for budget provision for 2018-2019. However, this bid was unsuccessful and the 2018-19 budget remains in line with that for 2017-18. Management to continue to cite the recommendation in future budget setting processes. Management have advised that Member Challenge panel have agreed that this can be funded out of contingency in year if required.	Testing scheduled for Q2 or Q3, 2018-19		
42	Catering (County Hall & Trent Bridge House)				
43	<b>Confirmation of goods received prior to paying invoices to suppliers:</b> 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 scheduled for Q2, 2018/19	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 remains in progress (RED)
44	Innovation Centres				
45	<b>Contract variation</b> - 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		
46	<b>KPI Validation</b> - 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				
47	Vacant property management				
48	<b>Reliable documentation of handover checks / Extent of handover checks / Documented vacant property and site security strategy / Decommissioning / Exit fire risk assessment</b> - Existing handover documentation to be revised and improved to incorporate a check list to ensure consistency of application. A new procedure for managing and monitoring vacant properties, complete with responsibilities of service departments and stakeholders will be produced and shared with affected parties. This will include an assessment of risk (trespass, vandalism, fire, etc.) and detail utility provision and management (including ensuring disconnections and certification where appropriate). Documents to be available on clearly identified shared drive.	Management update to be obtained for next quarterly report	To be scheduled following management update		

1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
49	<b>Review and reporting of vacant properties / Insurance and Health &amp; Safety advice</b> - Corporate Property Management Group, comprising senior operational managers from service departments, Health and Safety and Risk and Insurance to be established and meet on a quarterly basis to share information, issues, and best practice.				

1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
50	<b>Cross-Cutting</b>				
51	<b>Agency Staff &amp; Consultants</b>				
52	<b>Automation of management information:</b> 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
53	<b>Information Governance</b>				
54	Management committed to a number of actions to improve controls in relation to the following priority 1 areas: completeness of Information Asset Registers; assessment of business impact levels and security classifications; Risk assessments for high business impact information assets; On-going review of risk assessments for high business impact information assets.	Since the issue of the Internal Audit report, the Council has put in place an Information Governance Improvement Programme to prepare for the General Data Protection Regulations which come into force in May 2018. The four key strands of the programme (covering strategy, security, awareness and access) are addressing the actions identified in the Internal Audit report.	Internal Audit is involved in the work of the Information Governance Group and will schedule further testing as progress is made.		Implementation remains in progress (RED)
55	<b>Strategic Risk Management</b>				
56	<b>Risk register for Place department</b> - to be implemented	The Place Department Risk Register is in place and is being managed through the routine meetings of the Place RSEM Group.	Further testing scheduled for Q2, 2018/19		Confirmed by management (AMBER)
57	<b>Updated information on risk registers</b> - review risk registers to ensure information is up to date	This recommendation has given rise to the introduction of an ongoing rolling review process by the RSEMB. The Corporate Risk Register and three departmental risk registers have been tabled with the RSEMB, and it has been decided that each future meeting will examine one register in close detail and all will be reviewed at the annual Away Day. Following discussion with a representative from Essex County Council, an additional column has been included to indicate the potential risk once outstanding actions have been completed.	Further testing scheduled for Q2, 2018/19		Confirmed by management (AMBER)
58	<b>Invoicing and debt management</b>				
59	<b>Enforcement action for high risk customers</b> - Debts which are 45 days overdue will be considered for Enforcement Action. Prior to taking Enforcement Action, for services provided to an external party, a copy of the signed agreement will be requested. A copy is required as per the new Pre-Action Court Protocols which were introduced in October 2017. If a signed agreement cannot be supplied, it will be taken up with the Management of the Sales Office who raised the invoice.	The management response to the recommendation indicates this has already been implemented.	Testing scheduled for Q3, 2018/19		Confirmed by management (AMBER)

1	Action Description	Management Update	Internal Audit follow-up status	Internal Audit follow-up outcome	Action Status
60	<b>Pursuing overdue debt</b> - Finance Officers to be reminded of the procedure of working all of the account if they have an invoice in dispute. Senior Finance Officers and Senior Practitioner to check through dispute accounts every quarter to make sure that accounts are being picked up.	Management update to be obtained for next quarterly report	To be scheduled following management update		
61	Procurement compliance				
62	<b>Fuel for fleet vehicles:</b> There are 2 contracts for fuel, 1 for bulk fuel (called off from an ESPO), and Via also use fuel cards. To undertake a desktop exercise and understand who is the lead (NCC or Via). To liaise with Via regarding this to establish who is responsible for fuel cards.	Management update to be obtained for next quarterly report	To be scheduled following management update		
63	<b>Connection of bus stop Real Time Information (RTI) displays to the electricity network:</b> to review the level of competition in the market for the connection of bus stop RTI displays to the electricity network, confirm if there are only two suppliers, and decide if a tendering exercise should be undertaken.	Management update to be obtained for next quarterly report	To be scheduled following management update		
64	<b>Water:</b> to continue to competitively procure water supplies, although this will not start until the end of 2018	Management update to be obtained later in 2018-19	To be scheduled following management update		

**2 May 2018****Agenda Item: 8****REPORT OF THE MONITORING OFFICER AND SECTION 151 FINANCE  
OFFICER****LOCAL GOVERNMENT ASSOCIATION'S BRIBERY & FRAUD PREVENTION  
WORKBOOK FOR COUNCILLORS****Purpose of the Report**

1. To bring to the attention of Members the Local Government Association (LGA)'s workbook for councillors on bribery and fraud prevention, and to seek approval for its issue to all Council Members.

**Information and Advice**

2. The risk that all councils face from fraud and corruption is well documented and this Committee receives reports setting out the arrangements at the County Council to mitigate and counter these threats.
3. Central to this is the Annual Fraud Report. This presents a review of the incidence of fraud picked up at the Council over the preceding year, along with an update of current fraud risks and an assessment of the Council's counter-fraud arrangements. The next issue of the Annual Fraud Report is scheduled in the Committee's work programme for the June 2018 meeting.
4. In advance of that, Members' attention is drawn to a workbook on bribery and fraud, issued by the LGA (*see Appendix 1*). This is specifically aimed at councillors to assist them in understanding the threats, the expected response from councils and the contribution that councillors may make.

**Other Options Considered**

5. It is considered both important and relevant for Members' attention to be drawn to the content of the LGA's workbook, and this may be achieved in a number of ways. The alternative of not ensuring Members are aware of this publication was discounted.

**Reason for Recommendation**

6. To assist Members in understanding and developing the contribution they may make to the overall arrangements at the Council for countering fraud and corruption.

**Statutory and Policy Implications**

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

## **RECOMMENDATION**

- 1) That the Committee approves the issue of the workbook to all Council Members.

**Jayne Francis-Ward**  
**Corporate Director - Resources**

**Nigel Stevenson**  
**Service Director – Finance, Procurement & Improvement**

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

Rob Disney  
Head of Internal Audit

### **Constitutional Comments (SLB 20/04/2018)**

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

### **Financial Comments (RWK 23/04/2018)**

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

### **Background Papers**

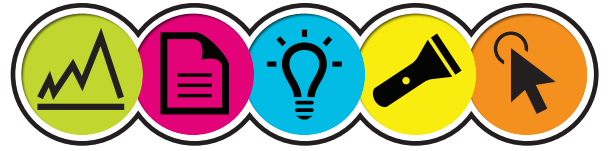
Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972:

None

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

All





# A councillor's workbook on bribery and fraud prevention



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# Foreword

This workbook has been designed as a learning aid for elected members. It makes no judgement about whether you have been a member for some time, or whether you have been elected more recently. If you fall into the former category the workbook should serve as a useful reminder of some of the key skills, approaches and tactics involved in neighbourhood and community engagement – it may even challenge you to reconsider how you have approached aspects of the role to date.

Those members who are new to local government will recognise that they have much to learn. The workbook will help you to get up to speed on the main areas of the neighbourhood and community engagement role that require focus and attention. In effect, it should provide you with some pointers on how to develop a style and approach that you are comfortable with, and that enables you to be most effective in your day to day duties.

The workbook offers few firm rules for ward members as it is recognised that each individual must decide how best to approach the role. This will be influenced by the other commitments in your life, the type of ward you represent and the methods and approaches that suit you best. There is no presumption about 'typical wards' or 'typical members' and the workbook should serve more as a direction marker rather than a road map.

In practical terms, the document will take between two to three hours to work through. You do not need to complete it all in one session and may prefer to work through the material at your own pace. The key requirement is to think about your own approach to neighbourhood and community engagement – how the material relates to your local situation, the people you serve and the council you represent.

In working through the material contained in this workbook you will encounter a number of features designed to help you think about the issues surrounding the development of neighbourhood and community engagement. These features are represented by the symbols shown below:



**Guidance** – this is used to indicate guidance, research, quotations, explanations and definitions that you may find helpful.



**Challenges** – these are questions or queries raised in the text which ask you to reflect on your role or approach – in essence, they are designed to be thought-provokers.



**Case studies** – these are 'pen pictures' of approaches used by councils elsewhere.



**Hints and tips** – a selection of good practices that you may find useful.



**Useful links** – these are signposts to sources of further information that may help with principles, processes, methods and approaches.

# Bribery and fraud prevention

Every organisation whether large or small is at risk from fraud and councils are no exception to this.

All councils have a duty to protect the public purse and a major part of this is by limiting exposure to fraud and corruption and reducing risk through effective prevention and detection. Authorities, even the smallest, are constantly under threat from fraudsters whether that be single person discount fraud, reducing council revenue or a cyber-attack causing a major data loss, reputational damage and fines from the information commissioner.

Fraud is estimated to cost UK councils around £2.1 billion per year which is money that cannot be used to support local communities.

As an elected member you have a range of statutory and moral obligations to protect the assets of your authority and you also need to equip yourself with the knowledge to deal with enquiries and questions from residents.

# Section 1 Fraud from a local authority perspective

## The scale of fraud

The challenge presented by fraud to councils is significant. As stated in 'The Local Government Counter Fraud and Corruption Strategy 2016-2019' (usually known as Fighting Fraud and Corruption Locally), it is estimated that fraud costs councils around £2.1 billion each year and some reports produced by other organisations suggest that this figure could actually be higher.

The CIPFA (Chartered Institute of Public Finance and Accountancy) counter fraud and corruption tracker, known as CFaCT is an annual survey of fraud activity in councils (and some other public bodies) and measures detection rates across local government and across different types of fraud. Based on returns in 2016 CIPFA estimates that over £325 million worth of fraud was detected in the UK public sector in 2015/16, with the biggest fraud areas being council tax and housing tenancy fraud. In previous years housing benefit fraud will have figured highly on this list.

Whatever the stats and reports say, is clear is that every pound lost by councils to fraud is a pound that cannot be spent on supporting the community.



### Useful links

The full CFaCT report for the UK can be found here:

[www.cipfa.org/services/counter-fraud-centre/fraud-and-corruption-tracker](http://www.cipfa.org/services/counter-fraud-centre/fraud-and-corruption-tracker)

If your authority took part in the survey they will have received a free comparison report showing their counter fraud activity compared to other authorities in the same tier. See if you can obtain a copy from your fraud manager or head of internal audit.

If your council didn't take part in the survey perhaps you can encourage them to do so next year?

The Fighting Fraud and Corruption Locally strategy and companion documents can be found at:

[www.cipfa.org/services/counter-fraud-centre/fighting-fraud-and-corruption-locally](http://www.cipfa.org/services/counter-fraud-centre/fighting-fraud-and-corruption-locally)

## The impact of fraud

The impact of fraud should never be underestimated. Fraud leaves the council with less to spend on services for residents and costs taxpayer's money. Fraud against a local council is not a victimless crime.

There's not only the lost/stolen money to consider but also the:

- loss of working time, with officers putting things right and liaising with police and lawyers
- cost of the investigation and any subsequent court costs
- increased insurance premiums.

There are also non-financial implications that are often forgotten. These will also, indirectly, have a financial impact, which is often difficult to qualify, such as:

- reduced or poor service for residents
- political impacts, eg government interventions, by-elections
- reputational damage for individuals or the council as a whole
- poor staff morale leading to poor performance and/or more fraud.

## What is fraud?

**‘Fraud is any intentional act or omission designed to deceive others, resulting in the victim suffering a loss and/or the perpetrator achieving a gain.’**

### **‘Managing the business risk of fraud’**

published by the Institute of Internal Auditors, et al

There are a number of definitions of fraud that are commonly used, however the majority of crimes committed that are considered to be fraud will be prosecuted under the Fraud Act 2006. Many activities that are carried out by councils are covered by specific legislation, for example, offences such as making false statements in order to obtain a council house or unlawful sub-letting of a council tenancy.

### **Fraud Act 2006**

This legislation was introduced to make the law of fraud simpler and more readily understandable providing a clear understanding of the ways in which fraud can be committed. The Act gives us the provision for the general offence of fraud which is made up of three key sections:

- S2. Fraud by false representation
- S3. Fraud by failing to disclose information
- S4. Fraud by abuse of position.



### **Challenges**

Think about the services that your council provides and identify some fraudulent activity that might occur within each of the categories.

Answers:

S2. Fraud by false representation

S3. Fraud by failing to disclose information

S4. Fraud by abuse of position

If you would like to know more about the Fraud Act 2006 the key provisions of the Act can be found here [www.legislation.gov.uk/ukpga/2006/35/contents](http://www.legislation.gov.uk/ukpga/2006/35/contents)

There are many other 'activities' that may fall under the overarching definition of fraud and are indeed types of fraud, the most common of these include:

- corruption
- bribery
- theft
- money laundering.

To give a clearer understanding of these terms, they can be defined as:

- **Corruption:** The misuse of a person's position to commit offences, which can include theft, extortion and a number of other crimes, including the soliciting of bribes. The defining characteristic of corruption is that it involves collusion between two or more individuals and is often associated with those holding public office.
- **Bribery:** The offering, giving, receiving, or soliciting of any item of value, or an advantage to another person, to induce that person to improperly perform a relevant function or activity, or to reward them for improper performance.
- **Theft:** Dishonestly appropriating property belonging to another with the intention of permanently depriving that person of it.
- **Money laundering:** The process by which criminals attempt to disguise the original ownership and control of the proceeds of criminal activity by making such proceeds appear to have derived from a legitimate source.



#### Useful links

You can find out more about bribery and corruption by completing the CIPFA's Bribery and Corruption e-learning module, in partnership with the LGA. To access the site for the first time, please email: [elarning@local.gov.uk](mailto:elarning@local.gov.uk)  
<http://lms.learningnexus.co.uk/LGA>

## Areas of fraud risk for councils

The estimated annual loss to fraud in councils is £2.1 billion. According to the CIPFA Fraud and Corruption Tracker 2016, the areas posing the highest fraud risk were:

### 1. Council tax fraud

Fraud can occur when an individual intentionally gives incorrect or misleading information in order to pay less or no council tax. Examples include someone stating that they live alone when another adult also lives there or someone claiming to be a student when they aren't.

### 2. Social housing/tenancy fraud

The unlawful misuse of social housing. This can be broken down into two main areas; social housing fraud and Right to Buy fraud. The former includes offences such as unlawful subletting, false applications, non-residency and unauthorised tenancy succession and the latter includes fraudulent applications under the right to buy/acquire schemes.

### 3. Procurement fraud

This occurs in connection within the local authority supply chain. It can happen at any point throughout the procurement cycle but is particularly prevalent in the contract letting phase. It can also include tendering issues, split contracts and double invoicing.

### 4. Adult social care and direct payments

Includes overstatement of needs through false declarations, multiple claims across authorities, collusion with care agencies and posthumous continuation of claims.



# Other high risk fraud areas for councils

## Housing benefit fraud

Councils are no longer responsible for the investigation of this fraud but as administrators of this benefit there is a responsibility to actively prevent attempts of fraud and to notify the Department of Work and Pensions (DWP) of any suspected fraudulent activity including false applications and failing to declare changes in circumstances.

## Business rates (NNDR) fraud

Offences include providing false details to obtain exemptions and reliefs and unlisted properties.

## Blue Badge misuse

There are 2.39 million Blue Badges in issue in the UK and it is estimated that 20 per cent of these are subject to fraudulent misuse such as use of the badge when the holder is not present and the alteration of a badge.

## Recruitment fraud

Includes false CVs, job histories, qualifications, references or referees.

## Insurance fraud

False claims made against a council or their insurers such as 'trips and slips'.

## Grant fraud

There are many different types of local authority grants paid out to individuals, businesses and charities. Fraud types include work not carried out, funds diverted, ineligibility not declared.

## Cyber fraud

Such as phishing, allows a range of fraud types resulting in diversion of funds and the creation of false applications for services and payments.

## Pension fraud

Occurs when the pension provider is not notified of changes in circumstances and payments continue to be cashed fraudulently. Examples include failure to notify the pension provider about the death of the recipient and failure to declare returning to work after retirement.

## No recourse to public funds

Fraudulent claim of eligibility, usually by the provision of false papers or by overstaying.



### Case study Dudley Metropolitan Borough Council's Code of Practice

Dudley Metropolitan Borough Council has codes of conduct for employees and councillors which set out the high standards expected of them. These are also intended to relay certain messages to all suppliers as there is a growing expectation that all service providers in local government should adhere to the same principles of being open and transparent when dealing with colleagues, residents and partners.

In developing its 'Suppliers' Code of Practice' Dudley aimed to reinforce good working practices and to stamp out fraud, bribery, corruption and unacceptable business practices.

Staff who buy in goods and services on behalf of the authority and all suppliers are required to work to the guidelines in this code of practice.

All active suppliers have received an email announcing the launch of the code and shown where the code is available on the council's website. The code includes useful contacts if people want to report problems to the council and reinforces the availability of a fraud hotline operated by Audit Services.

Audit Services also intends to approach key suppliers to obtain feedback and ask for written assurance that they comply with the code.

Dudley's leaflet 'Beating fraud is everyone's business', which sets out guidelines for employees, managers and councillors, is available on the CIPFA website.

[www.cipfa.org/services/counter-fraud-centre](http://www.cipfa.org/services/counter-fraud-centre)

Reproduced from Fighting Fraud and Corruption Locally 2016-19

# Section 2 Council and councillor responsibilities in relation to fraud prevention and detection

Well governed organisations have a range of policies, procedures and frameworks to support effective risk management, transparency, accountability, financial control and effective decision making, many of which relate directly or indirectly to fraud prevention. Applying these is not only the responsibility of the audit committee or cabinet.

As an elected member, you have an essential role to play in protecting the public purse, in particular within your council. You are responsible for ensuring that your authority adequately manages its risks and that local residents receive value for money. -You have a duty of trust to residents called the 'fiduciary duty' and a major part of this is ensuring that your council adequately controls its finances to reduce losses to fraud and corruption.

In addition to your fiduciary duty, as a councillor you are a public servant and are expected to uphold certain standards of conduct and behaviour in your public life. The Committee on Standards in Public Life calls these standards the 'Seven Principles of Public Life' (also known as the Nolan Principles).



## Useful links

If you would like to read more the full report on the Seven Principles of Public Life can be found here:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/543819/CSPL\\_Annual\\_Report\\_2015-2015.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543819/CSPL_Annual_Report_2015-2015.pdf)

## The seven principles of public life

The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

### 1. Selflessness

Holders of public office should act solely in terms of the public interest.

### 2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### 3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### 4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### 5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

## 6. Honesty

Holders of public office should be truthful.

## 7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

As a councillor you are expected to adhere to a code of conduct. A similar code of conduct will also apply to officers of your council. However, the biggest threat is from external sources, whether that is residents who may lie or exaggerate their circumstances to defraud or steal from the council or large scale, organised fraudsters, attacking public sector organisations as they perceive them to be a 'soft target'.

As a councillor your role in protecting the public purse may take a number of guises depending on your role and the responsibilities of your council but they may include:

1. reporting suspicious activity in your locality to your audit or fraud team eg subletting or council tax evasion
2. scrutinising risk registers and challenging if the fraud risks appear to not be well managed
3. oversight and scrutiny of budgets, especially in high risk areas
4. ensuring you declare any interests if you sit on committees such as planning
5. monitoring performance of your audit or fraud team with regard to detection and prevention of fraud
6. supporting the principles of good governance, and supporting an anti-fraud culture across the council, including whistleblowing
7. supporting the publicising of successful prosecutions by your council to act as a deterrent and perhaps providing quotes to the press if appropriate.

## Something to think about...

'Most public officials have probably never been offered a bribe and would feel pretty confident that they could spot the offer. If they don't necessarily think of themselves as totally incorruptible, they often think they can avoid getting entangled in situations where their conduct may be called into question. However, thinking you don't need help or guidance in knowing what is legal or illegal, or even what is right or wrong, in every circumstance is a risk – a risk that could and should be avoided by getting the most of what help and guidance is available.'

### Prof Alan Doig

Visiting Professor, Newcastle Business School,  
Northumbria University



### Activity

Imagine you are in the following situations, what you would do.

1. A resident comes to speak with you at your surgery and tells you that their neighbour is subletting their council property.
2. There has been a lot of publicity on TV about cyber fraud. You ask a question of your council's chief information officer (or equivalent) about what the council is doing to protect itself. The answer is "it's not a problem for us, so we don't really need to worry too much about it". You are not really comfortable that your chief information officer is taking the risk seriously.
3. You hear a rumour that a member of the planning committee has failed to declare that he has shares in a supermarket that want to develop in your area.
4. Your council is criticised by the external auditors for not doing enough to promote an anti-fraud and corruption culture. You are given the responsibility of leading the campaign. What might you do?

Please see page 26 for some suggested answers.

# Section 3 The fraud response

Councillors are not responsible for investigating fraud. If you become aware of fraud, or suspect it, you should immediately report it to the responsible officer in accordance with your authority's local procedures and policies. Do not be tempted to begin an investigation yourself, even if this appears to be helpful.

However, you should be aware of the arrangements your council has in place for responding to fraud and this is particularly important if you are given special responsibilities in this area, such as being a member of the audit and/or governance committee.



## Activity

What are your council's procedures for councillors to report fraud or suspicions of fraud? If you do not know, check with your member support officer or your authority's monitoring officer.

A robust and strategic approach is required to effectively tackle fraud perpetrated against local government organisations.

In order to tackle fraud risk, councils should have in place a strategic response based upon three basic principles as detailed below:

Acknowledge	Prevent and Detect	Pursue
Acknowledging and understanding fraud risks	Preventing and detecting more fraud	Being stronger in punishing fraud/ recovering losses
↓	↓	↓
<ul style="list-style-type: none"><li>Assessing and understanding fraud risks</li><li>Committing support and resource to tackling fraud</li><li>Maintaining a robust anti-fraud response</li></ul>	<ul style="list-style-type: none"><li>Making better use of information and technology</li><li>Enhancing fraud controls and processes</li><li>Developing a more effective anti-fraud culture</li></ul>	<ul style="list-style-type: none"><li>Prioritising fraud recovery and the use of civil sanctions</li><li>Developing capability and capacity to punish fraudsters</li><li>Collaborating with law enforcement</li></ul>

Fighting Fraud and Corruption Locally 2016-19

# Acknowledge

This is key and will underpin any anti-fraud strategy. If an organisation does not accept that they are at risk from fraud, then they will never be able to develop an effective anti-fraud response and ironically will leave themselves open to a higher likelihood of attack from fraudsters.

As a starting point a council should:

- make a proper and thorough assessment of its fraud and corruption risks that are specifically considered as part of the overall risk management process
- develop and implement an action plan in place to deal with the identified risks
- report regularly to its senior board eg audit committee, and its members

## Prevent and detect

The old adage that 'prevention is better than cure' is never more appropriate than in dealing with fraud. The reason for many processes that appear annoying and bureaucratic is to introduce steps that make it harder for people to carry out fraud.

Active prevention and fraud risk management is the most cost-effective way to fight fraud, make savings and reduce risk.

Effective prevention should include:

- A robust programme of anti-fraud and corruption awareness training for councillors, senior managers and all staff.
- Standards of conduct and policies, that are well communicated, including:
  - officer and councillor codes of conduct
  - risk management policy
  - financial regulations and procurement policy
  - anti-fraud, corruption, money laundering and bribery policies
  - whistleblowing policy
  - register of interests
  - gifts and hospitality policy.

Use of technology and data sharing to enable thorough due diligence with regards to recruitment, applications for services, the Right to Buy scheme and procurement processes.

A well-publicised anti-fraud and corruption strategy and policy, and the publicising of successful investigations into cases of fraud and corruption, to build and develop a strong anti-fraud culture. Such a culture, when promoted from 'the top down', will encourage staff and service users to actively participate in fraud prevention through awareness and encouraging them to report any suspicions.

Effective and well operated controls within systems that are regularly audited to provide assurance that they are working.

Good networking by officers and sharing intelligence between authorities so that new types of fraud are picked up early.

Unfortunately, no matter how good prevention measures and controls are, there will still be occasions when your council suffers fraud losses. In these circumstances it is vital that there is the ability to call upon competent, professionally accredited counter fraud specialists trained to a professional standard to investigate the suspected fraud.

Councils need to ensure that evidence is lawfully gathered and professionally presented, irrespective of whether the anticipated outcome is a disciplinary hearing, civil action or criminal proceeding.

## Pursue

Successful investigations will result in the identification of the fraudster and usually a financial figure representing the loss to the council. The authority will then have a number of options open to them regarding any course of action they may wish to take. This is a crucial part of the enforcement response and is needed to punish the fraudsters and act as a deterrent to others. Options available to councils include prosecution, cautions, fines and disciplinary action.



The recovery of any financial loss is also one of the most effective ways to deter offenders. It demonstrates that if caught, they will have to repay their 'ill-gotten gains'. It is important, therefore that there is a culture of rigorous pursuit of losses and that this is publicised.

## Investigative approaches

Councils need to regularly review their approach to fraud investigation and adapt when necessary.

Some councils have dedicated corporate anti-fraud teams to deal with all types of fraud and corruption. Others rely on audit staff to conduct investigations and some bring in outside experts when the need arises. Some councils have merged their internal audit and fraud teams to reduce costs. None of these is necessarily better or worse; it depends upon the circumstances of the authority. However, fraud investigation is a specialist job so it is important that councils have access to such trained and experienced staff.



### Case study Recovery of fraud losses

A council employee was illegally paid to provide confidential contract information.

The employees' responsibilities included awarding council contracts for ICT equipment. The employee introduced two new suppliers to the tender list, subsequently advising them of tender submissions by competing companies.

This enabled the two companies concerned to underbid competitive rivals to secure the contracts.

The fraud was identified as a result of information from an anonymous informant.

The employee was dismissed and subsequently found guilty under the Fraud Act and sentenced to two years' imprisonment.

The council successfully obtained a confiscation order under the Proceeds of Crime Act for £75,000 which was the amount the employee had illegally been paid.

**Source: Audit Commission (2014)**



### Activity

What kind of anti-fraud and corruption approach does your council have? Ask your monitoring officer or head of audit/risk management. Do you think it is the right approach?

Irrespective of how any council decides to tackle its fraud and corruption risk, there are always two types of investigation that councils may be involved in; proactive and reactive.

## Proactive investigations

These are intelligence led, making use of information from profiling or data-matching exercises.

A common example of this type of investigation would be where the authority was looking to identify people defrauding the council tax single person discount (SPD) scheme.

A household with only one adult is entitled to a 25 per cent discount on their council tax. Checking council tax records against the electoral role can identify cases where a person claims to be living alone is actually living with another adult. This type of data matching is legal and very effective in finding errors or frauds.

## National Fraud Initiative (NFI)

The National Fraud Initiative (NFI), coordinated by the Cabinet Office matches electronic data within and between public and private sector bodies to help prevent and detect fraud. These bodies include police authorities, local probation boards, fire and rescue authorities as well as local councils and a number of private sector bodies.

Participation in the NFI is mandatory for councils who are required to submit data to the National Fraud Initiative on a regular basis.

### Reactive investigations

These involve the search for and the gathering of evidence following an allegation or fraud referral, or the discovery of a set of circumstances which amount to an offence. In these cases, the offence is usually already being committed.



An example would be where a member of the public contacts a council to inform them that one of their council tenants is unlawfully sub-letting their council property.



**Case study**  
**London Borough of Harrow and**  
**Luton Borough Council (NFI**  
**2012/13 exercise)**

A payroll-to-payroll match identified an employee who was working full-time in a middle management position, in addition to a part-time night care worker role dealing with vulnerable adults. During the investigation it was established that some weeks she worked in excess of 70 hours, potentially placing vulnerable adults at risk.

There was a suspicion that she had been able to work both shifts on a weekly basis by sleeping whilst at work and the information shared between councils showed that she regularly breached the Working Time Regulations.

After investigation, she was found guilty and dismissed for gross misconduct by one authority and subsequently disciplined by the other for breaching the Working Time Regulations, but later resigned from the role.

This case study comes from the official Cabinet Office NFI pages and is one of many case studies to be found there. They make interesting reading. You may very well find one from your council there. Take a look.

[www.gov.uk/government/publications/national-fraud-initiative-case-studies/nfi-public-sector-case-studies](http://www.gov.uk/government/publications/national-fraud-initiative-case-studies/nfi-public-sector-case-studies)

In these cases a professionally qualified investigator, will carry out an investigation that could have some or all of the following components:

- evidence gathering
- interviewing witnesses and taking statements
- interviewing the alleged perpetrator
- preparing the case for court
- giving evidence at court.

## The challenges faced by councils in dealing with fraud and corruption

There are a number of challenges facing councils and their ability to effectively tackle fraud and corruption and to manage the risk it poses.

### Public sector budget reductions

The impact of budget reductions has a three-fold effect:

- less resources to maintain administrative procedures that prevent fraud
- potentially reduced resources for investigating fraud
- the risk of greater fraud activity by professional criminals or opportunists who identify local authorities as more vulnerable.

These challenges have led to innovative thinking on ways of approaching the fraud and corruption risks such as joint working with other authorities or other public bodies and data sharing (such as the London Counter Fraud Hub). The best and most forward thinking councils use budget constraints as the impetus to drive forward the robust recovery of losses and other criminal assets which can and do lead to significant financial rewards.

Some councils who employ successful financial investigators generate income by charging other organisations such as housing associations for investigative services.



**Case study**  
**Example of joint working**

The Metropolitan Police's Serious and Organised Crime Command has successfully collaborated with financial investigators from several London borough councils. There are currently nine Metropolitan Police Criminal Finance Teams set up as hubs – four in the north, four in the south and one central team – that are instrumental in training and mentoring several council investigators working together to tackle serious and organised acquisitive crime. The focus of this relationship is to recover assets and ensure that criminals do not benefit from criminal activities.

# How innovative has your council been?

## Is there scope for more?

### Maintaining an anti-fraud culture

Councils need to develop and embed a culture with clear values and standards in which beating fraud and corruption is part of the daily business. The 'tone from the top' is crucial in this respect and councilors and senior leaders should be seen to 'walk the walk' in terms of their ethics, values and behaviours. The CIPFA Counter Fraud Centre has developed its 'top 10 tips' (see activity below) to support organisations in developing and maintaining an effective anti-fraud culture.



#### Activity

Review the Top 10 Tips, on the following page, and consider (find out if you don't already know) how good or bad your council is at each of these. Give a score from 1 – 5.

#### 1. Set the tone at the top

Creating an anti-fraud culture is part of good governance and, led by a council's councillors and corporate directors, should start with a clear commitment to tackling fraud, corruption and other similarly delinquent behaviours. Ideally, zero tolerance to fraudsters (as opposed to fraud per se) should form the centre-piece of your organisation's anti-fraud strategy reinforcing expected standards in public service as set out in the 'Seven Nolan Principles of Public Life'. Having professionally qualified counter fraud staff in place can help to achieve this, as they have the credibility, standing and expertise to raise the profile of the anti-fraud agenda internally.

**Score: 1...2...3...4...5**

#### 2. Know and prioritise your fraud risks

Knowing what the fraud and corruption risks are in an authority determines the type of framework you need to put in place and how your staff work within it. For example, if your risks include procurement fraud, those responsible for procuring contracts and services need to recognise fraud, bribery and corruption indicators when they see them. Professionally qualified counter fraud staff can assist with this process as they can assess risk and train operational staff in appropriate action. **Score: 1...2...3...4...5**

#### 3. Scan the horizon

Fraud is constantly changing and fraudulent schemes often target frontline staff who are an organisation's first line of defence. What might seem a low fraud risk today might turn into a high one in the future. It is therefore vital that your organisation is up-to-date on the latest threats and risks and how to tackle them. Professionally qualified counter fraud staff can ensure that staff know who to come to if they suspect something amiss. As part of their continued professional development, counter fraud staff will also be 'plugged into' various anti-fraud networks which are vital sources of new information and threat alerts. **Score: 1...2...3...4...5**

#### 4. Build fraud awareness

Creating an anti-fraud culture and beating fraud should be everyone's business within a council, from the dedicated counter fraud specialists through to the procurement team, HR, facilities staff and beyond. A qualified counter fraud practitioner will be fully trained in how to help mobilise the entire organisation in the fight against fraud. Whether using e-learning, staff briefings, training, posters or internal alerts – or a combination of all these – they will be best placed to define and execute awareness programmes. **Score: 1...2...3...4...5**

## **5. Ensure policies and procedures are in order**

Professionally qualified counter fraud staff should be adept at finding the fraud gaps in existing organisational policies and procedures and determining what is required to plug those gaps in a cost-effective manner. For example, a general anti-fraud policy should include: guidelines on what to do when suspicions of fraud arise; a fraud response plan; processes for creating and implementing gifts and hospitality registers, declarations of interest registers and so on. An accessible and well-articulated whistleblowing policy should also be part of any effective anti-fraud culture. **Score: 1...2...3...4...5**

## **6. Create a dedicated anti-fraud team**

Build capacity by creating a counter fraud team comprising of professionally qualified who are operationally independent from other teams. This will ensure their objectivity and impartiality. The team should be provided with the necessary resources required for their function, which would include an element of contingency or 'flex' to cater for unforeseen surges in work, such as large and complex investigations. With the necessary safeguards in place, the team should also have access to the information, data systems and senior personnel they need to effectively perform its function. **Score: 1...2...3...4...5**

## **7. Take action**

Recovering money lost to fraud so it can be spent on key services is obviously vital. Professionally qualified counter fraud staff will be fully trained in conducting effective investigations and pursuing cases through the legal system, including the preparation of cases for prosecution. They will have the ability to give evidence in a court of law and take steps to recover lost funds. **Score: 1...2...3...4...5**

## **8. Measure success**

Today's counter fraud specialists not only understand how to detect, prevent and recover fraud losses; they are also trained to measure and report on the effectiveness of the preventive measures they put in place. This forms a key part of an organisation's anti-fraud culture as it highlights to senior management the successes of counter fraud work. **Score: 1...2...3...4...5**

## **9. Publicise your success**

Sharing the outcome of a successful investigation or how an anti-fraud measure has worked is a positive way to advertise the message that fraud doesn't pay. Professionally qualified counter fraud practitioners understand this and will want to publicise their successes both internally and externally, which should be encouraged. As well as being a deterrent, this can also lead to an increase in fraud referrals which is a good indicator that your anti-fraud culture is working. **Score: 1...2...3...4...5**

## **10. Never take your eye off the ball**

Fraud is an ever-evolving threat and as the risk doesn't stand still, nor should your organisation's strategy to combat it. Professionally qualified counter fraud staff are trained to implement and manage prevention programmes to monitor the measurement and control strategies in place and make any necessary adjustments. They will also be able to recognise new threats and risks and the need for refresher training whenever this may arise. **Score: 1...2...3...4...5**

**Total Score: ..... Do you think this is good enough?**

## Abiding by the rules

In dealing with fraud, councils need to abide by the rules in order to ensure that frauds they detect and investigate can be pursued to the most appropriate conclusion. The rules protect the rights of individuals to privacy and the right to a fair trial. Although there are frequent stories in the press about councils 'snooping' on people, the rules are in fact very strict.

For example:

### **Regulation of Investigatory Powers Act (RIPA) 2000**

This was brought in to regulate the powers of public bodies who carry out surveillance and investigation and also to cover the interception of communications. Councils have access to some of these powers for the purpose of prevention and detection of a crime.

### **Requesting information**

Council investigators have certain 'authorised officers' powers to request information about individuals. For any other investigations, they are restricted to powers under Section 29 (3) of the Data Protection Act (DPA) 1998 which allow organisations to give such information to council investigators, assuming it is for the prevention and/or detection of a crime, but it does not compel them to do so. Consequently, some organisations choose not to give the requested information to a council.

The data matching approach described earlier is also regulated under the Data Protection Act.

## More sophisticated frauds

The landscape of fraud and corruption is ever-changing, especially with the use of technology and the internet. Fraudsters never rest on their laurels and are always looking for new ways to defraud. This means council are constantly exposed to different threats and managing this risk can be extremely difficult so it's extremely important that the investigators keep abreast of emerging risks and trends and share this across the council, but in particular with key teams such as payments.

The advent of 'cyber crime', whether or not it involves fraud, is probably one of the biggest challenges facing public bodies today.

## Publicising success

While it may be embarrassing for any organisation, especially a local council, to admit that it has been the victim of fraud, experts would say that publicising successful investigations, where possible, is much the best policy. When a case ends up in court it will in any case become public. Proactive publicity shows residents and taxpayers that you are taking active steps to protect their interests and it may deter future fraudsters. Press and media teams can help to make sure the message is seen in a positive light.

# Section 4 Fraud risk management

**Note:** You should complete this section if you have special responsibility for audit, risk or governance. If not, you can move on to section 6.

Risk management is essential for good governance within any organisation and effective fraud risk management is a vital part of that.

If you have a special responsibility as a councillor for audit, risk or governance, you will need to ensure that your council has appropriate arrangements in place to manage the risk of fraud.

All councils have faced and are still dealing with increased pressure on their budgets meaning that the requirement to identify fraud and reduce risk is perhaps higher now than it's ever been.

The CIPFA code of practice on the management of fraud risk sets out the expected standard for public bodies in the management of fraud risk.

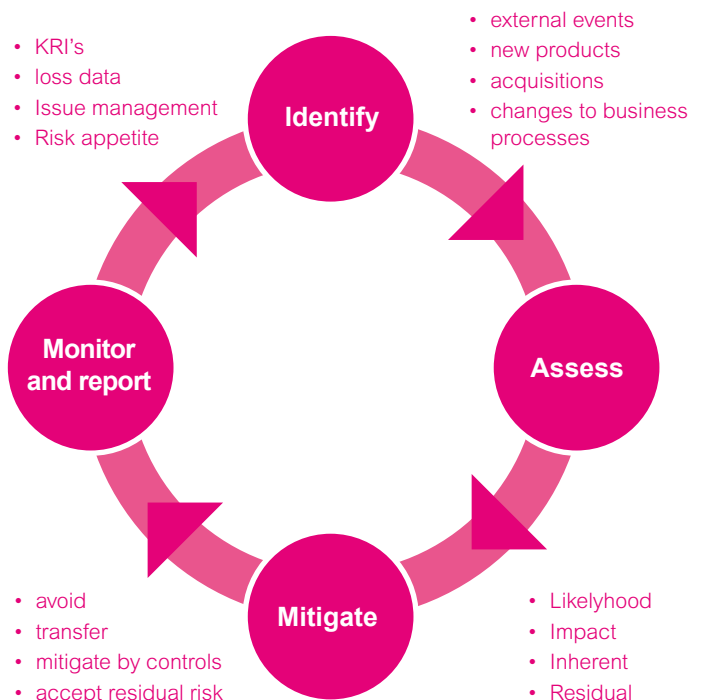
Implementing an effective fraud risk management framework, such as the CIPFA code of practice, will enable authorities to employ controls that help to prevent fraud from occurring in the first place, identify and detect fraud as soon as it occurs and enable a practical and efficient response to those fraud incidents. Fraud risks need to continually reviewed and managed, in the same way that other risks are managed within a council. The identification, assessment, mitigation and monitoring of risk (including fraud risks) is called the risk management lifecycle. The process works as such:



## Hints and tips Code of practice principles

Leaders of public services organisations have a responsibility to embed effective standards for countering fraud and corruption in their organisations. This supports good governance and demonstrates effective financial stewardship and strong public financial management. The five key principles of the code are to:

- acknowledge the responsibility of the governing body for countering fraud and corruption
- identify the fraud and corruption risks
- develop an appropriate counter fraud and corruption strategy
- provide resources to implement the strategy
- take action in response to fraud and corruption.



To help ensure that the fraud risk management is effective, it's important that the roles and responsibilities of all employees, members and those who act on behalf of the council are understood by all. The list below is not exhaustive but the main roles can be summarised as follows:

### **Councillors**

- ✓ Have and maintain an understanding of fraud risks
- ✓ Understand the key principles of risk management
- ✓ Consider fraud risk in relation to the decision making process

### **Directors**

- ✓ Support the council's fraud risk management strategy
- ✓ Set the appropriate tone with regards to the council's anti-fraud and corruption approach
- ✓ Ensure that there is a coordinated and consistent approach to the identification and management of fraud risk

### **Senior managers/service heads**

- Ensure that fraud risks are appropriately managed and implement effective review and monitoring arrangements
- Manage risk in their service areas in accordance with the fraud risk management strategy

### **Internal audit/corporate fraud team**

- ✓ Consider the council's fraud risk assessment when developing the annual audit plan
- ✓ Audit the internal fraud control processes across the authority
- ✓ Coordinate and/or conduct fraud and corruption investigations
- ✓ Assess the effectiveness of fraud prevention and detection processes
- ✓ Provide assurance to councillors and senior management of the effectiveness of fraud risk management and controls

### **All staff**

- ✓ Have a basic understanding of fraud risks and be aware of indicators
- ✓ Manage fraud risk in the course of their daily duties
- ✓ Read, understand and have access to fraud related policies and procedures
- ✓ Contribute towards the development of fraud control processes
- ✓ Report suspicions of fraud and corruption
- ✓ Cooperate with investigations

The development and implementation of a robust fraud risk management program will reduce the opportunities for fraudsters to exploit. This, coupled with encouraging employees to actively participate in the fight against fraud will contribute significantly to the creation of a strong anti-fraud culture; helping to change the attitude towards fraud so that it is not tolerated and therefore reducing the risk of fraud happening in the first place.

## **Fraud risk assessment**

The basis of an effective fraud risk management program begins with a Fraud Risk Assessment (FRA).

Councils are likely to face a wide variety of fraud and corruption risks and so a FRA will help the council to understand and identify the risks that are specific to the organisation as a whole as well as those that relate to individual service areas. It will also highlight gaps or weaknesses in fraud controls allowing the council to implement a plan to ensure the best use of resources in order to tackle those risks.

When conducting a FRA the questions that should be considered are:

- How could a fraudster exploit weaknesses in the current system controls?
- How might those controls be over-ridden or by-passed?
- How could the fraudster conceal their activities?



Bearing the above in mind, an effective FRA should generally consist of three main elements:

- **Identification of the fraud risk**

This will involve the gathering of information to highlight the fraud risks that could affect the council.

- **Assess the likelihood and impact of the fraud risk**

This assessment is based on historical information, and discussions/interviews with heads of services and other relevant staff.

- **Develop a response to those that present the highest risk**

Decide how best to respond to the fraud risks.



# Section 5 Assurance that fraud arrangements are effective

Note: You should complete this section if you have special responsibility for audit, risk or governance. If not, you can move on to section 6.

If you have special responsibility for audit, risk or governance you will wish to assure yourself that your council's fraud arrangements are effective.



## Assurance is:

'Data or information provided to management/boards/committees to give comfort that risks are being properly managed and controls are adequate and working effectively'

Institute of Internal Auditors

Best practice dictates that governance, risk management and strong financial controls (called the system of internal control) are part of the daily and regular business of an organisation. The system of internal control is a key component in the prevention and detection of fraud and corruption.

## What is internal control?

Any action taken by management, the board and other parties to manage risk. In other words, an action taken to ensure that risks do not materialise or get worse. Some examples might be:

- Expenses claims must be authorised by management before payment. This process of checking the claim for accuracy prevents fraud or error and so controls the risk of overpayment.
- The housing department carry out regular tenancy audits of their properties. This process of checking acts as a deterrent to subletting and a detection if it does happen and so controls the risk of subletting.

- The health and safety team carry out regular inspections of public buildings. These inspections highlight any existing problems for repair or any potential problems for signposting. In this way, the risk of slips, trips and other accidents are controlled.

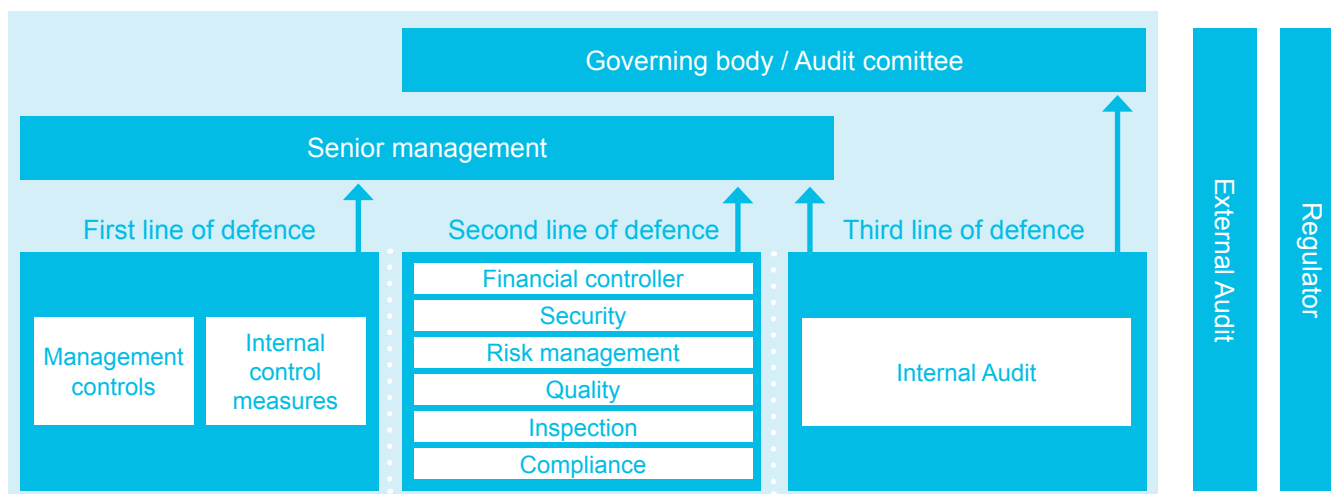
Councils must have a means of obtaining independent assurance that the system of internal control is adequate and working effectively. In local authorities there is usually an audit committee (sometimes called audit and risk committee) to carry out this role.

Usually there is also an overview and scrutiny committee to oversee the decision-making process, ensure that it is clear and that the people taking decisions are held accountable for those decisions.

The existence of an audit committee or scrutiny committee does not remove responsibility from individual members and senior managers, but provides the resource to focus on these issues. There is no 'one-size-fits-all' approach that must be applied to assurance and scrutiny in local government but council leaders and executives must ensure that the model they adopt is independent from the executive and other political influences.

Fraud prevention is heavily reliant on the system of internal control being adequate and working effectively.

Most councils rely on their internal and external auditors to provide these assurances but audit resources are limited and expensive and can never be relied upon to provide assurance across every activity that the local authority is responsible for.



Therefore all councillors and council officers have a role to play in seeking assurance that the controls are working. After the banking crisis a model was devised to try to capture and utilise the various levels of assurance that exist within organisations. This is called the three lines of defence

The majority of members will have little interaction with auditors other than when reading their report at the year-end but as the model shows, in reality the majority of assurance should come from within the organisation itself.

As a councillor you will receive and review a range of information and reports from within your authority or from external sources such as regulators or inspectors. These will often be related to your areas of expertise or committees that you sit on. It will be your responsibility to inspect and challenge the information you receive to assure yourself that it is accurate, credible and evidence based and that it tells you what you need to know.

When considering the fraud risks that your authority might be facing you need to consider whether the controls that you know exist are doing the job they are meant to be doing. If you have concerns that they are not then you need to raise that through the appropriate channels eg with the head of fraud, head of internal audit or through the chair of the audit committee.

## Role of audit committees in anti-fraud and corruption activity

The purpose of an audit committee is to provide to those charged with governance independent assurance on the adequacy of the risk management framework, the internal control environment and the integrity of the financial reporting and annual governance processes. If you sit on an audit committee you may wish to read more on the role of audit committees in relation to fraud prevention.



### Useful links

If you sit on an audit committee the following publication is recommended.

CIPFA audit committees: Practical guidance for local authorities and police  
[www.cipfa.org/policy-and-guidance/publications/a/audit-committees-practical-guidance-for-local-authorities-2013-edition-book](http://www.cipfa.org/policy-and-guidance/publications/a/audit-committees-practical-guidance-for-local-authorities-2013-edition-book)

In relation to anti-fraud and corruption activities the audit committee will receive regular reports from officers and auditors on the following:

- fraud cases that have occurred within the authority and financial losses
- whistleblowing
- current and emerging fraud risks and how they are being managed
- KPIs relating to fraud prevention and detection performance
- sanctions (including prosecutions and disciplinaries) and recovery actions
- benchmarking data
- resources spent on these activities within the authority.



### Activity

Find and obtain the latest fraud update provided to your audit committee and consider the following?

1. Is the reported fraud in line with what you would have expected for your council?
2. Are there any areas where you would have expected fraud that have not been reported on? If so why do you think that might be?
3. In your view is the reporting adequate? If not why not?
4. Has whistleblowing been reported on? Do you have a clear understanding of the whistleblowing arrangements in your authority? If you are unclear you should obtain a copy of your council's policy.

## What good looks like – the Fighting Fraud and Corruption Locally Strategy



### Turning strategy into action

#### The themes – Six Cs

Councils should consider their performance against each of the six themes that emerged from the research conducted.

**Culture** – creating a culture in which beating fraud and corruption is part of daily business.

**Capability** – ensuring that the range of counter fraud measures deployed is appropriate to the range of fraud risks.

**Capacity** – deploying the right level of resources to deal with the level of fraud risk.

**Competence** – having the right skills and standards.

**Communication** – raising awareness, deterring fraudsters, sharing information, celebrating successes.

**Collaboration** – working together across internal and external boundaries: with colleagues, with other local authorities, and with other agencies; sharing resources, skills and learning, good practice and innovation, and information.

In addition to the above, the CIPFA code of practice on managing the risk of fraud (see section 4) is there to support organisations putting in place counter fraud arrangements for the first time but will also be of benefit to those seeking to assess whether existing arrangements are adequate. Councillors may wish to ascertain whether the arrangements in their own council compare favourably with the recommended best practice approach.



### Useful links

Managing the risk of fraud and corruption

[www.cipfa.org/policy-and-guidance/publications/c/code-of-practice-on-managing-the-risk-of-fraud-and-corruption-guidance-notes-hard-copy](http://www.cipfa.org/policy-and-guidance/publications/c/code-of-practice-on-managing-the-risk-of-fraud-and-corruption-guidance-notes-hard-copy)

In addition to the Code of Practice the Fighting Fraud and Corruption section of the CIPFA website provides a range of free resources to support councils in their fight against fraud, such as leaflets and posters and a good practice bank:  
[www.cipfa.org/services/counter-fraud-centre/fighting-fraud-and-corruption-locally](http://www.cipfa.org/services/counter-fraud-centre/fighting-fraud-and-corruption-locally)

# Section 6 What you have learned and further reading

Now you have completed this workbook you have a good understanding of the fraud risks that affect councils and some of the methods that are used by authorities to prevent and detect fraud. You should now understand the scale of the problem and the impact that fraud can have on council finances. If you completed some of the activities, you will also have found out more about the arrangements that are in place in your own authority and assessed whether you think they are adequate.

If you completed sections 5 and 6 you will now hopefully feel better equipped to support your authority in the fight against fraud and also be clear on what assurances you should be receiving as committee members.

If you would like to explore this subject further there are a range of materials available for free to read on the CIPFA website:

[www.cipfa.org/services/counter-fraud-centre](http://www.cipfa.org/services/counter-fraud-centre)

Other websites that you may find interesting and useful:

[www.actionfraud.police.uk](http://www.actionfraud.police.uk) – a really useful site where fraud can be reported and also information on fraud scams found.

[www.met.police.uk/docs/little\\_book\\_scam.pdf](http://www.met.police.uk/docs/little_book_scam.pdf) – an excellent and really useful publication to help individuals from being scammed; helpful to keep in GP's surgeries.

[www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/Pages/default.aspx](http://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/Pages/default.aspx) – the City of London Police Economic Crime Directorate is recognised as the national policing lead for fraud and is dedicated to preventing and investigating fraud at all levels.

## Suggested answers for page 14 activity

1. Make a detailed note of everything the resident can tell you about the situation, names, addresses, etc. Take the contact details for the resident and pass everything to the fraud manager (if you have one) or the head of audit if not.
2. You should escalate your question to the appropriate corporate director, noting your concerns with regards to the current risk levels.
3. You should notify the councils monitoring officer
4. You should agree a project plan with the fraud manager or head of audit, with yourself as a figure head or spokesperson. You may wish to include a publicity campaign including posters and leaflets. If so, talk to your council's communications team. As a councillor, you will be in a good position to conduct radio and TV interviews, newspaper quotes and articles. You may wish to concentrate on a particular area of fraud that is particularly prevalent in your area.





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please contact us on 020 7664 3000.  
We consider requests on an individual basis.



**2 May 2018****Agenda Item: 9****REPORT OF SERVICE DIRECTOR – FINANCE, PROCUREMENT &  
IMPROVEMENT****MANDATORY INQUIRIES – 2017-18 STATEMENT OF ACCOUNTS****Purpose of the Report**

1. To inform Members of the External Auditors' requirement for the provision of information regarding the Council's approach to dealing with fraud, litigation, laws and regulations as part of their audit of the County Council's accounts for 2017/18 and to allow Members to comment on the response related to 'Those Charged with Governance'.

**Information and Advice**

2. As part of the annual approach taken by our External Auditors, KPMG seek responses to matters concerning the Council's approach and reporting on a number of areas, in particular related to themes surrounding fraud, litigation, laws and regulations, together with some areas specific to the accounts such as related parties and estimates used in the accounts. The responses to these questions form part of the overall audit and will inform the approach taken by KPMG to the audit of the Council's Statement of Accounts for 2017/18.
3. Attached for Members to comment upon is the questionnaire for completion by the Governance and Ethics Committee as 'Those Charged with Governance'.
4. A number of further mandatory questionnaires completed by Internal Audit, Legal Services and Management are available as background papers. These questionnaires set out the responses to inquiries made on the themes set out above.

**Statutory and Policy Implications**

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

## **RECOMMENDATION/S**

- 1) That Members receive, and comment upon, the inquiries for those charged with governance for the 2017/18 audit of the Statement of Accounts.

**Nigel Stevenson**

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

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

Glen Bicknell, Senior Accountant, Financial Strategy and Compliance

### **Constitutional Comments**

6. As this report is for noting only, no constitutional comments are required.

### **Financial Comments (GB 06/04/2018)**

7. There are no direct financial implications arising from this report.

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

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

- Mandatory Inquiry responses completed by Internal Audit, Legal and Management.

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

- All

## Inquiries—Those Charged With Governance

Name of Interviewee(s) : Cllr Bruce Laughton

Name of KPMG Interviewer(s) :

Date(s) of Interview :

### Required Inquiries

Category	Short Description	Detailed Description	Comments (optional)
Fraud	REQUIRED Programs and controls to prevent, detect and deter fraud – oversight by those charged with governance	How do those charged with governance exercise effective oversight of management's processes for identifying and responding to the risk of fraud in the entity and internal controls management has established to mitigate these fraud risks?	The Corporate Leadership Team and the Governance and Ethics Committee are consulted on the Annual Internal Audit Plan, this was completed in March 2018. Meetings are held on a 6 weekly basis and include a periodic update of work against the annual plan. Copies of internal audit reports are provided to officers and members following a predetermined distribution schedule. An Annual Report is provided (due May/June 2018) on activity against the plan and summarising key activities by the Internal Audit Team. Distribution includes Members, CLT and Operational Management. A Fraud Risk Assessment is undertaken which is used to inform the Annual Fraud Plan and work within the Internal Audit Planned activity. Activity in relation to Counter Fraud is reported through the Annual Fraud Report and developments

Category	Short Description	Detailed Description	Comments (optional)
			captured as part of the Fraud Plan.
Fraud	REQUIRED Management's assessment of fraud risks including the nature, extent and frequency of such assessment	What are your views about fraud risks at the entity?	Current fraud risks have been assessed as part of the Fraud Risk Assessment and captured in the Counter Fraud and corruption plan. This assessment is based on an established risk ranking matrix to ensure risks are captured consistently. The work undertaken is captured in the Annual Fraud Report and presented to the Governance and Ethics Committee on an annual basis. The next report is due in June 2018.
Fraud	REQUIRED Actual, suspected or alleged instances of fraud	Are you aware of, or have you identified, any instances of actual, suspected, or alleged fraud, including misconduct or unethical behavior related to financial reporting or misappropriation of assets? If so, have the instances been appropriately addressed and how have they been addressed?	Yes, such cases have been identified as part of internal audit work and cases have been subject to appropriate action. Cases have been recorded in the Annual Fraud Report. Cases have also been reviewed and actioned by departments: Adults, Social Care & Health and Trading Standards with appropriate input from senior managers and Police.
Significant unusual transaction	REQUIRED SUTs - existence	Has the entity entered into any significant unusual transactions?	No significant unusual transactions have been entered into during 2017/18. Cash holding and handling is reduced to a minimum and payments are subject to vetting prior to payment. The Council have not entered into any new JV's or PFI transactions.

**2 May 2018****Agenda Item: 10****REPORT OF THE CORPORATE DIRECTOR OF RESOURCES****REVIEW OF DEMOCRATIC SERVICES STAFFING STRUCTURE****Purpose of the Report**

1. To review the revised staffing structure for Democratic Services and to propose amendments to better meet current and future demand.

**Information and Advice**

2. The existing staffing structure for Democratic Services was agreed by Governance & Ethics Committee in July 2017 (see Appendix 1) with a staffing establishment of 14.5 full time equivalent (FTE) posts.
3. In approving the structure, the Committee also agreed that a review should be undertaken after six months of implementation to ensure the revised structure was robust and fit for purpose.
4. The revised structure has proven largely successful, although a number of refinements are proposed to ensure that the business of the Council can be conducted with optimum efficiency and to enable the most appropriate support to Councillors.

**Proposed Changes**

It is proposed that:-

- a. The existing PA to the Leader post is disestablished and replaced with an Executive Officer post. This new post will serve as a conduit between the ruling group and the Corporate Leadership Team (CLT) and the role's remit will largely reflect the Executive Officer roles which serve Corporate Directors currently. It is proposed that this post reports directly to the Team Manager, Democratic Services.
- b. The existing PA to the Main Opposition Group's Leader be reconfigured as an Executive Assistant post to reflect similar roles which serve CLT currently.
- c. The existing 2 FTE Member Support Officer posts within the ruling group be replaced with a FTE PA to Committee Chairs post and a 0.5 FTE Member Support Officer post. This is to ensure a more consistent and appropriate level of support to Committee Chairs, whilst still retaining relevant support for backbenchers within the ruling group.

- d. The existing Research and Civic Support post be reduced from 1 FTE to 0.8 FTE, with the post's remit refocused to provide civic support to the Chairman and Vice-Chairman in terms of diary management and their attendance at external events and research support to the Mansfield Independent Forum Group in recognition of their increased role in the governance of the Council. In light of the civic support aspects of this role it is proposed that this post should report directly to the Team Manager, Democratic Services.
  - e. A new Education Appeals Manager post be established within the Governance Team. As described in the report to Governance and Ethics Committee in July 2017, a new approach to administering the education appeals has been piloted, establishing a pool of external clerks who can be used on an ad hoc basis as a flexible resource to meet seasonal and other peak demand. This has so far proven very successful but, as indicated in the previous report, has resulted in further management demands in fully embedding and developing this approach further. It is felt that the establishment of this new Education Appeals Manager post will also enable the team to develop its offer to Academies wishing to buy into this service (the existing arrangements have meant that it has not been possible to meet all recent requests from Academies and it is hoped that this new post will enable the team to be more proactive in generating further income in the future).
  - f. Attempts have been made to progress the proposed Legal and Democratic Services Apprentice post via the national Association of Democratic Services Officers. Initial attempts have proven largely unsuccessful with not enough Councils sharing the County Council's interest at this stage in developing such a post within the Government's recognised list of apprenticeships via the Trailblazers arrangements. It is hoped that such a post might be established nationally in the long run but at this stage it is proposed to remove it from the structure.
  - g. The titles of the various Member Support posts be revised to enable more generic roles to be described across the different opposition groups. Job Descriptions have been updated to better reflect the current roles and to formalise and clarify the potential changes in grade and remit following elections. These draft job descriptions will be subject to further consultation with the postholders.
  - h. At this stage it is not proposed that a permanent business support post be established within the Governance Team although it should be noted that the plan to share the Legal Services business support resource has proven unworkable at times due to continuing levels of business support demands in Legal Services conflicting with seasonal peaks of demand in Democratic Services related to Education Appeals. In light of the seasonal peaks around the education appeals work, it is proposed that temporary support continue to be procured when required. The Nottingham Trent University student placement has again proven successful in this, its second year of operation. Further discussions are planned to ensure that the timing of this placement best reflects the business need.
5. The proposed revised staffing structure is attached at Appendix 2. The proposed revised staffing establishment for Democratic Services is 13.8 FTE posts with provision for an additional flexible resource budget to meet seasonal and peak demand, particularly relating to education admission appeals.

## **Other Options Considered**

6. To retain the existing structure but this would not enable the outcomes of this agreed review to be implemented to ensure the structure remains fit for purpose.

## **Reason for Recommendation**

7. The proposed revised structure will ensure that Democratic Services can continue to:
  - be appropriately staffed;
  - respond to the needs of the revised committee structure;
  - better respond to the changing landscape, available technological advances and the need to undertake business in different ways;
  - seek to maintain, where demand continues, its offer to external bodies, including the Office of the Police and Crime Commissioner, various academies for education appeals and other councils in relation to supporting the Nottinghamshire Police and Crime Panel and the City of Nottingham and Nottinghamshire Joint Economic Prosperity Committee.

## **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.

## **Financial Implications**

9. If the existing structure was fully staffed (including the apprenticeship post), the staffing costs including salary, NI and pensions contributions would be £542,140 a year (based on the most recent monthly costs). This does not include the additional contingency resource relating to education appeals which is likely to be in the region of £45-50,000 over the course of a full year (costs continue to be monitored in that respect and the estimate is based on the initial six months of operating this approach).
10. The proposed structure would incur staffing costs of £586,036 and this calculation is based on the following draft indicative grades, subject to formal job evaluation where required:-
  - i. Executive Officer to the Leader – Band D
  - ii. Research and Civic Support Officer – Grade 5
  - iii. Executive Assistant to the Opposition Group – Grade 5
  - iv. Education Appeals Manager – Band B

N.B. the PA to Committee Chairs post has been evaluated at Grade 4.



11. A contingency allocation of up to £73,894 will be sought from the Finance and Major Contracts Management Committee. This includes the costs of the difference between the existing and the proposed structure and £30,000 towards the additional resource relating to education appeals as outlined above in paragraph 9 (the remaining £15- £20,000 of the cost of the additional resource will be covered from within the existing Democratic Services budget).

### **Human Resources Implications**

12. The Human Resources implications are set out in the body of the report.

### **Trade Union Consultations**

13. These draft proposals will be shared with the trade unions and further discussions will be held as appropriate.

## **RECOMMENDATIONS**

- 1) That the revised staffing structure for Democratic Services, attached at Appendix 2, be approved.
- 2) That the revised staffing structure be reviewed after twelve months to ensure business needs are being appropriately met, with a report submitted to the Committee if that review determines that further changes are required.
- 3) To make a request to the Finance and Major Contracts Management Committee to approve a contingency allocation of £73,894.

**Jayne Francis-Ward**  
**Corporate Director, Resources**

**For any enquiries about this report please contact:**  
Keith Ford, Team Manager, Legal and Democratic Services

### **Constitutional Comments (SLB 23/04/2018)**

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

### **Financial Comments (SES 24/04/18)**

15. The financial implications are set out in the report

### **Human Resources Comments (GME 23/04/2018)**

16. The revised structure and new posts will be evaluated and, where necessary, recruited to in accordance with the agreed employment procedures of the Council.

## **Background Papers and Published Documents**

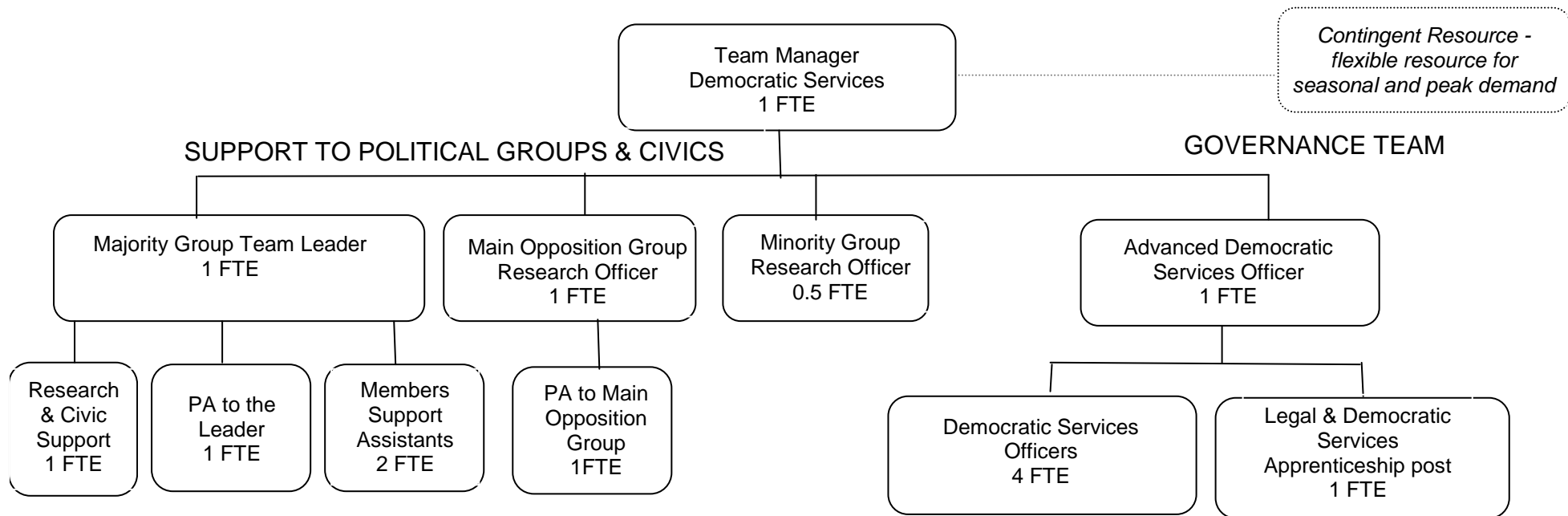
Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Report to Governance and Ethics Committee – 19 July 2017 and minutes of that meeting.

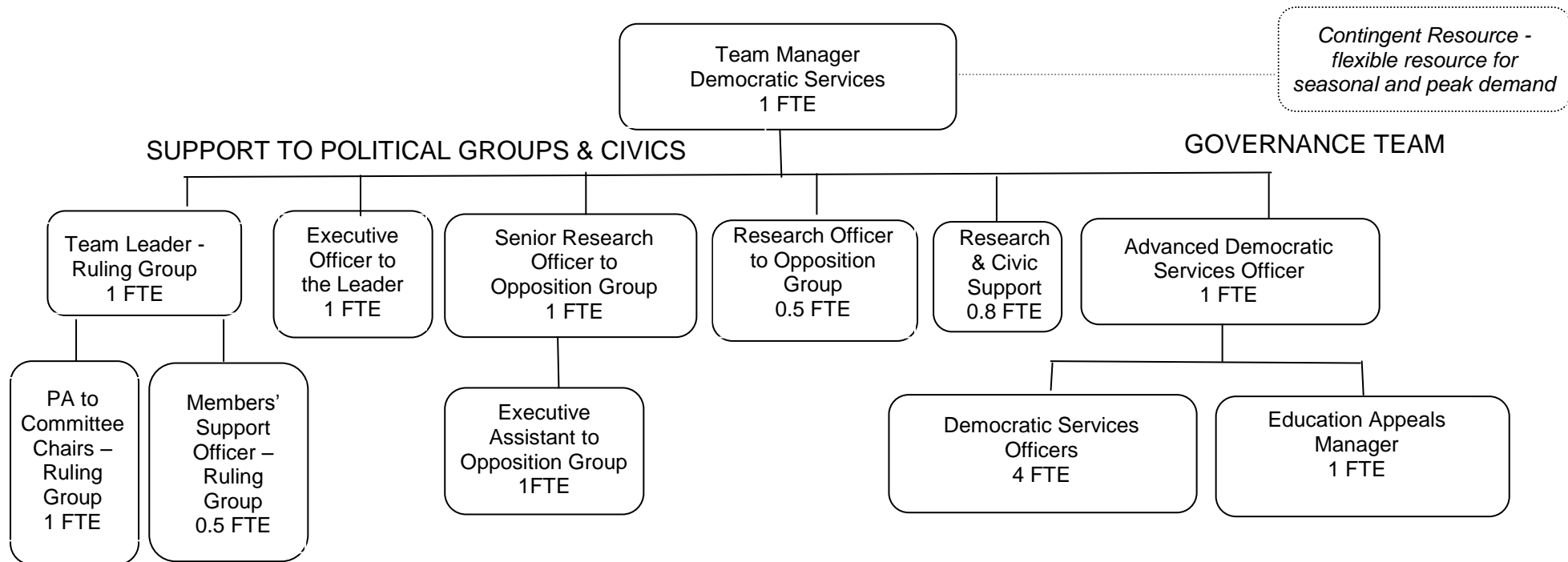
## **Electoral Division(s) and Member(s) Affected**

- All

## APPENDIX 1 - EXISTING STRUCTURE CHART



## APPENDIX 2 – PROPOSED STRUCTURE CHART





**2 May 2018****Agenda Item: 11****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:**

Keith Ford, Team Manager, Democratic Services Tel. 0115 9772590

E-mail: [keith.ford@nottsc.gov.uk](mailto:keith.ford@nottsc.gov.uk)

**Constitutional Comments (SLB)**

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

**Financial Comments (NS)**

There are no financial implications arising directly from this report.

**Background Papers**

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

None

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

All



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

<b><u>Report Title</u></b>	<b><u>Brief summary of agenda item</u></b>	<b><u>Lead Officer</u></b>	<b><u>Report Author</u></b>
<b>13 June 2018</b>			
Statement of Accounts 2017-18	A presentation on the main headlines from this year's Statement of Accounts	Nigel Stevenson	Glen Bicknell
Councillors Divisional Fund	Review of the processes underpinning the Fund.	Jayne Francis-Ward	Sarah Ashton
Annual Whistleblowing Report	Report on the Whistleblowing complaints received in the past year.	Jayne Francis-Ward	Simon Gill
Attendance at Outside Bodies	To review Members' attendance at outside bodies to which they have been appointed.	Jayne Francis-Ward	Sarah Ashton
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
Vacant Property Management – Internal Audit report	To consider the department's response to the findings of this internal audit report.	Adrian Smith	Derek Higton
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
Information Governance Improvement Programme Update	Six monthly update report (as agreed by the Committee on 13 December 2017)	Jayne Francis-Ward	Caroline Agnew
Statutory Officer's Annual Report 2017-18	To consider the Statutory Officer's Annual Report.	Rob Disney	Rob Disney

<b>Report Title</b>	<b>Brief summary of agenda item</b>	<b>Lead Officer</b>	<b>Report Author</b>
<b>25 July 2018</b>			
Revised approach to Internal Audit Planning	To consider a revised approach to the Internal Audit Plan, as endorsed by the Committee on 14 March 2018.	Nigel Stevenson	Rob Disney
Statement of Accounts 2017-18	To seek approval for this year's Statement of Accounts.	Nigel Stevenson	Glen Bicknell
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).	Anthony May	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	Anthony May	Caroline Agnew
<b>26 September 2018</b>			
Member Development and Training	Update report on Member Development and Training undertaken and planned.	Anthony May	Keith Ford
Petitions Scheme	To review the Council's Petitions Scheme	Anthony May	Sara Allmond
<b>6 November 2018</b>			
External Placements of Looked After Children and Young People	Outcomes of audit (to include specific update on off-contract spend as agreed by the Committee on 14 March 2018)	Rob Disney	Rob Disney / Laurence Jones / Jon Hawketts