

Governance and Ethics Committee

Wednesday, 30 November 2022 at 10:30

County Hall, West Bridgford, Nottingham, NG2 7QP

AGENDA

1	Minutes of last meeting held on 28 September 2022	3 - 6
2	Change to Membership To note the appointment of Councillor Nigel Turner to the Committee in place of Councillor Bethan Eddy	
3	Apologies for Absence	
4	Declarations of Interests by Members and Officers:- (see note below) (a) Disclosable Pecuniary Interests (b) Private Interests (pecuniary and non-pecuniary)	
5	Local Government Social Care Ombudsman Decisions August 2022 to October 2022_	7 - 66
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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 Kate Morris (Tel. 0115 804 4530) or a colleague in Democratic Services prior to the meeting.

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



Meeting GOVERNANCE AND ETHICS COMMITTEE

Date Wednesday 28 September 2022 (commencing at 10.30 am)

membership

COUNCILLORS

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

Richard Butler	Sue Saddington - Apologies
Bethan Eddy – Apologies	Helen-Ann Smith
Errol Henry JP – Apologies	Roger Upton - Apologies
Andy Meakin	Daniel Williamson
Michael Payne – Apologies	

SUBSTITUTE MEMBERS

Councillor Boyd Elliott for Councillor Bethan Eddy
Councillor Kate Foale for Councillor Michael Payne
Councillor Bruce Laughton for Councillor Sue Saddington
Councillor Eric Kerry for Councillor Roger Upton

OFFICERS IN ATTENDANCE

Richard Elston	Chief Executive's Department
Keith Ford	
Kaj Ghattaora	
Nigel Stevenson	
Marjorie Toward	

Nicola Peace	Adult Social Care and Public Health
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Robert Briggs	Children and Families
Peter McConnochie	
Zoe Miller	
Katie Warren	

1. MINUTES

The Minutes of the last meeting held on 21 July 2022, having been previously circulated, were confirmed and signed by the Chairman.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from:

- Councillor Beth Eddy - other reasons

- Councillor Errol Henry - other reasons
- Councillor Michael Payne - other reasons
- Councillor Sue Saddington - medical reasons
- Councillor Roger Upton - other reasons

3. DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

None.

4. UPDATE ON LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS (JUNE 2022 TO AUGUST 2022)

Members considered the report which covered decisions of the Local Government and Social Care Ombudsman (LGSCO) relating to the Council since the last update was presented in July 2022.

Zoe Miller, Group Manager - District Child Protection, Nicola Peace, Group Manager – Ageing Well (South – Hospitals) and Peter McConnochie, Service Director - Education, Learning and Inclusion, responded to Members' questions and comments about the four cases in which the LGSCO had found fault.

During discussions, Members requested a further update report on the ongoing communication improvements strategy within the Adult Social Care and Public Health department, within 4-6 months. It was also clarified that the issue of communications across the Council was also scheduled within the work programme of Overview Committee.

Members also requested that concerns about the Council being held accountable for the failings of any private care home in the County be raised with the LGSCO.

RESOLVED: 2022/036

- 1) That the findings of the Local Government and Social Care Ombudsman be noted and the lessons learned and actions taken in response to the findings welcomed.
- 2) That a further update report on the issue of communications within Adult Social Care and Public Health department be submitted to a future meeting of this Committee within 4-6 months.
- 3) That Members' concerns about the Council's accountability for the failings of private care homes be raised with the LGSCO.

5. LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN ANNUAL REVIEW LETTER 2021

Members considered the report which shared the contents of the most recent Annual Review Letter.

RESOLVED: 2022/037

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

6. FINANCIAL REGULATIONS WAIVERS 2021-22

Members considered the report which summarised requests to waive Financial Regulations received in the previous financial year.

RESOLVED: 2022/038

That the detail contained in the report Financial Regulations Waivers 2021/22 and the continued progress in keeping waivers to a minimum be supported.

7. UPDATE ON USE OF RESOURCES BY COUNCILLORS

Members considered the report which provided the latest annual update on use of resources by Councillors and their support staff.

RESOLVED: 2022/039

- 1) That the relevant resources expenditure for the period March 2021 to April 2022 as detailed in Appendix B & C of the report, be noted.
- 2) That no further information or actions were required on specific items of expenditure.

8. ATTENDANCE AT KEY NATIONAL CONFERENCES

Members considered the report which sought an ongoing approval to send relevant Members and officers to specific key national conferences held on an annual basis.

RESOLVED: 2022/040

- 1) That a standing approval be granted for the following conference attendance by Members, together with any necessary travel and accommodation arrangements:

Conference	Relevant Member Roles
LGA Annual Conference and Exhibition	Council Leader Council Deputy Leader Leader of the Main Minority Group
CCN Annual Conference	Council Leader Council Deputy Leader Leader of the Main Minority Group
NCASC Annual Conference	Cabinet Member for Adult Social Care and Public Health (ASCPH) Deputy Cabinet Member for ASCPH Cabinet Member for Children and Young People (CYP) Deputy Cabinet Member for CYP
LGA / ADPH Annual Public Health Conference	Cabinet Member for Adult Social Care and Public Health (ASCPH) Deputy Cabinet Member for ASCPH Chairman of Health and Wellbeing Board

- 2) That an updated approval, where relevant, be sought at any such point when the cost of places at any of the above events increases beyond inflationary increases

or the political composition of the Council changes in a way that may affect the allocation of places at these events.

9. RUSHCLIFFE COMMUNITY GOVERNANCE REVIEW – UPPER SAXONDALE (STAGE 2)

Members considered the report which shared the final draft recommendations relating to Rushcliffe Borough Council's Community Governance Review and sought approval for the Council's response to the consultation.

RESOLVED: 2022/041

That the Council's response to Rushcliffe Borough Council on the final draft proposals of the Upper Saxondale Community Governance Review, included as Appendix B to the Committee report, be approved.

10. WORK PROGRAMME

Members requested that the requested update report on the communications improvement strategy within Adult Social Care and Public Health department be scheduled within the work programme.

RESOLVED: 2022/042

That the work programme be agreed subject to the additional item requested.

The meeting closed at 10.38 am

CHAIRMAN

30 November 2022

Agenda Item: 5

REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE AND EMPLOYEES

LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS AUGUST 2022 TO OCTOBER 2022

Purpose of the Report

1. To inform the Committee about Local Government & Social Care Ombudsman's (LGSCO) decisions relating to the Council since the last report to Committee completed 22nd August 2022

Information

2. Members have asked to see the outcome of Ombudsman investigations regularly and promptly after the decision notice has been received. This report therefore gives details of all the decisions received since the last report to this Committee which was held on 28th September 2022.
3. The LGSCO provides a free, independent, and impartial service to members of the public. It looks at complaints about Councils and other organisations. It only looks at complaints when they have first been considered by the Council and the complainant remains dissatisfied. The LGSCO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the Ombudsman finds that something has gone wrong, such as poor service, a service failure, delay or bad advice and that a person has suffered as a result, the LGSCO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGSCO publishes its decisions on its website (www.lgo.org.uk/). The decisions are anonymous, but the website can be searched by Council name or subject area.
5. A total of eight decisions relating to the actions of this Council have been made by the Ombudsman in this period. Appendix A to this report summarises the decisions made in each case for ease of reference and Appendix B provides the full details of each decision.
6. Following initial enquiries into three cases, the LGSCO decided not to continue with any further investigation for the reasons given in Appendix A
7. Full investigations were undertaken into five complaints, although one is an update of a previous Ombudsman decision. Appendix A provides a summary of the outcomes of the

investigations. Where fault was found, the table shows the reasons for the failures and the recommendations made. If a financial remedy was made the total amount paid or reimbursed is listed separately.

8. There were five complaints where fault was found. The first complaint is from Adults Social Care department, about how the Council dealt with Mr J's discharge, managed his care and didn't consider the needs of his wife as a carer. The Council has agreed to apologise to Mr X and make a financial remedy for the distress. The Council has also reviewed its procedure and all staff are aware of the need to involve the family in considering the needs of the carer as well as the need to regularly review the needs of the service user and update care plans.
9. The second complaint is also in Adults Social Care. This complaint was on the last report as fault found however the Ombudsman revised its final decision with an extra point. The more recent note from the Ombudsman stated that the Council was at fault when it failed to provide Mr X with affordable options for his parents, Mr and Mrs P's, care placements. As a result, Mr X was denied the option to choose between a care home with no top up fee and a more affordable one. It should repay, or write off, the top ups Mr X has paid or owes and make service improvements. This is in the process of being completed and a clear communication has been sent to staff of the importance to offer alternative options.
10. The third complaint is in Children and families department. The complaint is about the Council not ensuring Ms X has access to a childcare provider, a nursery, a free place and been transparent with invoices. Ms X says that she has spent time seeking clarity and suffered distress due to spending large sums on childcare she expected to be free. The Ombudsman concluded that the Council was at fault because it did not meet its statutory duties to ensure Ms X had access to a free place and transparent invoicing at the nursery. This is a public report to be published on the Ombudsman website 16th November. I refer you to Appendix B which is a report detailing what occurred and the steps being taken for the Council to consider. The Council has to confirm to the Ombudsman that they have reviewed this case and the steps being taken. The Council has also agreed to reimburse half of the nursery costs and pay Ms X 2 x £100 payments for distress and inconvenience.
11. The fourth complaint is in Adults Social Care. The complaint is about the Council not ensuring Mr X had adequate care support and left him in unsuitable accommodation. No fault was found in the Council's decision making on Mr X's care. But fault was found in the Council's delay in securing Mr X new accommodation. As a result, the Council is making a payment of £300 to Mr X to recognise this and the Housing with Care and Support Team have revised their Operational guidance and the requirements for accurate note taking. It is worth noting that the Council sourced several options and, after a lot of work by the Council sourcing these, Mr X actually agreed to the first option after declining all the others the Council were willing to offer and this does best suit his needs. He is happy there according to the recent case note.
12. The fifth one is in Children and Families department. The complaint is about delays in the assessment process for Miss X's daughter, Y's, Education, Health, and Care (EHC) plan. Also, there was insufficient content in the plan nor was alternative provision provided. This caused distress and some financial hardship for Miss X. To remedy the fault, the Council has agreed

to apologise to Y and Miss X for the delay in the EHC process and failing to review the alternative education provision and pay Miss X £1625 for not ensuring Y received appropriate education for two academic terms and the delay in the EHC process.

Statutory and Policy Implications

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

Data Protection and Information Governance

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

Financial Implications

15. The details of the financial payments are set out in Appendix A. £800 will come from Adults Social Care budget and £1825 from Childrens Social Care budget with more once the refund amount is finalised with the nursery for the third complaint above.

Implications for Service Users

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

RECOMMENDATION/S

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

Marjorie Toward

Monitoring Officer and Service Director – Customers, Governance and Employees

For any enquiries about this report please contact:

Richard Elston Team Manager – Complaints and Information Team

Constitutional Comments (HD (Standing))

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

Financial Comments (SES 08/11/2022)

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

19. The details of the financial payments are set out in Appendix A. £800 will come from Adults Social Care budget and £1,825 from Childrens Social Care budget with more once the refund amount is finalised with the nursery for the third complaint above.

Background Papers and Published Documents

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

- None

Electoral Division(s) and Member(s) Affected

- All

APPENDIX A

DECISIONS NOT TO INVESTIGATE FURTHER

DATE	LGO REF	PROCEDURE	COMPLAINT SUMMARY	REASON FOR DECISION
24.08.22	22005371	Adults	Complaint about how the Council calculated the financial assessment for the Mother when assessing care	No investigation as case was outside timescales of 12 months since last Council response so Ombudsman declined to investigate
29.09.22	21009745	Corporate	Mr X complained the Council threatened to remove an obstruction he placed outside his property to prevent vehicles expelling exhaust fumes near his home.	Council acted within its powers and no evidence of any injustice caused so not taken further
27.10.22	22009327	Corporate	Complaint that the Council hasn't pruned a tree outside their house	Not enough evidence to justify an investigation or any injustice

THERE WERE NO FULL INVESTIGATIONS WHERE NO FAULT FOUND

FULL INVESTIGATIONS WHERE FAULT FOUND

DATE	LGO REF ANNEX PAGE NO	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY	STATUS OF AGREED ACTION
15.09.22	21009745	Adults	Complaint about how the Council cared and treated Ms X's husband when discharged from hospital and not considering Ms X's needs as a carer	The Council was at fault for I found fault by the Trust and the Council with regards to Mr J's discharge planning and the suitability of the care package provided. Also fault found with	The Council agreed to the Ombudsman's recommendation to apologise and pay financial remedy to recognise the distress.	£2 x £250	Apology letter sent October 2022 and payment has been received

				how they didn't compete a full needs assessment and also how they didn't consider Ms X's needs.			
19.10.22	21014715	Adults	Complaint that the care provided to Mr X's parents, Mr and Mrs P, after the Council arranged for them to move into residential care, did not meet their needs.	The Council was at fault when it failed to provide Mr X with affordable options for his parents, Mr and Mrs P's, care placements. As a result, Mr X was denied the option to choose between a care home with no top up fee and a more affordable one.. There was no fault in how the Council decided to take the value of the Mr and Mrs P's property into account when deciding what they could afford to pay for their care. There was also no fault in the support provided to Mrs P before she was admitted to the Care Home,	The Council has agreed to repay, or write off, the top ups Mr X has paid or owes and make service improvements. This is on top of the previous decision and actions reported at previous meeting where a clear communication was sent to the provider around informing next of kin of incidents.	Write off top up fees.	All previous actions carried out as reported at last G&E committee

				its actions in relation to falls experienced by Mr and Mrs P or the information in their care plans about their mobility			
16.09.22	21016061	Childrens	Complaint that the Council has not ensured her childcare provider, a nursery, issues clear and transparent invoices. And, it has not ensured she has fair access to a free place.	Council found to be at fault because it did not meet its statutory duties to ensure Ms X had access to a free place and transparent invoicing at the nursery	The Council agreed to apologise and pay the recommended amounts for distress and time refund Ms X 50% of the additional charges she has paid from January 2020 to the date Ms X's daughter left the nursery in February 2022 and review the nursery's policies and practices, taking action to ensure it complies with the Council's provider agreement in respect of fees and invoicing. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this.	2 x £100 to be paid and 50% of fees during that time to be reimbursed	Actions will be completed and confirmed to the Ombudsman by mid December 2022

					Appendix B accompanying this report outlines the details.		
05.10.22	21017952	Adults	Complaint about the Council not ensuring Mr X had adequate care support and left him in unsuitable accommodation	No fault in the Council's decision making on Mr X's care. But fault found in the Council's delay in securing Mr X new accommodation.	The Council recognise the distress and time and uncertainty	£300 for distress and uncertainty	Apology letter has been sent and payment sent end of October 2022
30.09.22	22001977	Children	Miss X complained about delays in the assessment process for her daughter, Y's, Education, Health and Care (EHC) plan. Miss X also complained the Council has not provided enough alternative education while Y could not attend school	There was fault in the Council's delay in the EHC process and the Council has not provided sufficient alternative education or reviewed the education offer for Y	Apologise to Y and Miss X for the delay in the EHC process and failing to review the alternative education provision. • Pay Miss X for not ensuring Y received appropriate education for two academic terms and the delay in the EHC process. This money should be used to benefit Y.	£1625 for not ensuring Y received appropriate education for two academic terms and the delay in the EHC process	Apology letter sent and payment instructed end of October, awaiting confirmation it has been received

15 September 2022

Complaint reference:
21 009 745

Complaint against:
Nottinghamshire County Council
Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust



The Ombudsmen's final decision

Summary: We uphold Mrs J's complaint about the care and treatment provided to her husband by the Council and the Trust. We found fault with the handling of Mr J's discharge, the management of his care and needs and consideration of Mrs J's needs as a carer. This fault caused Mr and Mrs J significant distress. The Council and Trust will apologise to Mr and Mrs J and pay a financial remedy. They will also take action to prevent similar problems occurring in the future.

The complaint

1. Mrs J complains about the care and treatment her husband, Mr J, received from Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust (the Trust) while admitted to hospital in February 2021. Specifically, she complains about inadequate management of his fluids, constipation and pressure sores while he was an inpatient.
2. Mrs J is also unhappy with the handling of her husband's discharge by the Trust and Nottinghamshire County Council (the Council) between February and March 2021. Mrs J complains that the Trust failed to ensure Mr J was medically fit for discharge. She also complains that the Council and Trust did not properly consult her or Mr J about the discharge arrangements. She says the Trust and Council did not properly assess Mr J's capacity to make decisions about his care. Further, Mrs J says the Council and Trust did not properly consider her own health problems and ability to care for Mr J.
3. Mrs J is dissatisfied with the handling of her complaint by both organisations, which she says was inaccurate, dismissive and did not properly address the concerns she raised.
4. Mrs J says that the handling of Mr J's inpatient care and his discharge caused his health to deteriorate significantly, to the point he had to move into a care home permanently. She says if the discharge had been handled differently, and more support put in place, Mr J could have returned home for longer and enjoyed a better quality of life.
5. Mrs J would like the Trust and Council to make systemic improvements to ensure discharge procedures are followed correctly and adequate assessment of patient and family needs take place as part of discharge planning.

The Ombudsmen's role and powers

6. 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*)
7. 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*).
8. If it has, they may suggest a remedy. Our recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.
9. If the Ombudsmen are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, they can complete their investigation and issue a decision statement. (*Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

10. I discussed the complaint with Mrs J and considered the information she provided. I reviewed information provided by the Council and the Trust, including Mr J's clinical records, his care assessments and his Community Care Officer's notes. In addition, I took account of relevant guidance and legislation. I have carefully considered all the written and oral evidence submitted to us, even if we do not mention specific pieces of evidence within the decision statement.
11. I shared this draft decision with Mrs J, the Council and the Trust and they had an opportunity to comment. I have carefully considered the comments I received.

What I found

Key legislation and guidance

NHS Quick Guide: Discharge to Assess

12. Definition of 'Discharge to Assess – *'Where people who are clinically optimised and do not require an acute bed, but may still require care services, are provided with short term funded support to be discharged to their own home (where appropriate) or another community setting. Assessment for longer-term care and support is then undertaken in the most appropriate setting and at the right time for the person.*
13. Principles for Discharge to Assess model include:
 - *'Supporting people to go home should be the default pathway, with alternate pathways for people who cannot go straight home.*
 - *Putting people and their families at the centre of decisions, respecting their knowledge and opinions and working alongside them to get the best possible outcome.*
 - *Take steps to understand both the perspectives of the patient and their carers... [and] their needs.'*

Hospital Discharge

14. Department of Health guidance: *Ready to go? Planning the discharge and the transfer of patients from hospital and intermediate care (March 2010)* (the 'Ready to go guidance') is the core guidance around hospital discharge. It contains ten key steps for staff to follow during discharge planning, including:
 - start planning for discharge or transfer before or on admission;
 - identify whether the patient has simple or complex discharge and transfer planning needs and involve the patient and carer in your decision;
 - involve patients and carers so that they can make informed decisions and choices that deliver a personalised care pathway and maximise their independence.
 - Review the clinical management plan with the patient each day, take any necessary action and update the progress towards the discharge or transfer date.
 - Use a discharge checklist 24-48 hours prior to transfer.'
15. Chapter 3: Involving patients and carers notes '*Recognise the role of the carer from the start of the discharge or transfer process to ensure that all states of the care pathway are well managed... Patients and their carers may have different needs, so do not assume that a carer will necessarily be able or willing to continue in a caring role... Carers have a right to an assessment... the results of this assessment may mean more care for the person they are caring for, care delivered in a different way or services just for the carer themselves.*

Medically fit for discharge

16. Department of Health guidance: Definitions – *Medical Stability and 'Safe to Transfer'* (2003) (the 'Safe to transfer guidance') gives guidance on when a patient can be safely considered to be 'medically fit for discharge'. This lists three key criteria for making this decision and stresses professionals should address them at the same time, if possible. According to the protocol, a person is considered to be safe for discharge when:
 - a clinical decision has been made that the patient is ready for transfer;
 - a multidisciplinary team decision has been made that the patient is ready for transfer; and,
 - the patient is safe to discharge/transfer.
17. A patient can be defined as clinically or medically stable if tests (such as blood tests and observations) are considered to be within the normal range for the patient. A patient is 'fit for discharge' when all relevant physiological, social, functional, and psychological factors have been taken into account. This can require a multidisciplinary assessment.

Mental Capacity Act

18. The Mental Capacity Act 2005 (the MCA) applies to people who may lack mental capacity to make certain decisions. Section 42 of the MCA provides for a Code of Practice (the Code) which sets out steps organisations should take when considering whether someone lacks mental capacity.
19. Both the MCA and the Code start by presuming individuals have capacity unless there is proof to the contrary. The Code says all practicable steps should be taken to support individuals to make their own decisions before concluding someone

lacks capacity. The Code says people who make unwise decisions should not automatically be treated as not being able to make decisions. Someone can have capacity and still make unwise decisions.

Care and Support Statutory Guidance - Care Act 2014

20. Department of Health guidance for the Care Act 2014: '*Care and Support Statutory Guidance 2014*' says that where an individual provides or intends to provide care for another adult and it appears the carer may need support, councils must carry out a carer's assessment. Carers' assessments must seek to find out not only the carer's needs for support, but also the sustainability of the caring role itself. Factored into this must be a consideration of whether the carer is, and will continue to be, able and willing to care for the adult needing care.

What happened

21. Mr J was living at home with Mrs J. He was able to move around his home with the aid of a walking frame and was independent with toileting, dressing and personal hygiene.
22. On 19 February 2021, Mr J tripped over at home. He was admitted to Bassetlaw Hospital with a fractured shoulder.
23. The treating doctors placed Mr J's arm in a collar and cuff. This reduced Mr J's mobility and meant he required assistance from nurses for his personal hygiene needs, to reposition himself and for transfers.
24. The clinical team assessed Mr J as being 'Amber' risk for pressure ulcers. This meant that Mr J needed to be repositioned at least every four hours throughout the day and night.
25. On 22 February, the Trust completed a referral to the Integrated Discharge Team, a multi-disciplinary team consisting of health and social care professionals. The referral documented Mr J's wish to be discharged home.
26. On 23 February, the clinical team decided Mr J was medically fit for discharge. He was allocated to a Community Care Officer (the Officer) for discharge planning. The Officer planned to discharge Mr J home with visits from two care workers, four times a day, while he recovered.
27. Over the next few days, the Officer spoke with Mrs J about the discharge arrangements. Mrs J raised multiple concerns about managing Mr J's needs at home. This included concerns about his mobility and toileting capabilities.
28. An Occupational Therapist (OT) assessed Mr J on 25 February 2021. The OT identified that Mr J required a Rotunda support frame for transfers and felt further assessments were required.
29. On 26 February, the OT visited Mr and Mrs J's home to assess it. Mrs J raised further concerns and asked about the possibility of a short-term rehabilitation placement. The OT explained that rehabilitation was not an option until Mr J's arm healed sufficiently for him to use it.
30. Following Mrs J's concerns, both the OT and the Integrated Discharge Team spoke to the ward. The records suggest there was some confusion as to Mr J's continence needs. The OT noted that a member of ward staff told her Mr J could be incontinent at night. However, the Integrated Discharge Team recorded being told that Mr J asked for the toilet. At the OT's request, the Officer referred Mr J to the Discharge to Assess pathway so he could be considered for therapy once he was fit enough.

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31. From 27 February onwards, Mr J started to have more frequent incidents of urinary incontinence, including overnight. Mr J had been constipated and was prescribed laxatives, following which he began to have some faecal incontinence episodes too.
 32. Mr J's sacrum, the skin area at base of his spine, had been becoming increasingly red and sore. The area was already vulnerable from a previous pressure ulcer. On 28 February, this developed into an open moisture lesion. Mr J was increased from 'Amber' to 'Red' risk. This meant he needed to be repositioned every two hours throughout the day and night. Mr J's discharge was then briefly delayed due to a raised temperature.
 33. On 3 March 2021, Mr J was discharged home. Mrs J, who had been unable to visit him in hospital due to COVID-19 restrictions, was alarmed by his deterioration. She says he arrived home with faeces running down his legs and an open ulcer on his sacrum.
 34. As planned, Mr J received visits from two care workers four times a day, with Mrs J supporting him between visits and overnight. Mr J's incontinence continued, both daytime and overnight, and by 8 March, his moisture lesion had significantly deteriorated.
 35. The Officer spoke with Mrs J on three occasions between 8 and 16 March 2021. His notes record that he intended to arrange a visit with an OT to review Mr J's care package, however this was not successfully arranged.
 36. On 22 March, Mrs J became unwell and was admitted to hospital. The Council found an urgent short-term care in a care home for Mr J, while Mrs J was in hospital.
 37. On 24 March 2021, the Officer visited Mr J in the care home to assess his mental capacity. He felt Mr J understood where he was and why he was there. As the Officer was satisfied Mr J had the capacity to consent to his short-term placement in the care home, he did not complete a formal capacity assessment.
 38. On 29 March 2021, following Mrs J's discharge from hospital, the Officer phoned her to discuss Mr J's proposed return home on 31 March. Mrs J said she still felt very unwell. She said she was concerned she would not be able to cope with Mr J's night-time care needs and ongoing incontinence. The Officer suggested a 24-hour response service as an option.
 39. The Officer phoned the care home to ask about Mr J's current needs. The manager confirmed that Mr J needed repositioning every two hours as he had moisture damage. The manager also explained that Mr J was doubly incontinent and regularly needed checking and changing overnight.
 40. On 31 March 2021, the Officer visited Mr J to discuss his care needs. Mr J confirmed he had been experiencing regular incontinence overnight which required the Care Home staff to change his bed sheets. Mr J also confirmed that he had been regularly incontinent, including overnight, when he was at home. Mr J understood his needs could be better met in the care home and agreed to remain in the care home for a longer period.
 41. In early April 2021, Mr J's shoulder had healed enough to start physiotherapy. His mobility and continence also began to improve. By mid-May, discussions were taking place about steps for Mr J to return home. In June 2021, Mr J had a fall. Following this, his mobility and health deteriorated again and he had further falls.

Mr J's needs increased again, including overnight care, continence care and regular repositioning due to his recurring sacrum sore.

42. On 23 September 2021, a social worker visited Mr and Mrs J at the care home to discuss his long-term care. She recommended that remaining in the care home long term was the best option. Mr J still wished to return home and was upset, however he understood the reasons and agree to stay in residential care permanently.

Analysis

Mr J's inpatient care

Fluid management

43. Mrs J complains the Trust did not manage Mr J's fluid intake properly when he was an inpatient. She says Mr J was not drinking enough and she was not allowed to drop off Mr J's preferred energy drink due to COVID-19 restrictions. She believes Mr J became constipated as a result.
44. The clinical records document Mr J as having either 'normal' or 'small' food and fluid intake, which varied each day. There were some days where he needed encouragement to eat and drink more. He consistently passed urine at least every six hours.
45. A fluid balance chart of Mr J's intake and output was only recorded on 20 February 2021. Therefore, there are no detailed records of Mr J's daily fluid intake available for review. However, it is only necessary to record a patient's fluid balance if they are at considered to be at risk of malnutrition or dehydration. Given that Mr J was taking fluids, albeit sometimes on the low side, and passing urine regularly, it would not have been necessary for the Trust to monitor Mr J's fluid intake in detail.
46. On 28 February 2021, Mr J's clinical records contain the note of a conversation between Mrs J and the hospital ward. Mrs J told the ward that Mr J does not like tea and prefers an energy drink or orange. The nurse replied that the hospital did not have any energy drink to offer Mr J, but the family could bring him some in.
47. As part of my enquiries, I asked the Trust to clarify the COVID-19 visiting restrictions in place at the time. The Trust said although visiting restrictions were in place at the time, family could leave items at the ward doors and this option was offered to Mrs J. I acknowledge Mrs J did not think this was allowed and it seems likely there a misunderstanding developed surrounding this. However, I am satisfied from the records that there was an option for Mr J's preferred energy drink to be supplied by Mr J's family. Overall, I have not found any fault with the way Mr J's fluid intake was managed.

Constipation management

48. Linked to Mrs J's concerns about fluid management are her further concerns about the handling of Mr J's constipation. Mrs J considers that a lack of fluids caused Mr J to become constipated. In turn, she says this was treated too aggressively with laxatives, causing faecal incontinence and loss of dignity.
49. The clinical records show that, following his admission to hospital, Mr J did not open his bowels for almost a week. His constipation only began to resolve when the clinical team prescribed laxatives. Even then, Mr J remained constipated on discharge. I have not seen any evidence to confirm that Mr J's constipation was caused solely by a reduced fluid intake. While lack of fluids can contribute to

constipation, Mr J was also mostly immobile and on opioid-based pain relief medication. These can also cause constipation. Mr J's clinical records suggest his pain medication was a primary cause of his constipation. Laxatives were required to help counteract this side effect.

50. Long-term constipation can have serious complications if left untreated. Mr J was constipated, and the Trust treated this with laxatives in line with the NICE Guidance for Constipation in Adults (September 2021). The guidance states that short-term constipation in adults who have opioid-induced constipation should be offered osmotic (stool softening) and stimulant laxatives. The Trust prescribed Mr J the appropriate laxatives. Mr J did suffer some episodes of faecal incontinence and the laxatives likely contributed to this. While this would have been unpleasant for Mr J, the use of laxatives was an important part of the treatment for managing Mr J's constipation. I have not found any fault with the way Mr J's constipation was managed. I have addressed Mrs J's concerns about Mr J's arrival home below.

Pressure area management

51. Mrs J complains that the hospital left Mr J in bed for long periods, which led to him developing an open ulcer at the base of his spine.
52. While admitted to hospital, Mr J developed a moisture lesion on his sacral area. Moisture lesions are the breakdown of the skin where an area has prolonged exposure to moisture, for example from urinary and/or faecal incontinence. Areas, such as the patient's sacrum, are particularly vulnerable to moisture damage. Moisture lesions can be very painful.
53. The clinical records show Trust staff assessed Mr J's pressure areas when he was admitted and found his skin intact. The Trust assessed Mr J via its Pressure Ulcer Prevention and Management Care Plan. He was assessed as being 'Amber' risk of pressure ulcers due to his significantly reduced mobility and need for assistance to move and reposition. Therefore, according to the Trust's records, Mr J required a minimum of four-hourly repositioning while in bed and two-hourly while seated in a chair. Mr J's pressure areas should also have been checked three times a day.
54. On 25 February 2021, Mr J's clinical records show redness was starting to form on his buttocks. A barrier cream was appropriately applied multiple times throughout his admission. Despite this, Mr J's skin continued to deteriorate and his sacral area ultimately broke open into a moisture lesion on 28 February. While action can and should be taken to reduce the risk of pressure ulcers, the NHS guidance for pressure ulcers explains that it can be difficult to completely prevent them.
55. At this point, Mr J was appropriately increased to 'Red' risk of pressure ulcers. This was in line with the Trust's criteria for patients '*spending all or majority of time in bed or chair with moisture lesions in sacral area*', Mr J now required minimum two-hourly repositioning while in bed.
56. Overall, Mr J was repositioned as per the schedule for his risk rating. The records show that he regularly moved from his bed to a chair most days. He also had three visits from a physiotherapist to assess his mobility, which involved helping him move around. Skin checks were also completed three times a day. For the majority of Mr J's admission, his pressure area management and treatment was appropriate.

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57. However, I note two incidents where Mr J was not moved for significant periods of time. On 25 February 2021, only one daily skin check is recorded. There is also no record of him being repositioned overnight between midnight and 8am. Mr J was 'Amber' risk at this point and should have been repositioned at least every four hours while in bed. This placed Mr J at a greater risk of developing a pressure ulcer.
58. Further, on 2 March 2021, the records show that Mr J was only repositioned once between 9/10am and 6pm, which was to use the toilet. At this point, Mr J had an open moisture lesion and was 'Red' risk, meaning he should have been repositioning every two hours at the minimum while in bed. He was sat in a chair for this period. The seating repositioning regime is not completed for this day but, again, would have been two hourly repositioning as a minimum. The next day's records placed Mr J on to one hourly repositioning in a chair. This is fault. The failure to reposition Mr J regularly increased the risk of his moisture lesion deteriorating further.

Discharge process

Discharge - Medical fitness for discharge

59. Mrs J complains that the Trust failed to ensure that Mr J was medically fit for discharge. She says he arrived home with an untreated urinary tract infection (UTI), an open ulcer at the base of his spine and faeces running down his legs.
60. The Trust tested Mr J's urine while he was admitted to hospital and prescribed a course of oral antibiotics to treat his UTI. I have found no evidence to suggest that he was discharged with an untreated UTI.
61. As I have discussed above, Mr J's overall pressure care was adequate, aside from two occasions. Mr J had multiple factors increasing his risk of developing a pressure area. He had previous skin damage to the area, reduced mobility due to his fracture and had become frequently incontinent. While it would have been unpleasant for Mr J, it is not always possible to avoid moisture lesions forming. The evidence shows that Mr J had previously developed an ulcer in this area and this has continued to be an ongoing issue for him.
62. Mr J was assessed as medically fit for discharge as he no longer required treatment in hospital and his conditions could be managed in the community. I have not found fault with this decision.
63. However, while Mr J was medically ready to leave hospital, I do not consider that he was discharged home with adequate care in place to meet his needs. I will address this point in further detail below.
64. Turning to Mr J's arrival home, Mr J was continent, independent with his personal hygiene and mobile with a walker prior to his fall. Mrs J was unable to visit Mr J during his admission to hospital due to COVID-19 visiting restrictions. Therefore, it is understandable that Mrs J was shocked by the rapid change in Mr J's condition when he arrived home. However, I have not seen any evidence to suggest that Mr J's condition deteriorated directly as a result of poor inpatient care. Instead, the impact of his shoulder injury and UTI appears to have been the main reasons.
65. I have reviewed Mr J's clinical records regarding his personal care, which are not detailed on this point. However, Mr J is recorded as receiving support with his personal hygiene multiple times a day, due to his reduced mobility and sometimes

incontinence. On 3 March 2021, the day of Mr J's discharge, he is recorded as having received personal hygiene support in the morning and afternoon.

66. Mrs J was understandably upset to see Mr J arrive home this way. However, I am satisfied, on the balance of probabilities, that Mr J was supported with his personal hygiene prior to transfer and he likely suffered faecal incontinence enroute. Therefore, I have not found fault on this point.

Discharge - Consultation prior to discharge

67. Mrs J complains she was not properly consulted about Mr J's discharge. She says the Officer was dismissive of her concerns and instead told her what was going to happen without taking her views into account. Mrs J said she felt '*bullied*' into accepting a situation she was unhappy with.
68. Mrs J also feels that Mr J was simply asked if he wished to return home but says there was no proper discussion with him about other options and the implications of returning home with his current level of care needs.
69. Mrs J asked several times about whether Mr J could go to a short-term rehabilitation placement instead of returning straight home. The term '*rehabilitation*' is sometimes used to describe a particular type of service designed to help a person regain or re-learn some capabilities where these capabilities have been lost due to illness or disease. Rehabilitation services can include provisions that help people attain independence and remain or return to their home.
70. As the OT explained to Mrs J during the home visit, Mr J was unable to participate in rehabilitation therapy at the point of discharge as he was unable to use his arm. Therapy was not an option for around six weeks, until the fracture had started to heal, and Mr J's pain had decreased.
71. However, while it is correct that Mr J would not have been suitable for a rehabilitation placement at the time, other short term residential care placements (such as respite care) would have been available as an option.
72. According to the OT's notes, Mrs J asked the OT about Mr J's continence overnight. The OT spoke to the ward, who confirmed Mr J could be incontinent at night. It is recorded that the ward sister agreed to phone Mrs J to discuss this with her. There is no record to confirm this call happened.
73. The Council's electronic case notes contain multiple records of the Officer responding to Mrs J's concerns by simply saying that Mr J wished to return home and he could not go against Mr J's wishes as he had the capacity to decide.
74. It is correct that Mr J's wishes needed to be considered and respected. However, Mrs J's views, as a family member and a carer, also needed to be taken into account. Mrs J would be caring for Mr J between care visits and overnight. The Discharge to Assess guidance and the '*Ready to go?*' guidance, as quoted above, both state that the patient *and their family/carers* need to be full involved in the process. There is no evidence of the Officer having any meaningful conversation about Mr and Mrs J's conflicting views. I have found that Mrs J's concerns about discharge were not given adequate weight by the Officer. This would have been frustrating and worrying for Mrs J.
75. Further, I am not satisfied that Mr J was properly consulted about his discharge options. On 22 February 2021, the Trust completed a referral to the Integrated Discharge Team (IDT). The content of this document was then used by the Officer as the primary guidance for planning Mr J's discharge. The IDT referral

simply stated that Mr J wished to go home. No further detail is given. I have reviewed the Trust's records and the Council's records, including the electronic case notes and I can see no evidence of further discussion, by anyone, with Mr J about his discharge.

76. On 23 February 2021, the Officer spoke to Mrs J on the phone about the discharge arrangements. Mrs J was concerned about Mr J's reduced mobility. She asked whether Mr J could be discharged to a rehabilitation centre instead, for a few weeks, to recover his mobility before returning home. According to the case notes, the Officer replied that Mr J had capacity to decide to return home and he could not go against Mr J's wishes. Mrs J raised concerns about Mr J's capacity to decide to return home and asked whether other options and implications of returning home in his current state had been properly discussed with him. The notes record the Officer's reply that he would be *'more than happy to visit [Mr J] on the ward and ask him where he would like to be discharged to'*. There is no evidence this happened. I have seen nothing to suggest the Officer had any direct contact, in person or by telephone, with Mr J prior to his discharge.
77. I have seen no evidence of a discussion with Mr J about what care options may be available, what his care needs when returning home may be and the potential implications of returning home, for example, without overnight care. Further, I have found nothing to suggest Mr J was asked for his views on Mrs J's concerns.
78. Mr J's care needs changed significantly between the referral being completed and his discharge. By his discharge on 3 March 2021, Mr J had developed an open moisture lesion which required frequent repositioning and became increasingly incontinent. I have seen no evidence that the increase in Mr J's care needs and the implications of this on his discharge planning was discussed with him.
79. In response to Mrs J's complaint, the Council's position has consistently been that Mr J had capacity to make decisions about his discharge and wished to return home, therefore it was following his wishes. However, I am not satisfied that Mr J was properly consulted about his discharge arrangements. This is fault. This is not inline with the *'Ready to go?' guidance which includes involving 'patients and carers so that they can make informed decision and choices...'* The failure to provide Mr J with adequate information would have impacted on his ability to make an informed decision about his discharge arrangements.

Discharge - Mr J's mental capacity

80. Linked to the above complaint, Mrs J felt that Mr J did not have the mental capacity to make decisions about his discharge arrangements. She complains that Mr J's capacity was not properly assessed when she raised concerns.
81. Mr J's medical records stated that he had 'mild cognitive impairment' at the time although he did not have a formal diagnosis of dementia. The records suggest that Mr J sometimes needed extra time to understand information, was occasionally confused and sometimes struggled to properly express himself, which was frustrating for him. However, this does not necessarily mean that Mr J lacked capacity to make decisions about his care.
82. Mr J's capacity was considered by multiple professionals at various stages of his discharge planning and after discharge. Every professional concluded that Mr J had capacity to make decisions about his care. As Mr J was considered to have capacity, it was not necessary for a formal mental capacity assessment to be completed.

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83. As above, the Mental Capacity Act 2005 states that individuals should be presumed to have capacity unless there is proof otherwise. Further, a person with capacity still has the right to make unwise decisions.
84. Mr J was able to follow instructions as an inpatient, such as to not attempt to move without assistance. When he moved into a care home on 24 March 2021, he was able to tell the Officer why he was there. On 31 March, Mr J was able to discuss his care needs with the Officer and agree to lengthen his stay in the care home so his needs could be better met.
85. While Mrs J felt it was unwise for Mr J to return straight home, Mr J was deemed able to make this decision. I have not found fault with the way Mr J's capacity was considered. However, he should have been provided with the relevant information about his care to weigh up the pros and cons then reach an informed decision. As mentioned above, this did not happen.

Discharge - Failed discharge

86. Mrs J complains that Mr J's discharge broke down as he was not provided adequate support at home and this put too much pressure.
87. I note Mr J was initially due to be discharged with no equipment or further assessments until Mrs J raised concerns about his continence and mobility. It was only following this that OT input was requested, which resulted in multiple pieces of equipment being provided.
88. The Council says Mrs J did not raise any concerns with the Officer that Mr J's home care package was inadequate. It also says when the Officer tried to arrange a visit, Mrs J suggested it be delayed until after various appointments.
89. Mrs J disputes the Officer's records of their telephone conversations between 8 and 16 March 2021. She says she has no recollection of the Officer asking to visit to check Mr J's care package. Rather, she says he only called to ask for details about the property. She denies asking for any visits to be delayed and said she would have been able to accommodate a visit around the appointments.
90. Presented with two conflicting accounts of these phone calls, and no independent record such as an audio recording, I am unable to make a finding about why the Officer's planned visit did not occur.
91. Mrs J accepts that she did not complain to the Officer about the inadequate care package. She felt it would not make any difference due to the Officer's previous reaction towards her concerns. She says she was exhausted too unwell at the time to address it when she did not think she would be listened to. I appreciate Mrs J's point of view, particularly given that she was admitted to hospital shortly after.
92. In its complaint response of 23 June 2021, the Council accepts that, under the Discharge to Assess model, contact should have been made within 72 hours to check whether Mr J's care package was meeting his needs. This did not happen. This was fault. This was a missed opportunity to identify that the care package was not meeting Mr J's overnight needs and significantly impacting on Mrs J's welfare.
93. In the Council's complaint response of 6 August 2021, the Council states it was unaware of Mr J's overnight needs until 29 March 2021, and therefore unable to act before that. However, as above, it was apparent prior to discharge that Mr J had overnight needs.

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94. The IDT discharge document dated 22 February 2021, recorded Mr J's pressure areas as intact, which was correct at the time. It also noted that he was using urine bottles for toileting. However, Mr J later developed a moisture lesion and was rated as 'Red' risk for pressure ulcers. He was placed on a two-hourly repositioning schedule. He was also regularly incontinent, including overnight, which would have exacerbated his moisture lesion. Given this, it is difficult to see how a care package of four daily care visits and no overnight care could meet his needs.
95. I asked the Trust to comment on why it felt the domiciliary care package was suitable in these circumstances. The Trust replied that four daily visits was the maximum care package available at home and Mr J's incontinence had improved prior to discharge. This is inaccurate. The clinical records show Mr J was becoming increasingly incontinent prior to discharge. There is evidence that, on discharge, Mr J had repositioning and overnight needs which could not be met by four daily visits. The fact that this was the maximum number of home care visits available does not mean the care package was suitable for Mr J. Nor is it justification for implementing an unsuitable home care package. Instead, a further conversation should have been held with Mr J and Mrs J to explore whether there was a better way to meet his needs.
96. The evidence suggests the home care package was planned based on out-of-date information obtained shortly after Mr J was admitted. There is no evidence that the discharge planning was updated to reflect Mr J's changed needs of increasing double incontinence and an open moisture lesion, which developed from 28 February onwards. Again, this is not in line with the above '*Ready to Go?*' guidance which includes reviewing '*the clinical management plan with the patient each day, take any necessary action and update the progress towards the discharge or transfer date*' and also that '*a discharge checklist should be completed 24-48 hours prior to transfer.*'
97. Had these needs been properly identified during discharge planning, then the Trust and the Council could have properly considered them when planning Mr J's discharge. The failure of the Council and Trust to review Mr J's needs prior to discharge, identify that his needs had increased and discuss this with Mr J and Mrs J is fault. As a result, there was a missed opportunity to consider more appropriate care options and Mr J was discharged with an unsuitable care package which did not meet his needs.
98. Following Mr J's discharge, there was a continued collective failure to identify that his needs were not being met. I have reviewed the domiciliary care records in relation to the care Mr J received at home between 3 and 23 March 2021 by visiting care workers. Mr J's overnight needs continued once he returned home. These records clearly show that Mr J's moisture lesion was significantly worse by 8 March. Further, there are multiple records of Mr J being incontinent both during the day and frequently overnight, involving regular changing and washing of his bedding. His incontinence was present when he returned home and throughout this period. Mrs J is also recorded as telling the carers she was tired after Mr J had been calling out for help in the night. There is no evidence that the care workers raised concerns that Mr J's care package was inadequate, despite frequently finding he had been incontinent overnight.
99. Further, there were missed opportunities by the Officer to obtain meaningful updates about Mr J's care package during his phone calls with Mrs J. The records of these conversations are brief and the only discussion about Mr J's current

wellbeing related to his pain level. There is nothing in the records to suggest the Officer sought to obtain useful information about Mr J's care package, particularly given the ongoing delayed visit. Mr J was home for 20 days without a proper review of his care, either in person or by telephone.

100. Mr J's clinical records demonstrates that he had known overnight needs on discharge. The domiciliary care records along with information given to the Officer by Mrs J, Mr J and the care home shows that these needs were present on his arrival home and continued to be present throughout, with his moisture lesion deteriorating further.
101. There were multiple failures by both the Trust and the Council to identify at an earlier stage that Mr J had unmet overnight needs. As a result, Mr J did not receive adequate care following discharge and would have encountered avoidable distress and discomfort. These failures also cause a great deal of unnecessary stress and upset for Mrs J.
102. On balance of probabilities, I consider Mr J's discharge would not have failed if his needs had been properly identified and met on discharge. Mr J's needs were apparent prior to discharge. The discharge did not fail due to his needs changing once he returned home. Although Mr J had expressed a preference to return home, he was not given all the relevant information about his care needs and care options to make an informed decision.
103. We cannot say whether Mr J would have chosen different discharge arrangements, had the matter been discussed properly with him. He did have a clear preference to ultimately return home. However, the evidence also shows that he was also able to recognise that his care needs could not easily be met at home. Indeed, Mr J later freely consented to remain in the care home, once this had been discussed with him. As a result, Mrs J has been left with significant uncertainty about how the discharge arrangements impacted on Mr J's long-term recovery.

Discharge – Failure to complete a needs assessment for Mr J

104. Mrs J complains that the Council failed to visit Mr J at home to complete a care assessment. She says the Council incorrectly told her an assessment had been completed.
105. The Council records contain a Care and Support Assessment for Mr J dated 10 March 2021. This was completed by the Officer before a home visit had been arranged to assess him and review his care package. The assessment does not refer to Mr J's incontinence or his moisture lesion.
106. Mrs J is noted on the assessment as providing support to Mr J with preparing meals and drinks, washing and drying laundry, emptying urine bottles and dressing him. I will later address Mrs J's right to a carer's assessment.
107. The assessment is updated on 24 and 29 March 2021, following Mr J's move into a care home. The update notes Mr J's overnight needs for frequent repositioning and hygiene care due to moisture damage and double incontinence.
108. The Officer records in both the needs assessment and the electronic case notes that that Mr J had recently developed overnight needs. This is incorrect. The clinical records show Mr J's needs had begun to change before he left hospital. He developed the moisture lesion prior to discharge and his incontinence had been increasing too. I have already addressed the Officer's failure to obtain meaningful updates about Mr J's home care above.

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109. Although the Officer completed a care and needs assessment for Mr J, it was based on out-of-date information. Therefore, the needs assessment initially failed to identify Mr J's overnight needs and the need for frequent repositioning round the clock due to his moisture lesion. As a result, the full extent of Mr J's needs, and the impact of this on Mrs J and his care package, was not properly considered until after 29 March 2021. This was a further missed opportunity to identify earlier that the care package was not suitable to meet Mr J's needs. This contributed to Mr J returning home without adequate care in place. This placed pressure on Mrs J, who was struggling to fill the gaps in the care package herself.

Consideration of Mrs J's needs as a carer

110. Mrs J is an elderly lady with chronic health problems. At the time of Mr J's discharge, she quickly became unwell with an illness which developed into a serious complication. On 22 March 2021, Mrs J was admitted to hospital. This condition causes extreme fatigue and takes several weeks to recover from.
111. Following Mrs J's discharge, the Officer phoned her to discuss Mr J's return home. Mrs J shared her concerns that she was still very unwell and was unable to support Mr J, particularly overnight. She felt his return home so soon would significantly impact on her own ability to recover.
112. Mrs J informed the Officer that Mr J was regularly incontinent and calling out overnight. The Officer suggested a 24-hour response service as an option to manage Mr J's overnight needs at home. This service is intended for occasional emergency issues and can provide assistance with toileting. However, it is not intended to be used on a regular basis.
113. In hospital and then at home Mr J was incontinent on multiple nights. This service states that it is for occasional use only and therefore would have been inappropriate for Mr J's needs. The 24-hour response also would not have addressed Mr J's need for regular overnight positioning. Further, Mrs J would still have been disturbed from her sleep every time Mr J called out for help and been required to wait for the arrival and duration of the care workers attendance. This would have impacted on her own recovery.
114. I have not seen any evidence that the Officer took Mrs J's concerns seriously during this phone call. Instead, he maintained that Mr J's needs could be met at home although he had not visited Mr J, reviewed his care package or obtained further information from the care agency or the care home about Mr J's current care needs at the time. I am also of the view that the Officer did not adequately listen to Mrs J's concerns about the impact Mr J's care was having on her own personal health and wellbeing. There is no evidence that the Officer considered her needs as a carer.
115. Where an individual provides or intends to provide care for another adult and it appears the carer may have any needs for support, local authorities *must* carry out a carer's assessment. Carers' assessments must seek to find out not only the carer's needs for support, but also the sustainability of the caring role itself. This includes the practical and emotional support the carer provides to the adult.
116. Where the local authority is carrying out a carer's assessment, it must include in its assessment a consideration of the carer's potential future needs for support. Factored into this must be a consideration of whether the carer is, and will continue to be, able and willing to care for the adult needing care. (*Care and Support Statutory Guidance 2014*).

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117. During my enquiries, the Council confirmed Mrs J was not offered a carer's assessment. This is fault. As a result, the impact of the situation on Mr and Mrs J was not considered. The Council's records of Mrs J's phone calls demonstrates that the lack of consideration of her needs as a carer caused her significant distress, worry and frustration.

Complaint handling

118. The complaint handling by both the Trust and the Council was inadequate. The responses did not address all of Mrs J's concerns and failed to identify that Mr J's discharge was fundamentally mismanaged. This is fault. The complaint handling has caused frustration for Mrs J.

Agreed actions

Council

119. Within one month of my final decision statement, the Council will:
- apologise to Mr and Mrs J for the failures surrounding Mr J's discharge. This left Mr J without sufficient care and caused distress and frustration for Mrs J.
 - apologise to Mrs J for failing to offer her a carer assessment; and
 - pay Mr and Mrs J £250 each in recognition of the impact of this fault on them.

Trust

120. Within one month of my final decision statement, the Trust will:
- apologise to Mr and Mrs J for the failures surrounding Mr J's discharge. This left Mr J without sufficient care and caused distress and frustration for Mrs J; and
 - pay Mr and Mrs J £250 each in recognition of the impact of this fault on them.
121. Within one month of my final decision statement, the Trust will:
- review its pressure area management to ensure that patients are being repositioned as required.

Trust and Council

122. Within one month the Trust and the Council will write to the Ombudsmen to explain what action they will take to ensure the Integrated Discharge Team has:
- a robust procedure to ensure that a person's needs are regularly reviewed throughout their admission and care planning is updated as needed;
 - procedures to ensure a person's care needs and options are fully discussed the person and their family/carers prior to discharge; and
 - ensured staff are aware of the need to involve family members/carers in the process, including properly considering their views and any arising carer needs.

Final decision

123. I found fault with the Trust's failure to ensure than Mr J was always repositioned when required.
124. I found fault by the Trust and the Council with regards to Mr J's discharge planning and the suitability of the care package provided. I also found fault with the way the Trust and the Council consulted Mr and Mrs J about the discharge.

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125. I found fault by the Council due to its failure to complete an up-to-date needs assessment for Mr J. Further, the Council failed to consider Mrs J's needs as a carer.
126. The complaint handling by the Trust and the Council was also inadequate.
127. I am satisfied the actions the Council and the Trust have agreed to take represent a reasonable and proportionate remedy for the injustice caused to Mr and Mrs J by the fault I have identified. I have now completed by investigation on this basis.

Investigator's decision on behalf of the Ombudsmen

The Ombudsman's final decision

Summary: The Council was at fault when it failed to provide Mr X with affordable options for his parents, Mr and Mrs P's, care placements. As a result, Mr X was denied the option to choose between a care home with no top up fee and a more affordable one. The Council has agreed to repay, or write off, the top ups Mr X has paid or owes and make service improvements. There was no fault in how the Council decided to take the value of the Mr and Mrs P's property into account when deciding what they could afford to pay for their care. There was also no fault in the support provided to Mrs P before she was admitted to the Care Home, its actions in relation to falls experienced by Mr and Mrs P or the information in their care plans about their mobility. However, the Care Home was at fault when it failed to update Mr and Mrs P's next of kin, Mr X, about these and other incidents. Although Mr X was not caused a significant injustice, the Council should make service improvements to prevent a reoccurrence.

The complaint

1. Mr X complained about the actions of the Council. Specifically, he said the Council:
 - a) failed to provide proper support to Mrs P before she was admitted to a care home in April 2020;
 - b) should have placed Mrs P in a nursing home because she needed nursing care;
 - c) failed to properly explain top-ups when Mr X agreed to Mr and Mrs P's residential placement; and
 - d) wrongly decided not to apply a discretionary property disregard to Mr and Mrs P's house which he states he has lived in since before they moved into care
2. Mr X also complains:
 - a) Mr and Mrs P experienced frequent falls and the Care Home failed to update the family following them; and
 - b) the Care Home did not hold appropriate information about his mother's mobility needs, or his father's need to have his food blended.

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3. Mr X said that as a result, Mr and Mrs P's health has been put at risk because they did not receive the care they needed, which also caused him distress. Mr X also says that if the Council refused to apply the property disregard, he would be made homeless.

The Ombudsman's role and powers

4. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the council followed the relevant legislation, guidance and our published "Good Administrative Practice during the response to COVID-19".
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. We cannot question whether an organisation'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*)
7. Part 3 and Part 3A of the Local Government Act 1974 give us our powers to investigate adult social care complaints. Part 3 is for complaints where local councils provide services themselves. It also applies where a council arranges or commissions care services from a provider, even if the council charges the person receiving the care. In these cases, we treat the provider's actions as if they were council actions. (*Part 3 and Part 3A Local Government Act 1974; section 25(6) & (7) of the Act*)
8. We may investigate complaints from the person affected by the complaint issues, or from someone they authorise in writing to act for them. If the person affected cannot give their authority, we may investigate a complaint from a person we consider to be a suitable representative. (*Section 26A or 34C, Local Government Act 1974*)
9. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
10. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Care Quality Commission (CQC), we will share this decision with CQC.

How I considered this complaint

11. I considered information provided by the Council and Mr X.
12. I considered the Care Act 2014 (the Act) and Care and Support Statutory Guidance 2014 (the Guidance).
13. Mr X and the Council had an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

Paying for care

14. Where a council arranges care and support to meet a person's needs, it may charge the adult, except where the council must arrange care and support free of charge.
15. If the person lives in a care home and has over £23,250 capital, known as the upper capital limit, they must pay the full costs of their care.
16. Below this level, a person can seek means-tested support from the council. This means that the council will carry out a financial assessment of the person's assets and will make a charge based on what the person can afford to pay. Where a person's resources are below the lower capital limit of £14,250, they will not need to contribute to the cost of their care and support from their capital.

Top ups

17. The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 set out what people should expect from a council when it arranges a care home place for them. Where the care planning process has determined a person's needs are best met in a care home, the council must provide for the person's preferred choice of accommodation, subject to certain conditions. This also extends to shared lives, supported living and extra care housing settings.
18. The council must ensure:
 - the person has a genuine choice of accommodation;
 - at least one accommodation option is available and affordable within the person's personal budget; and
 - there is more than one of those options.
19. However, a person must also be able to choose alternative options, including a more expensive setting, where a third party or, in certain circumstances, the resident is willing and able to pay the additional cost. This is called a 'top-up'. But a top-up payment must always be optional and never the result of commissioning failures leading to a lack of choice.
20. In such circumstances, the council needs to ensure the person paying the top-up enters a written agreement with the council and can meet the extra costs for the likely duration of the agreement.

Discharge to assess under COVID-19

21. From 19 March 2020, there was a requirement to free up hospital beds for the anticipated wave of COVID-19 admissions. Government guidance at that time directed rapid discharge of all patients who were clinically ready to leave hospital, either home or to another place of care. Transfer from the wards should have been within one hour to a designated discharge area and then discharge from hospital as soon as possible, and within two hours wherever possible.
22. Where patients were discharged under this government guidance, the NHS fully funded the cost of new or extended out-of-hospital health and social care packages.
23. For patients who needed to be discharged to a rehabilitation bed or care home, the guidance stated they would not be able to remain in hospital until their first choice of care home had a vacancy. This meant some patients were discharged

to an alternative care home until they were able to move to their preferred choice. The guidance stated the NHS would pay for this support.

Deferred payments

24. Deferred payment agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. Under a deferred payment agreement, the outstanding costs of a person's care and support are recouped when their property is sold.

Property disregard

25. A person's property must be disregarded by the council (ie not taken into account when calculating what they can afford to pay for their care) for 12 weeks under certain circumstances. These include when someone first enters a care home as a permanent resident.
26. A person's property will also be disregarded under other circumstances. These include where it is occupied by a relative who is aged 60 or over or is incapacitated. In these cases, it must be the relative's main residence and they must have lived there in the time prior to the person going into a care home. Under these circumstances, the property is disregarded completely unless or until something changes.

What happened

27. In November 2019, Mrs P was admitted to hospital.
28. In February 2020 discussions took place between the Council's hospital-based officer and Mr X about Mrs P's discharge from hospital. The officer explained it would be for the hospital to decide when Mrs P was well enough to be discharged. The officer discussed Mrs P's care package with Mr X.
29. The hospital-based officer carried out an assessment with Mrs P in March. This considered what eligible needs she had and how these could be met. The officer also spoke to Mr X around this time about the care Mrs P would need. The officer assessed Mrs P as needing two carers visiting four times a day.
30. NHS occupational therapists (OTs) also carried out a home visit around this time. They decided various assistive equipment would be put in place.
31. Mrs P was discharged home a few days later with an OT accompanying her home to further assess how she managed at home.
32. The care agencies providing Mr and Mrs P's package of care soon reported issues with the bathroom which was later deemed unsafe and concern about Mr and Mrs P's mental states. The district nurses also raised a safeguarding alert with the Council after finding Mrs P had three pressure sores.
33. The Council spoke to Mr X and it was agreed Mr and Mrs P needed to go into respite care whilst a decision was made about their long term care and whether the house could be adapted to meet their needs.
34. At the beginning of April, the care notes record a conversation with Mr X and the Council about respite and paying for care. The officer said they had found a care home which could take both Mr and Mrs P. They would have to contribute towards their care. The officer said there would also need to be a top up of £99 a week for each of them. The notes state Mr X "*confirmed this third party payment and said it wouldn't be a problem*". The officer emailed Mr X a copy of the third party agreement the same day. Mr X signed and returned the agreement.

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35. Mr and Mrs P went into the Care Home for respite in April 2020. The Care Home fell within the boundaries of the City Council. However, the County Council remained responsible for the Care Home's actions because it was the council responsible for placing them there. This investigation concerns the actions of the County Council.
 36. At this time, the government had introduced new charging arrangements because of the COVID-19 pandemic. This meant all Mr and Mrs P's care was paid for them by the NHS.
 37. The Care Home drew up care plans for Mr and Mrs P. These recorded they were both at high risk of falls. They detailed their levels of mobility and the support they required.
 38. In July, the Council held a meeting with Mr X to discuss whether Mr and Mrs P could return home. The notes record Mr X stated he had separated from his wife. He said he had moved into the property in November 2019 when Mrs P went into hospital and then moved out again when she was discharged. Mr X said he moved back in again when his parents went into respite care. Mr X raised concerns about where he would live if his parents came home.
 39. The notes also recorded discussions around the third party top ups and the Council setting up a deferred payment.
 40. In mid-2020, Mr P had an infection which caused him some trouble with eating and drinking. A speech and language therapist assessed him in September 2020 and said the infection had cleared and Mr P could have a normal diet and fluids. There was no record he needed his food blending.
 41. In September, the NHS funding came to an end.
 42. In October, Mr and Mrs P become permanent residents at the Care Home.
 43. In December, the Council sent Mr X a debt recovery letter for non-payment of the top ups. Mr X responded to say he could not afford to pay them. He said he thought the top ups would be taken from Mr and Mrs P's pension. He stated the Council had failed to give him any affordable care home options.
 44. When the following events occurred, Mr and Mrs P were self-isolating in their rooms, in line with other residents, because of the COVID-19 pandemic.
 45. On 12 February 2021, Mr P had a fall. The Care Home called the paramedics and Mr P was admitted to hospital where he had a scan and then returned to the Care Home.
 46. On 13 February, Mr P had a second fall. The paramedics attended again and considered he was safe to stay in the Care Home. Whilst they were still there, the hospital phoned to say the scan from the day before showed Mr X had a small bleed on the brain. He was admitted to hospital again and discharged later that day.
 47. The Care Home updated Mr P's care plan to reflect what had happened and the steps it had taken to prevent a reoccurrence.
 48. The Care Home raised a safeguarding alert with the City Council (as it was located within its geographical area – see paragraph 35 above). It concluded there was no evidence of abuse or neglect, and the fall could not have been prevented given the recommendation for residents to isolate because of the pandemic. It was satisfied with the actions taken by the Care Home and, therefore, the referral did not meet the threshold for an enquiry and was closed.

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49. Mrs P also had two falls in February. One was unwitnessed. The Care Home called the emergency services and paramedics attended. They recommended Mrs P stay at the Care Home with 15 minute checks. Later that day Mrs P became unwell and the emergency services were called again and Mrs P was admitted to hospital. She returned the following day after a scan showed no concerns. The Care Home amended the way they supported her when mobilising to reduce the risk of a reoccurrence.
50. The Care Home raised another safeguarding alert with the City Council. After investigating it came to same conclusion as it did with Mr P in paragraph 47 and the incident was closed.
51. In March 2021, Mr X complained to the Care Home about the issues in paragraphs 1 and 2 of this decision statement. With regard to the Council's intention to apply a discretionary property disregard, Mr X said he said he moved into the property's annex in June 2019 and into the house in April 2020 when Mr and Mrs P went into the Care Home. Mr X said the property was on one level which made it easier for him to manage as he had a disability.
52. Also in March, the Council informed Mr X that the Care Home had agreed to waive the top up fees from 17 February 2021. This meant Mr X only owned the top up fees from 10 September 2020 to 17 February 2021.
53. The Council responded in April 2021. It made the following points:
- Mr P had two falls on 12 and 13 February. Because they were close together, the Care Home forwarded a urine sample to Mr P's GP who confirmed he had an infection. The GP prescribed antibiotics and the family was informed. Mr P experienced no other falls subsequently;
 - Mrs P also had two falls in February. The first was in her room and was due to a combination of her leaning forward to get into her wheelchair and a member of staff not following the Care Home's policies on use of equipment. The Care Home had amended Mrs P's care plan so two members of staff now assisted her in getting into her wheelchair. The second fall was unwitnessed, and the Council was unsure how it happened although Mrs P said she had tried to get up and walk;
 - a number of safeguards were in place including call bells, sensor mats and motion sensors to prevent or alert staff to falls. Risk assessments were carried out for both Mr and Mrs P and updated, together with their care plans, when necessary. The Care Home raised safeguarding alerts which had found no evidence of abuse;
 - no family member had power of attorney which meant the Care Home would not share sensitive information unless it was necessary. Furthermore the Care Home only informed the family of incidents if they led to a safeguarding investigation which found fault. However, the Care Home did notify the family about both of Mr P's falls and the bleed on his brain. The Council offered to notify the family of all incidents if they wished; and
 - the family did not advise the social worker or Care Home that Mr P needed a special diet. He was observed being able to eat solid food. A speech and language therapist assessment in September 2020 identified no issues with swallowing and did not recommend a liquid diet.
54. In relation to the funding for Mr and Mrs P's care, the Council said it would only consider a property disregard if the house had been Mr X's only or main

residence before Mr and Mrs P went into the Care Home. The documents already sent in by Mr X were not sufficient to demonstrate this. The Council asked for a utility bill, council tax bill or bank statement dating from before April 2020 to prove he had lived there since that date.

55. The Council said it had applied the 12 week property disregard from when the COVID-19 funding stopped at the end of September 2020. This ran until mid-January 2021.
56. Mr X submitted a council tax discount letter. The Council acknowledged this but said the date Mr X occupied the property, according to the Department of Works and Pensions (DWP), was February 2021, nearly a year after Mr and Mrs P had gone into care. The Council agreed to provide a temporary discretionary disregard for a period of three months from January to April 2021.
57. The Council declined to allow a disregard after that date. It said this was because Mr X had not proved he lived in Mr and Mrs P's property before April 2020. The Council said that as he owned a 50% share in his own home and there was no intention to sell the property he currently resided in, he would not be made homeless.
58. Mr X denied having any ownership in his own home. The Council sent him a copy of the Land Registry deeds showing he owned the property with his wife.
59. The Council went on to say it would award a 12 month property disregard to January 2022 to enable Mr X to arrange his affairs.
60. Mr X remained unhappy and complained to the Ombudsman.

My findings

Complaint 1a) support provided to Mrs P before she was admitted to a care home in April 2020

61. The Council properly assessed Mrs P prior to her discharge from hospital and drew up a care and support plan to meet her eligible needs. OTs carried out home visits and ensured the appropriate assistive technology and equipment were in place. Mrs P's case notes record care workers acted promptly to inform the Council when they identified issues when providing care, relating to both Mr and Mrs P's mental states and home safety. The district nurses also reported matters to the Council. The Council acted appropriately to these reports and considered there was a risk to Mr and Mrs P remaining at home. As a result, the Council arranged for respite care in a residential setting whilst decisions about their future care were considered. Its case notes for Mrs P record Mr X agreed with these decisions. There was no fault in the Council's actions.

Complaint 1b) placement of Mrs P in a residential and not a nursing home

62. There is nothing in Mrs P's records that indicate a need for a nursing home placement. The Council was not at fault for placing her in a residential home.

Complaint 1c) top-ups for Mr and Mrs P's residential placements

63. When arranging residential care placements, councils must ensure at least one accommodation option is available and affordable. This means that there must be a suitable placement available that does not require top ups.
64. When Mr and Mrs P were placed in the Care Home, the emergency COVID-19 legislation was in place. Hospitals were urgently discharging all patients without a medical need and placements were scarcer than usual. As a result the Council

had very limited choices when finding a care home which could take both Mr and Mrs P.

65. The case notes record the Council provided Mr X with financial information about top ups and Mr X subsequently signed a form to say he would pay a top up for each of his parents. However, the Council failed to provide Mr X with care home options which were affordable and did not need a top up. Although this may not have been possible at the time Mr and Mrs P first went into a care home, the Council should have done so later, when the NHS funding came to an end. This was fault.
66. As a result, Mr X was caused an injustice because he was not given the information he needed to make an informed decision about his parents' care or given a choice of placement that did not require a top up.

Complaint 1d) property disregard

67. In investigating this part of Mr X's complaint, I have considered the relevant legislation and information from the Council. This includes records from Council Tax which stated Mr X has never been registered as living at Mr and Mrs P's property and the Land Registry which state Mr X owns another property with his wife. I have also considered the Council's case notes which recorded Mr X stating he did not move in until Mr and Mrs P went into respite care in April 2020.
68. The Act and Guidance lay out what a council must take into account when considering whether to award a property disregard. This includes issues such as when the relative moved into the property, their age and disabilities and whether selling the house would make them homeless.
69. The Council decided Mr X did not meet the requirements to award a permanent property disregard. He did not provide proof he was living in Mr and Mrs P's property before they went into the Care Home and it was not his only or main residence. He owned 50% of his matrimonial house and because the Council did not intend to sell his parents' property, he would not be made homeless if he chose to move in there. The Council exercised its discretion to apply a disregard for 12 months to enable Mr X to consider his options. There was no fault in the way the Council made its decision.

Complaints 2a) frequent falls and informing the family and 2b) Mrs P's mobility needs and blending Mr P's food

70. The Care Home drew up comprehensive care plans for Mr and Mrs P. These recorded their eligible needs, including their levels of mobility, and the support required to meet their needs. Following the falls, the Care Home updated both plans detailing the additional support.
71. It also took appropriate action by calling for an ambulance, following medical advice and raised safeguarding alerts with the Council. The Home updated Mr and Mrs P's plans and put additional support in place. The Council investigated and found the falls to be unavoidable and the support in place to be adequate.
72. Mr X was unhappy because the Care Home did not inform him of all of the falls and other incidents, such as Mr P's infection diagnosis. The Council said this was because he did not have power of attorney for Mr and Mrs P and so it was inappropriate to share sensitive information.
73. The Council has not sent me details of any formal communication plan in place between Mr X and the Care Home. This would have allowed processes to be in place specifying in what situations Mr X would be contacted. However, even

without such a plan, Mr X was involved in the planning and arrangement of Mr and Mrs P's care and he was their next of kin. The Care Home was aware of this and should have informed him without delay when either of his parents fell, were diagnosed with any medical condition, needed an ambulance calling or were admitted to hospital. The failure to do so was fault.

74. However, I do not consider Mr X was caused an injustice. He became aware of these incidents shortly after they occurred, and the Council addressed his concerns in its complaint response. It also updated Mr and Mrs P's care plans to ensure he would be informed in the future.
75. In relation to Mr P's diet, the records specify Mr P was able to eat a normal diet and did not need to have his food blended. There was no fault in the Council's actions.

Agreed actions

76. Within one month of the date of the final decision, the Council has agreed to:
- repay or write off the top ups paid or owed by Mr X in relation to Mr and Mrs P's care home fees for the period 10 September 2020 to 17 February 2021.
 - remind relevant officers of the statutory requirement to offer at least one available and affordable care home placement; and
 - remind staff at the Care Home of the need to have communication plans in place for residents to ensure next of kin and families are updated appropriately.

Final decision

77. There was fault leading to injustice. The Council has agreed to my recommendations and so I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Nottinghamshire County Council
(reference number: 21 016 061)**

16 September 2022

The Ombudsman's role

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

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

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

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

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

Key to names used

Ms X	The complainant
Y	The complainant's child

Report summary

Education and children's services

Ms X complained the Council has not ensured her childcare provider, a nursery, issues clear and transparent invoices. And, it has not ensured she has fair access to a free place. She says she has spent time seeking clarity and suffered distress due to spending large sums on childcare she expected to be free.

Finding

Fault found causing injustice and recommendations made.

Recommendations

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

To remedy the injustice caused we recommend the Council:

- apologise to Ms X in writing;
- pay Ms X £100 for time and trouble;
- pay Ms X £100 for distress and uncertainty;
- refund Ms X 50% of the additional charges she has paid from January 2020 to the date Y left the nursery in February 2022. The Council should liaise with Ms X and the nursery to gather the information it needs to action this; and
- review the nursery's policies and practices, taking action as needed to ensure it complies with the Council's provider agreement in respect of fees and invoicing. It should tell us the outcome of this review and any actions taken.

The complaint

1. Ms X complained the Council has not ensured her childcare provider, a nursery, issues clear and transparent invoices. And, it has not ensured she has fair access to a free place. She says she has spent time seeking clarity and suffered distress due to spending large sums on childcare she expected to be free.

Legal and administrative background

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

Free Early Education Entitlement

3. The Childcare Act 2006 (as amended) places a duty on councils to secure early education provision free of charge at either 15 or 30 hours a week for a qualifying child, over at least 38 weeks of the year. This is known as the Free Early Education Entitlement (FEEE). (Equivalent hours may also be provided over the course of the year.)
4. The funding is to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not to cover the costs of meals, other consumables, additional hours or additional services. Parents must pay for these if they choose to receive them. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free childcare are responsible for setting their own policy on how to respond, with options including allowing parents to supply their own meals or nappies, or waiving or reducing the cost of meals and snacks.
5. Councils must:
 - ensure providers are completely transparent about any additional charges, for example, for those parents opting to purchase additional hours or additional services;
 - work with providers and parents to ensure all parents have fair access to a free place;
 - ensure that providers do not charge parents "top-up" fees (any difference between a provider's normal charge to parents and the funding they receive from the local authority to deliver free places);
 - ensure providers work with parents to ensure parents understand which hours/sessions can be taken as free provision; and
 - work with providers to ensure their invoices and receipts are clear, transparent and itemised allowing parents to see that they have received their child's free entitlement completely free of charge and understand fees paid for additional hours or services.

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6. In 2019 we urged councils to have better oversight of nurseries offering free early years places after a nursery chain was found to be charging parents a top-up fee. In a statement accompanying the report on that case, [19 004 977](#) we said:

“The government’s intentions have always been that these places are provided free of charge to parents and it is up to local authorities to administer them accordingly...Free must mean free.”

Council policy

7. The Council has provider agreements with those settings that agree to provide FEEE.
8. This requires childcare providers to agree that:
- additional charges for consumables must be voluntary for the parent;
 - it cannot charge parents “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the local authority to deliver funded places); and
 - it shall ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their funded entitlement completely free of charge and understand fees paid for additional hours.

How we considered this complaint

9. We produced this report after examining relevant documents and speaking to the complainant.
10. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

11. Ms X says her child Y became eligible for FEEE from January 2020 and then attended the nursery.
12. On 3 August 2021 Ms X complained to the Council that the nursery was not providing a free place and invoices were not clear, transparent and itemised. As a result the nursery had overcharged her for the past 20 months.
13. The Council contacted the nursery which then sent it information about its fees, as sent out to new claimers. This said:
- it had additional charges of £1.80 an hour. Parents could discuss this with the nursery (it did not say whether parents could opt out);
 - it stretched the funding to cover 52 weeks of the year. If parents wanted term time only they had to pay a 50% retainer fee to cover non-term time weeks; and
 - it offered stretched funding and included additional services as standard. It made all parents aware of its policy.
14. On 5 August the Council told Ms X that Y attended nursery for 52 weeks a year and she properly received 22 funded hours a week. The nursery could apply an additional charge for consumables and was acting in line with its provider agreement.

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15. Ms X replied that the nursery had not allowed her to opt out of additional charges and its invoices were unclear and not itemised. She enclosed an invoice dated February 2021. This refers to a nursery fee for Monday to Friday morning only. It does not say the period covered or provide any further breakdown of the fee.
 16. The Council then asked the nursery to evidence how it met its provider agreement regarding charges. The nursery told the Council it would amend its terms to ensure these were in line with the provider agreement going forward.
 17. On 10 August the Council told Ms X the nursery would review its terms. Also, that the nursery had offered to meet with her to discuss her individual circumstances and whether she wanted to opt out of paying the consumables charge for Y. The nursery wanted Ms X to contact it directly to arrange a meeting to resolve the issue and look at invoices.
 18. Ms X told the Council her relationship with the nursery had broken down and she did not want a meeting without the Council's oversight. She did want to opt out of consumables and she also wanted a refund for previous months when the nursery did not allow this.
 19. On 12 August the Council told Ms X she had to resolve matters with the nursery directly or contact us.
 20. On 4 November Ms X emailed the nursery and copied in the Council. She said its invoicing was still unclear and she asked for a refund for its previous overcharging. Ms X then sent the Council a copy of an invoice and asked it to progress her complaint. She said it remained unclear how much the top-up fee was or how to opt out. We note the invoice covers the month of November. It includes a fee for two morning sessions a week; "October 2021 fees", "September 2021 fees" and no fee for 15 hours' stretched funding. It does not provide any further breakdown. And it does not say which, if any, fees relate to additional charges.
 21. On the same date the nursery sent the Council its updated terms. These showed additional charges were now voluntary. However, they still referred to a 50% retainer fee for those looking for a term time place only. (Meaning any parent looking for a free funded place over 38 weeks had to pay additional fees.)
 22. The nursery also responded to Ms X that she could opt out of some charges.
 23. On 5 November the Council told Ms X it was satisfied the nursery had taken action to comply with its provider agreement. It considered the matter closed and she could contact us.
 24. On 17 November Ms X complained the Council had not acted on her complaint. She was still paying too much and she had previously over paid. Invoices were not transparent. And the updated documents were not on the nursery's website.
 25. The Council repeated to Ms X it considered the nursery was acting in line with its provider agreement. It said it could not further consider her complaint under its complaints process. It referred to the nursery's updated contract which made clear additional fees were voluntary. It said it was not responsible for the additional charges and Ms X should direct any further dialogue about this to the nursery or seek alternative provision. She could also contact us.
 26. In comments on our draft report Ms X said Y left the nursery in February 2022.

Conclusions

27. The Council received information from Ms X and the nursery in early August 2021 which showed the nursery was not offering parents FEEE. Rather it imposed additional charges and a retainer fee as standard with no opportunity to opt out.
28. While the Council took some action, in asking the nursery to amend its terms, it did not seek to resolve the matter for Ms X or seek to remedy any losses suffered by Ms X. The Council simply referred Ms X back to the nursery. However, it is the Council's duty to work with providers and parents to ensure all parents have fair access to a free place. The Council did not do this. This is fault.
29. In terms of preventing recurrence in future, the Council did review the nursery's updated terms in November 2021. However, there is a lack of evidence it considered whether these met its provider agreement. In particular the Council did not comment on the 50% retainer fee, which would require parents to pay an additional fee on top of the free funded care. We therefore find fault in the Council's decision making.
30. The Council did not investigate Ms X's complaint about invoicing when raised in August 2021. This is fault. The Council simply referred Ms X back to the nursery. However, it is the Council's duty to work with providers to ensure their invoices and receipts are clear, transparent and itemised. The Council did not have due regard to this duty. This is fault.
31. The Council did not address Ms X's complaint about invoicing when raised again in November 2021. This is fault. Further, it assured Ms X the nursery was meeting the provider agreement, appearing to overlook evidence she provided to the contrary. Namely, an invoice that was not clear, transparent or itemised. We find fault in the Council's decision making.
32. Ms X has paid additional charges because of the Council's fault. This is injustice. We accept on balance that Ms X will have benefitted from some consumables, such as meals. However, given the lack of opt out, we consider it proportionate for the Council to reimburse 50% of the additional charges Ms X has incurred.
33. Ms X was put to avoidable time and trouble in her complaint to the Council and in contacting us, because the Council did not properly address her complaints. This is injustice.
34. Ms X has suffered distress and uncertainty due to the lack of clear invoicing. This is injustice. The Council should work with the nursery to ensure their invoices and receipts are clear, transparent and itemised.
35. In response to a draft of this report the Council said the following.
 - It meets its statutory duties through rigorous Provider Support meetings and annual Audits. It applies its Local Provider Agreement with force and will suspend funding for provision which is less than Good (Ofsted) or does not comply with the financial points detailed in the agreement.
 - It investigated the complaint between Ms X and her provider. The nursery is privately run and the Council did not receive any monies from Ms X. Therefore, the request to "refund" her does not apply.
 - It denies fault because:
 - Ms X refused to engage with the nursery to discuss her requirements;
 - local authorities should not intervene where parents choose to purchase additional hours of provision or additional services;

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- where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond;
 - the nursery's terms say the additional charges are voluntary;
 - with reference to the documents provided by the nursery, it ensured parents were aware of the nursery's admissions criteria;
 - it found the initial invoice sent by Ms X was not clear or broken down. However, the invoice of November 2021 showed Ms X paid in full for 5.5 hours (Monday and Friday) as itemised on the invoice. It showed the fees for the month were £152 in line with the hourly charge for additional services. And it showed the funded hours as no charge. Y attended for 27.5 hours a week. As Ms X stretched her 30 hour entitlement over the full calendar year, she received 22 funded hours per week and paid a full hourly rate for the remaining 5.5 hours;
 - parents were made aware of the 50% charge for term time only places and were able to use these places flexibly; and
 - it audited the nursery in June 2022 and filed a satisfactory outcome.
36. We have considered the Council's comments but our findings remain largely the same.
37. As referred at paragraph 19, we were aware Ms X chose to ask the Council to resolve her complaint rather than engage further with the nursery. Given the Council's statutory responsibility to act, we do not criticise Ms X for doing so.
38. We acknowledge the Council cannot provide a "refund" but we would expect the Council to reimburse Ms X for losses suffered. We note the Council may seek to recover this sum from the nursery if it wishes.
39. The crux of Ms X's complaint is that the additional charges were not voluntary and she had no opportunity to opt out. She did not have access to a free place. The Council has relied on the nursery's updated terms as referenced in paragraph 22 above. However, the previous terms did not make clear the charges were voluntary.
40. The Council has now detailed its decision making in respect of the invoices. However, this was not communicated to Ms X at the time. And, while the Council has offered an explanation for the November 2021 invoice, Ms X did not find the invoice clear and the invoice alone does not provide the level of detail the Council has offered. It therefore remains for the Council to ensure the nursery meets its provider agreement; ensuring invoices are clear, transparent and itemised.
41. The Council appears to accept the nursery can apply a charge for term time only places even though this means parents cannot access a free place. This appears contrary to the law. It therefore remains for the Council to ensure the nursery meets its provider agreement in respect of charges.

Recommendations

42. To remedy the injustice caused we recommend the Council:
- apologise to Ms X in writing;
 - pay Ms X £100 for time and trouble;
 - pay Ms X £100 for distress and uncertainty;

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- refund Ms X 50% of the additional charges she has paid from January 2020 to the date Y left the nursery in February 2022. The Council should liaise with Ms X and the nursery to gather the information it needs to action this; and
 - review the nursery's policies and practices, taking action as needed to ensure it complies with the Council's provider agreement in respect of fees and invoicing. It should tell us the outcome of this review and any actions taken.
43. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

44. We find the Council at fault because it did not meet its statutory duties to ensure Ms X had access to a free place and transparent invoicing at the nursery. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms X. The Council should take the action identified in paragraphs 42 to remedy that injustice.

Local Government and Social Care Ombudsmen Report ‘Investigation into a complaint about Nottinghamshire County Council (Reference number: 21 016 061)’

On 3 August 2021, Early Childhood Services within the Children and Families Department received a complaint from a parent in Rushcliffe sharing concerns about a privately owned nursery charging additional fees for her child who was accessing funded childcare. The parent stated that she had raised concerns with the owner of the nursery a number of times but to no avail. The parent contacted the Council to make a complaint about the nursery and asked Early Childhood Services to investigate her complaint.

The specific concerns raised by Mrs X included:

- The nursery charging her a top up fee for the funded hours her child was accessing and being ‘overcharged’
- Lack of clarity and transparency of the invoices sent by the nursery

Early Childhood Services contacted the Nursery on 4 August 2021 to ask for clarification of any top up fees and the transparency of their invoices. The nursery manager responded on the same day, and shared their standard letter which is sent to all parents accessing childcare funding for their 3 and 4 year olds. The letter stated that they have a non-refundable deposit of £50 to guarantee a child’s place, but this would be refunded where children are only accessing their funded childcare entitlements and not any additional privately funded hours. The letter also stated that the nursery applies an additional service fee for snacks and consumables but do state *“If this is not what you are looking for then please speak to us to discuss your options”*. The letter then states, *“we are not allowed to make it conditional that you buy extra hours or services in order to get your funded hours”*.

Early Childhood Services questioned the retainer fee and identified that the parent was also paying for an additional 5.5 hours per week on a privately funded basis, so this was not refundable in line with the Nursery’s policies.

The Council also questioned the ‘top up fee’ and the nursery confirmed that they charge an additional £2.50 for each funded hour a child receives if they attend for half a day; and if a parent uses the nursery over a full day, they are charged £1.80 per hour. They confirmed that this additional fee is to cover consumables such as snacks and nappies. This arrangement is in line with national guidance and Nottinghamshire’s Early Years Provider Agreement¹ on condition that parents have an opportunity to ‘opt out’ of these fees. The information sent by the nursery did not make it explicit that this fee was optional but has implied this in the letter. This led to a formal investigation and financial audit of the nursery by Early Childhood Services.

The Council reviewed the case against national Guidance and understands its Statutory Duty to ensure that children are able to access their funded hours of childcare and early education. According to *Early Education and Childcare Statutory*

¹ [earlyyearsprovideragreement2021-24.pdf \(nottinghamshire.gov.uk\)](#)

guidance for local authorities, June 2018², “Government funding is intended to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the costs of meals, other consumables, additional hours or additional services.” Local Authorities should “ensure that providers are aware that they can charge for meals and snacks as part of a free entitlement place and that they can also charge for consumables... although these charges must be voluntary for the parent”.

The sections included in the Nottinghamshire Early Years Provider Agreement that relate to this complaint are:

Section 15 ‘Charging Parents/Carers’

- 15.1 *Government funding is intended to cover the cost to deliver 15 or 30 hours a week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.*
- 15.2 *The Provider can charge for meals and snacks as part of a funded entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. Parents should therefore expect to pay for these, although these charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the funded entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals. Providers should be particularly mindful of the impact of the additional charges on the most disadvantaged parents.*
- 15.4 *The Local Authority shall not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent’s ability to take up their child’s funded place. The Provider shall be completely transparent with parents about any additional charges.*
- 15.6 *The Provider can charge parents a deposit to secure their child’s funded place but shall refund this element of the deposit to parents within a reasonable time scale (which shall be after the child has been included as attending the Provider setting and recorded in their headcount return).*
- 15.7 *The Provider cannot charge parents “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the local authority to deliver funded places) or require parents to pay a registration fee as a condition of taking up their child’s funded place.*
- 15.8 *The Provider shall ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their funded entitlement completely free of charge and understand fees paid for additional hours. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider. The Provider*

² [Early education and childcare \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

shall not represent the funded entitlement to parents on any invoice as a monetary subsidy or discounted place.

On 5 August 2021, the Nursery was asked specific questions from the Council relating to their adherence to the local Provider Agreement:

- Are these additional charges optional? (15.2)
- Can you provide me with the detail about how these charges are communicated to parents and how their invoices are itemised for them to understand them? (15.8)
- Can you confirm that these additional charges do not constitute “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the local authority to deliver funded places)? (15.7)

On 10 August 2021, the nursery owner told the Council *“We have provided completely free places to children on several occasions, where there has been a need for the child to receive nursery education and the family are struggling... I can see that we have not been as transparent as we could have been within our funding literature. We are taking immediate remedial action and addressing our communications with parents by letting them know about our revised offer”*.

On 27 August 2021, the nursery owner told us that in response to the complaint, they were reviewing and updating their Terms and Conditions which were being appraised by their legal team. After some chasing, the Council finally received two documents on 4 November 2021, the Contract signed by parents for the provision of care outside of the publicly funded Early Education and the letter for parents who were accessing funded childcare for their 3 or 4 year old. The contract now made it clearer that the additional top up fee was optional *“we apply a voluntary additional services fee of £2 per hour for the provision of these items during funded hours. Our standard policy is to provide all these services and include this charge but if that is not what you require, please see us to discuss your options”* and they added a statement for parents to sign in the contract *“I understand that I do not have to agree to purchase extra hours and/or additional services to get my funded hours. XX Nurseries has explained my options and I’ve chosen to take my funded hours within a package of additional hours and/or services”*. The nursery has a copy of the signed agreement with the parent.

The Council also carried out a financial audit of the nursery and found that their finances were satisfactory.

Nottinghamshire County Council, on a number of occasions, recommended that the parent discuss her requirements directly with the Early Years Provider in order to resolve the matter. The Provider reported that they offered a number of meetings and called the parent only to have calls ignored, evidence of this is contained in emails between the Provider and the parent. The parent refused to meet the Provider stating *“I have no interest in meeting with {the manager} after all this time... I am not willing to engage with her on this matter ... I am not willing to waste {time} on a meeting that I have no reason to believe will be productive...”* (direct quotes from the parent’s emails).

The Council also recommended that the parent liaise directly with the Nursery to seek reimbursement her for any additional top up fees that were not used for consumables such as snacks. The parent chose not to contact the nursery and instead submitted a complaint to the Local Government Ombudsman to complain about Nottinghamshire County Council. The Ombudsman submitted their report to the Council in July 2022, and following an appeal by the Council, they submitted their final report in September 2022 rejecting the appeal and stating that the Council was at fault and caused injustice to the parent.

The Ombudsman stated *“Mrs X complained the Council has not ensured her childcare provider, a nursery, issues clear and transparent invoices. And, it has not ensured she has fair access to a free place. She says she has spent time seeking clarity and suffered distress. To remedy the injustice caused they recommended that the Council:*

- *apologise to Ms X in writing*
- *pay Ms X £100 for time and trouble*
- *pay Ms X £100 for distress and uncertainty*
- *refund Ms X 50% of the additional charges she has paid from January 2020 to the date Y left the nursery in February 2022. The Council should liaise with Ms X and the nursery to gather the information it needs to action this; and*
- *review the nursery’s policies and practices, taking action as needed to ensure it complies with the Council’s provider agreement in respect of fees and invoicing. It should tell us the outcome of this review and any actions taken”.*

The Council is now progressing the recommendations of the Local Government Ombudsman report. In addition, the Council is sharing information with the Department for Education and the Local Government Association as the response by the Local Government may have repercussions on all top tier Local Authorities who fulfil the statutory duties laid out in the Early Education and Childcare statutory guidance and yet may be liable for providing refunds to parents who have paid external childcare providers rather than Local Authorities.

Supporting Documents:

- Department for Education ‘Early Education and Childcare Statutory Guidance for Local Authorities, June 2018 [Early education and childcare \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)
- Nottinghamshire Early Years Provider Agreement for Funded Early Years Provision 2021-2024 [earlyyearsprovideragreement2021-24.pdf \(nottinghamshire.gov.uk\)](https://www.nottinghamshire.gov.uk)

The Ombudsman's final decision

Summary: Mr X complained the Council did not ensure he had adequate care support and left him in unsuitable accommodation. We found no fault in the Council's decision making on Mr X's care. But we found fault in the Council's delay in securing Mr X new accommodation. We recommended the Council apologise and pay Mr X £300 for distress and uncertainty.

The complaint

1. Mr X complains the Council did not ensure he had adequate 1:1 support and left him in unsuitable accommodation. Mr X says this caused him distress and affected his health.

What I have investigated

2. I have investigated Mr X's complaint dating back to March 2021. At the end of this decision I have set out why I have not investigated earlier matters.

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 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*)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I spoke to Mr X and I reviewed documents provided by Mr X and the Council. This included:

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- Complaint correspondence
 - The Council's social worker case notes for Mr X
 - The Council's chronology of actions in finding accommodation for Mr X
7. I gave Mr X and the Council an opportunity to comment on my draft decision. I considered any comments before making a final decision.

What I found

Care and support

8. A council carries out a care needs assessment to decide whether an individual has care needs that it must meet. It then completes a care and support plan which sets out how it will meet those needs.
9. In (R (Davey v Oxfordshire CC) the Court of Appeal decided:
- A council's duty under section 9 of the Care Act 2014 is not to achieve the person's desired outcomes but to assess whether the provision of care and support would contribute to those outcomes
 - The wishes of the person may be a primary factor but they are not an overriding consideration.
10. A council should review a care plan every 12 months. If a service user requests a review earlier than planned a council must consider this request. However, a council is entitled to refuse the request if it considers the current plan remains appropriate.

What happened

11. In March 2021 Mr X lived in a residential care home funded by the Council to enable him to continue his rehabilitation and become independent since losing his eyesight. This was shared accommodation with people who had mental health difficulties and because of this Mr X wanted to move to another property.
12. At this time Mr X received 8 hours of 1:1 support per week. 7 hours was for someone to read to him and 1 hour was for help accessing the community
13. The Council's case notes of March 2021 show Mr X and the Council had considered one property may be suitable. However, there was a disagreement over care provision. The Council could arrange care at the new property however Mr X was not happy with its offer. Mr X was therefore looking to arrange his own care however the landlord decided to let the property before this was possible.
14. In summarising the position on accommodation to Mr X, his social worker said:
- he did not want supported living [as he did not want to live in a place where other people had mental health issues or learning disabilities];
 - general needs housing was not suitable and would not provide the level of security that would allow him to be and feel safe at least in the short term.
 - They were now exploring extra care. Due to short timeframes he would have to move into any property with Council arranged care and could then source his own personal assistant later.
15. Mr X asked for an increase to his 1:1 hours.

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16. In April the Council told Mr X it had reviewed his care and support needs regularly and it considered the current level of 1:1 appropriate to meet his assessed needs within the residential care placement.
 17. In June the social worker contacted Mr X to discuss a referral for extra care housing. However, Mr X no longer wanted to work with that officer.
 18. On 10 June the Council agreed to transfer Mr X to another social worker who would carry out his annual review of care needs and look at accommodation options.
 19. In July a new social worker visited Mr X to start his review. The Council's case notes show Mr X wanted four hours of 1:1 support per day to complete administrative tasks, including raising complaints, and to access the community. During this visit the social worker explained the timing of finding an appropriate placement and then recruiting a personal assistant. They explained sometimes it had to bridge the gap with another provider until a personal assistant could start. Mr X refused this as an option.
 20. In August Mr X chased for an update on his increased hours.
 21. The Council's case notes show a social worker tried to call Mr X to update him at the end of August but could not reach him by phone.
 22. On 30 September a social worker visited Mr X to explain the Council would fund an additional 2 hours 1:1 per week for him to access social activities.
 23. On 21 October Mr X complained the social worker made no effort to increase his 1:1 hours following their meeting in July and these were still not provided. The social worker replied to direct Mr X to the Council's complaints process.
 24. On 26 October the social worker completed a referral for Mr X to extra care housing. The case notes say Mr X had only just agreed to this.
 25. The Council's chronology notes the extra care team were not accepting new placements in November 2021.
 26. On 2 November the social worker completed their care plan review. The notes of this meeting say Mr X wanted 4 hours support per day but only an additional 2 hours were agreed. Mr X wanted more hours for social activities, shopping and some for further administrative support. Mr X said he did not have enough hours for community access eg the gym and shopping. Mr X said he needed at least 6 hours administrative time to deal with his legal claim. The Council said the support workers were not trained to complete administrative duties in relation to legal matters. Mr X said that he needed staff to be able to use the computer programme that can read letters/emails to him but only several staff were trained to use the computer. The Council said solicitors should send legal documents in a format Mr X could access.
 27. On 12 November 2021 Mr X told the social worker he disagreed with the care review outcome as he felt he did not have enough hours of support.
 28. The Council issued the updated care and support plan on 16 November. This said the care home provided meals and drinks, launders and set out clothes, and kept his accommodation clean. Mr X was to have one hour per day of 1:1 support for reading, correspondence and internet access. The care home was to provide an additional 2 hours per week to support Mr X to access the community. Mr X would now receive 7 hours 1:1 support per week for reading etc and 3 hours per week for community access. The plan also noted Mr X wanted to move. It said the

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- Council had explored options such as Supported Living, Extra Care and an alternative Residential care placement. These were unsuccessful either because the placement rejected the referral or because Mr X rejected it.
29. The Council's case notes of January 2021 show Mr X still wanted an increase in support hours.
 30. The Council allocated Mr X a new social worker. They met with Mr X on 23 February and confirmed they would help him find new accommodation.
 31. On 7 March 2022 Mr X complained to the Ombudsman about problems with the Council prior to March 2021 and current issues, namely that his current accommodation was unsuitable and he did not receive enough support hours. The Ombudsman asked the Council to investigate this complaint.
 32. On 8 March Mr X added to his complaint that his new social worker was late to meet him on 23 February; did not know how to progress with a move and; had no records of his contact with his previous social worker.
 33. The Council responded to the complaint on 8 April. It said:
 - It apologised the social worker arrived later to meet him than expected;
 - His new social worker could not comment on whether minutes taken by his last social worker were accurate as they were not at meeting;
 - The care home had served notice on his support hours so it would look for a new provider;
 - It did hold records of Mr X's interactions with staff;
 - He currently had 11 hours' 1:1 support;
 - A new officer would work with him on finding accommodation.
 34. The Council's case notes show it allocated a new officer in April 2022 to help look at supported living accommodation for Mr X. One vacancy arose that the officer considered but then discounted as unsuitable. There were no other vacancies at that time.
 35. Mr X complained again he needed more support hours and kept asking why he could not get more but still had no explanation. He also said he was unhappy with the complaint response. He received 10 hours weekly support not 11, but he needed 20. And the Council said he had refused four offers of accommodation but that was incorrect as he accepted two.
 36. The Council provided a further complaint response on 6 May 2022.
 - It confirmed Mr X received 10 hours per week 1:1 support and also base line support from the care home. There had been several meetings to discuss in detail core hours, what they were used for and what the additional 1:1 hours were for.
 - It assessed Mr X as being independent in most aspects of care. His areas of needs were around reading, writing, dealing with mail along with some social hours. This was initially 8 hours 1:1 however that was increased to 10 hours last year to include social networking/activities. It apologised for its error referencing 11 hours.
 - Base line support was the same for all individuals in the house. These hours are the shared hours which all residents have a right to share as and when

needed. However, they are not classed as 1:1 hours and should not be used for 1:1 support.

- It would arrange a review of Mr X's care needs given he was unhappy.
 - It noted Mr X was engaging with a current worker to find suitable accommodation that would meet his eligible needs. Previous workers made efforts to explore alternative accommodation but unfortunately have been unable to secure this or he had not felt the options were appropriate.
37. The Council reviewed Mr X's care and support plan in May 2022. Its records show the social worker felt that 10 hours 1:1 support was adequate for Mr X while in his current accommodation, as he had enough support from the shared hours from home staff when his 1:1 was not present.
38. On 12 May Mr X raised queries with the Council's response.
39. On 27 May the Ombudsman decided to investigate.
40. On 22 June the Council told the Ombudsman it had placed its complaints process on hold pending our investigation
41. When I spoke to Mr X I asked why he did not complain to us about earlier issues sooner. He said he did complain to the care provider but they did not do anything. They later told him he would have to complain to the Council first which he did. Mr X said he was now moving but this should have happened sooner.
42. In comments on a draft decision the Council said it had tried to find a solution to support Mr X's long term accommodation needs. The difficulty had predominantly been in meeting Mr X's desires and wishes. It offered a commitment and personalised approach to supporting Mr X. It listened to him, accepted his opinions, responded to his requests and worked in a strength-based way. At all times it maintained the upmost professional approach to supporting his needs. Mr X and the Council did not always agree on the best way forward. This did not reflect an unwillingness to find solutions and compromises but, staff had to follow clear procedure and policy. It offered sincere apologies that it had been unable to find a solution and it remained committed to doing so.

Findings

43. Mr X made clear he wanted more support hours from March 2021. The Council initially decided his hours were appropriate and a review was not necessary. The Council was entitled to reach such a decision.
44. In July 2021 the Council agreed to review Mr X's support plan but it appears to have delayed completing this until November 2021. This delay amounts to fault. During this time Mr X suffered uncertainty as to whether the Council would increase his hours. He also lost the benefit of receiving the agreed two hour increase sooner. This is injustice.
45. The Council considered Mr X's request for more 1:1 hours but decided his current support with an additional two hours per week would meet his needs. I appreciate Mr X disagrees with the Council's view but this does not mean there was fault in its decision making. I cannot question the Council's decision where there is no fault in its decision making process.
46. Mr X also made clear from March 2021 that he wanted to move accommodation. The Council agreed with a move in principle however there was a lack of any progress from March to June 2021. This is fault. I note extra care housing remained an option but Mr X did not agree to this until the end of October 2021.

The Council has said there were no extra care placements available in November 2021. However, there is a lack of evidence of any further consideration of accommodation for Mr X from then until April 2022. This is fault. I cannot say Mr X would have moved accommodation sooner but for this fault, however he has suffered distress and uncertainty as to whether he could have. This is injustice.

47. In August 2022 Mr X told the Ombudsman he was moving to new accommodation. If this did not occur or if Mr X has further complaints not addressed here, these would be premature.

Agreed action

48. To remedy the injustice set out above I recommend the Council carry out the following actions:
49. Within one month of the date of my decision:
- Provide Mr X with an apology;
 - Pay Mr X £300 for distress and uncertainty.
50. Within three months:
- Review its actions in supporting Mr X to move accommodation from March 2021 to April 2022, consider whether additional monitoring is necessary to ensure cases are progressed and consider whether to update service users on any progress more regularly. Notify the Ombudsman of the outcome of its review and actions taken.
51. The Council has accepted my recommendations.

Final decision

52. I found no fault in the Council's decision making on Mr X's care but I found fault as the Council delayed in securing Mr X new accommodation. The Council has accepted my recommendations and I have completed my investigation.

Parts of the complaint that I did not investigate

53. I did not investigate Mr X's complaints arising more than 12 months before he contacted the Ombudsman. This is because Mr X could have contacted the Ombudsman about these matters in time if he wished and there is no good reason to exercise discretion to investigate.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

1. Summary: Miss X complained about delays in the assessment process for her daughter, Y's, Education, Health and Care (EHC) plan. Miss X also complained the Council has not provided enough alternative education while Y could not attend school. Miss X complained about the content and information collated for Y's EHC plan. Miss X says this has caused distress to Y and she has missed education. Miss X says funding Y's education has put her under financial pressure and she has been put to time and trouble to complain. There was fault in the Council's delay in the EHC process and the Council has not provided sufficient alternative education or reviewed the education offer for Y.
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The complaint

2. Miss X complained about delays in the assessment process for her daughter, Y's, Education, Health and Care (EHC) plan. Miss X also complained the Council has not provided sufficient alternative education while Y was unable to attend school. Miss X complained about the content and information collated for Y's EHC plan. Miss X says this has caused distress to Y and she has missed out on education. Miss X stated she has been put under financial pressure funding Y's education and has taken time and trouble to complain.

What I have investigated

3. I have investigated the delays in the EHC plan assessment process and the alternative provision between May 2021 and May 2022. The final section of this statement contains my reasons for not investigating the rest of the complaint.

The Ombudsman's role and powers

4. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
5. 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. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it

would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)

7. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
8. 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

9. I read Miss X's complaint and spoke to her about it on the phone.
10. I considered the information provided by Miss X and the Council.
11. Miss X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Background information

12. A child with special educational needs may have an Education, Health and Care (EHC) plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC plan is set out in sections. We cannot direct changes to the sections about education, or name a different school. Only the tribunal can do this.
13. There is a right of appeal to the SEND Tribunal against a decision not to assess, issue or amend an EHC Plan or about the content of the final EHC Plan. Parents must consider mediation before deciding to appeal. An appeal right is only engaged once a decision not to assess, issue or amend a plan has been made and sent to the parent or a final EHC Plan has been issued.
14. Statutory guidance 'Special educational needs and disability Code of Practice: 0 to 25 years' ('the Code') sets out the process for carrying out EHC assessments and producing EHC Plans. The guidance is based on the Children and Families Act 2014 and the SEN Regulations 2014. It says:
 - where a council receives a request for an EHC needs assessment it must give its decision within six weeks whether to agree to the assessment;
 - the process of assessing needs and developing EHC Plans "must be carried out in a timely manner". Steps must be completed as soon as practicable;
 - the whole process from the point when an assessment is requested until the final EHC Plan is issued must take no more than 20 weeks (unless certain specific circumstances apply); and
 - councils must give the child's parent or the young person 15 days to comment on a draft EHC plan.
15. The Ombudsman's view, based on caselaw, is that 'service failure' is an objective, factual question about what happened. A finding of service failure does not imply blame, intent or bad faith on the part of the council involved. There may be circumstances where we conclude service failure has occurred and caused an injustice to the complainant despite the best efforts of the council. This still

amounts to fault and we may recommend a remedy for the injustice caused. (*R (on the application of ER) v CLA (LGO) [2014] EWCA civ 1407*)

16. Councils must arrange suitable education at school or elsewhere for pupils who are out of school because of exclusion, illness or for other reasons, if they would not receive suitable education without such arrangements. [The provision generally should be full-time unless it is not in the child's interests.] (*Education Act 1996, section 19*). We refer to this as section 19 or alternative education provision.
17. This applies to all children of compulsory school age living in the local council area, whether or not they are on the roll of a school. (*Statutory guidance 'Alternative Provision' January 2013*)

What happened

18. This is a summary of events, outlining key facts and does not cover everything that has occurred in this case.
19. Y has Special Educational Needs (SEN) and anxiety. She was on a significantly reduced timetable but has not accessed school since May 2021 due to her anxiety
20. The Council confirmed the school notified it Y was not accessing education in September 2021. Y did not access any education until November 2021. Since then, she had an alternative education package totalling two hours a week. The education package was increased to four hours in March 2022. During this period, Miss X states she paid for a variety of education subscriptions and resources.
21. Miss X contacted the Council to request an EHC plan for Y in September 2021. In October 2021, the Council confirmed it would complete an EHC needs assessment. The Council requested reports from professionals including educational psychology (EP). The Council gave professionals the statutory six-week timescale to respond. It confirmed it would inform Miss X of its decision to issue a plan or not within 16 weeks from the date the referral was received. The letter explained the EP service was experiencing delays.
22. Miss X complained to the Council about delays to EP advice in the needs assessment in November 2021. She stated demand on the service is not an exemption to extend the statutory timescale and as Y was number 128 on a list of 132 people, the Council would miss the statutory timescales. Miss X also complained about the Council refusing to commission speech and language therapist (SALT) and occupational therapy (OT) assessments and not considering funding independent assessments.
23. The Council responded to Miss X's complaint in December 2021. The Council explained the delay in making a decision about issuing a plan was because of not receiving educational psychology advice. The Council confirmed a final EHC plan would also be delayed. The Council confirmed it would not pay for independent reports. The Council upheld Miss X's complaint but did not provide any remedy for the delay.
24. Miss X asked the Council to escalate her complaint to stage two. The Council confirmed at the end of December it would do so and completed the stage two response at the end of January 2022. The response upheld the complaint about the delay in receiving the EP report and stated this was beyond its control. The Council apologised for the delay but offered no remedy.
25. The Council wrote to Miss X in March 2022 confirming it considered it necessary to issue an EHC plan. It issued a draft EHC plan later that month. Miss X had the

opportunity to comment on the draft plan and wrote to the Council requesting changes. The Council met with Miss X in April 2022 to discuss changes she had requested.

26. The Council issued Y's final EHC plan in May 2022. Miss X stated the content of the plan was not correct and some changes agreed in April had not been included. Miss X also said the plan had been issued prior to a panel meeting to decide the type of education placement most suitable for Y. The Council accepted Miss X's request to amend the plan and issued an updated version in June after the panel meeting confirmed the education placement.
27. Miss X is not satisfied with the Council's response and has asked the Ombudsman to investigate. Miss X would like the Council to accept its failures, apologise and reimburse costs of providing Y's education.
28. In response to my enquiries the Council accepted the delay in the EHC plan process. The Council also stated Y's school arranged alternative provision and as the school commissioned the support, the school was responsible for reviewing the alternative provision.

My findings

29. It is clear from documentation, and the Council accepts, there was a delay in issuing Y's EHC plan. Once the Council agreed to assess Y's needs it should have issued the final EHC plan by the end of January 2022. It did not issue a draft plan until March 2022. The Council did not issue the final plan until May 2022, and this required further revision after it failed to make the changes it had agreed to. This was significantly outside the 20-week timeframe.
30. The Ombudsman takes the view that Council must abide by the statutory and legislative requirements under the SEN legislation and guidance. The Council's failure to meet the requirement amounts to fault. The fault caused Miss X and Y an injustice because of the delay and uncertainty. Y has missed provision specified in the EHC plan and added anxiety already associated with education for Y. The delay issuing the final EHC plan also delayed Miss X's ability to exercise her right of appeal to the SEND tribunal.
31. The Council is responsible for deciding what education is suitable when a child is out of school. Education should be full-time, unless the physical or mental health of the child is such that full-time education would not be in his or her best interests. There is no fixed definition of full-time education, but it should be equivalent to the education they would receive in school. It is recognised that where a child receives one to one tuition, the hours of face-to-face provision could be fewer as the provision is more concentrated.
32. The Council stated it became aware Y was not able to attend school in September 2021 and the school determined two hours provision per week was suitable. The Education Act confirms it is the Council's responsibility to arrange suitable education for children when a child or young person is out of school. There is no evidence the Council considered Y's particular needs or her ability to engage with full-time provision.
33. I consider the failure to properly consider and record how it was decided Y should receive only two hours of tuition amounts to fault. As does the failure to review this provision. The Council should review the provision offered regularly to ensure it continues to be appropriate and it is providing a suitable education. Failure to do so is fault and has caused Y an injustice as she has not received appropriate

education for two academic terms. Miss X has also been caused injustice as she has funded additional education for Y for those terms.

34. The Ombudsman has published guidance to explain how we calculate remedies for people who have suffered injustice as a result of fault by a Council. Our primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred.
35. When a young person has missed education as a result of fault by the Council, we may recommend the Council makes a symbolic payment to acknowledge the education they have missed and help them to catch up. We usually recommend a payment of between £200 and £600 per school month to acknowledge the impact of that loss, to be used for the young person's educational benefit.
36. As Y has had some educational provision, I consider any payment should be at the lower end of the scale. The Council became aware of Y not accessing education in September 2021. The school provided some support until the Council issued the EHCP in May 2022 but as detailed above there was no review or consideration of suitability or increased provision.

Agreed action

37. To remedy the outstanding injustice caused to Miss X and Y by the fault I have identified, the Council has agreed take the following action within 4 weeks of my final decision:
 - Apologise to Y and Miss X for the delay in the EHC process and failing to review the alternative education provision.
 - Pay Miss X £1625 for not ensuring Y received appropriate education for two academic terms and the delay in the EHC process. This money should be used to benefit Y.
38. The Council should provide evidence of the actions taken to satisfy the recommendations.

Final decision

39. I have completed my investigation. I have found fault by the Council leading to an injustice. The Council has agreed to take action to remedy that injustice.

Parts of the complaint that I did not investigate

40. I am not investigating Miss X's complaint about the content of Y's EHCP. That is because Miss X can appeal against the EHC plan to the SEND tribunal.

Investigator's final decision on behalf of the Ombudsman



30 November 2022

Agenda Item: 6

REPORT OF THE CABINET MEMBER FOR FINANCE

STATEMENT OF ACCOUNTS 2021/22

Purpose of the Report

1. To seek approval for Committee to delegate responsibility to the Section 151 Officer, in consultation with the Chairman of the Governance and Ethics Committee, to approve the Statement of Accounts 2021/22 on completion of all external audit work.

Draft Statement of Accounts 2021/22

2. The deadline for publishing the draft Statement of Accounts 2021/22 was 31 July 2022. Nottinghamshire County Council's Statement of Accounts 2021/22 were published onto the Council's website on 5 July 2022, well ahead of the deadline.
3. As reported to Governance and Ethics Committee in July 2022, issues surrounding the accounting treatment of infrastructure assets led to the delay in signing off a number of Local Authority accounts in 2020/21. The Government has recognised that a long-term solution is required but, in order to mitigate the risks of widespread qualifications and delays, a necessary short-term solution is currently being consulted upon. It is looking increasingly unlikely at this stage that the necessary statutory action will have taken place to enable the 2021/22 to be completed by the target date of 30 November 2022. A proposed solution is currently being consulted on and the aim seems to be to have a short-term solution in place by the end of 2022.
4. It is also widely acknowledged that difficulties are being experienced across the Local Authority audit sector. Only 45% of 2019/20 local government audits in England and Wales were completed by the target date of November 2020 and just 9% of 2020/21 audits were finalised by the target date of September 2021.
5. These issues outlined above are likely to result in the 2021/22 audit not being finalised by the target date of 30 November 2022. If that is the case, it is proposed that the responsibility to approve the audited Statement of Accounts 2021/22 is delegated to the Section 151 Officer in consultation with the Chairman of the Governance and Ethics Committee. Also, at that stage, the Audited Statement of Accounts 2021/22 will be published on the Council's website.

Audit Results

6. The statutory audit of the Statement of Accounts 2021/22 is being undertaken by Grant Thornton. At the time this document was published, the external auditors are continuing with their audit work. It is expected that Andrew Smith (Director – Grant Thornton) will provide a verbal update on their progress to date at the Committee meeting.
7. If the Audit Findings Report 2021/22 is not available to be presented to Committee at this meeting it is proposed that it will be brought to a future Committee at the earliest opportunity.
8. The statement of accounts is one of the key documents prepared by the Council to demonstrate good governance and value for money. This provides information about the County Council's financial position, performance and cash flows and consequently, shows the results of the stewardship and accountability of elected members and management for the resources entrusted to them, which is of paramount importance in the use of public funds.
9. As required by The Accounts and Audit (England) Regulations 2015, the Council's S151 Officer will re-certify the accounts following completion of the audit. It is proposed that responsibility to approve the Audited Statement of Accounts 2021/22 is delegated to the Section 151 Officer, in consultation with the Chairman of Governance and Ethics Committee. The Chairman of the Governance and Ethics Committee will also sign the Statement of Approval and the S151 Officer and Chairman of the Governance and Ethics Committee will sign the letters of representation.

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

RECOMMENDATION/S

11. That

- a) The Committee delegates responsibility to the Section 151 Officer, in consultation with the Chair of Governance & Ethics Committee, to approve the Statement of Accounts 2021/22 on completion of all external audit work.

Councillor Philip Owen
Chairman of Governance and Ethics Committee

For any enquiries about this report please contact:
Nigel Stevenson

Service Director (Finance, Infrastructure and Improvement)

Constitutional Comments (KK 18/11/2022)

12. The recommendations fall within the delegation to Governance and Ethics Committee under its terms of reference.

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

30 November 2022

Agenda Item: 7

REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE & IMPROVEMENT

INTERNAL AUDIT PROGRESS TERM 1 2022-23 AND TERM 3 PLAN 2022-23

Purpose of the Report

1. To inform Members of the work carried out by Internal Audit in Term 1 of 2022/23.
2. To consult with Members on the Internal Audit Plan for Term 3 of 2022/23.

Information

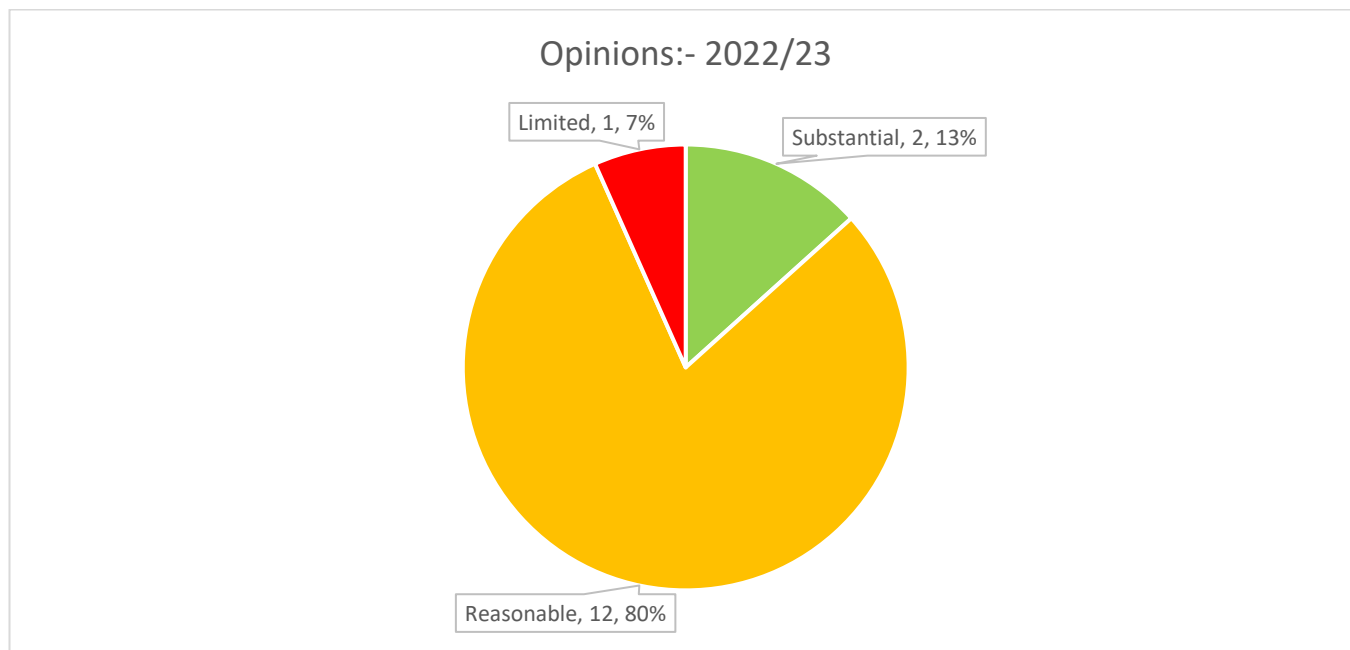
Internal Audit's work in Term 1 2022/23 – April 2022 to July 2022

3. Internal Audit continued to deliver its service through a flexible and agile approach, maintaining efforts to ensure the Team's coverage was complementary to the ongoing, cross-Council pandemic response. A range of work was completed across the Council, covering the following key types of Internal Audit input:
 - Assurance audits - for which an audit opinion is issued
 - Advice and consultancy – often relating to key developments, initiatives and changes to the internal control framework
 - Counter-fraud – primarily focussed on pro-active work to raise awareness of emerging fraud issues.

Audit assurance

4. The opinion-based assurance work is a key contributor to the Head of Internal Audit's year-end opinion on the adequacy of the Council's arrangements for governance, risk management and control. **Chart 1** shows the cumulative distribution of opinions issued in 2022/23, to the end of Term 1.

Chart 1- Opinions to Term 1 2022/23



5. In terms of the work completed on the County Council’s services and systems, **Chart 2** analyses the opinions issued in Term 1 2022/23 by service area and level of assurance.

Chart 2- Opinions for Term 1 2022/23

	LIMITED ASSURANCE	REASONABLE ASSURANCE	SUBSTANTIAL ASSURANCE
COUNCIL-WIDE		Action Tracking Assurance Mapping Head of Internal Audit Annual Report	
CHILDRENS PLACE ADULTS		Climate Change	Clayfields
CHIEF EXEC'S		Grow your Own	Pensions Administration
School Audits	1 Visit *	7 Visits	0 Visits
<p>*The main reason for the Limited Assurance on school audits is the breakdown of the internal controls in relation to separation of duties and authorisation. This is due to the small number of staff involved, often only one office manager, who is able to generate and process transactions in relation to payroll, payments and expenses etc. Guidance and training is available to staff undertaking such functions from the Schools Finance Team.</p>			

6. The significant pieces of assurance work during Term 1 were the following:

- Continuous Assurance – to provide a monthly report to the Council’s statutory officers on the application of internal control in key Council processes.

- Action Tracking – to provide assurance over the implementation of recommendations and the actions taken by management.
- Assurance Mapping – to provide assurance over arrangement across the Council to inform the Head of Internal Audit Annual Report.

7. **Chart 1** includes schools audits undertaken by the Children’s & Families’ Finance Team.

Advisory input

8. Internal Audit continued to provide advisory input to developments across the Council. The following summarises the key areas of activity:
- Home for Ukraine – advice on internal controls to ensure the effective delivery of assistance and use of grant funding.
 - Household Support Grant – advice on internal controls and monitoring arrangements to disseminate the grant.
 - Donations to Youth Clubs - advice on options for collection and recording of donations received.
9. Internal Audit’s advisory input ensures that timely advice is delivered and can influence subsequent actions. The engagements in advisory work help to maintain the influence the Section has to retain a proper focus on control issues and provides intelligence for subsequent planned assurance activity.

Counter-Fraud

10. Internal Audit pursued its pro-active programme, disseminating fraud awareness materials to alert departments and staff of fraud risks and scams that emerged during Term 1. The following summarises the key areas of activity:
- Annual Fraud Report – capture and reporting of counter fraud activity across the Council to drive the counter fraud agenda.
 - National Fraud Initiative (NFI) – coordination and review of matches with departments.
 - National and Local Fraud Alerts – screening and distributing to relevant sections alerts publicised by national fraud agencies.
11. In addition, Internal Audit advised in fraud investigation activities involving live cases outlined in the Annual Fraud Report.

Certification

12. Internal Audit also provides a certification function for a variety of grants received and distributed by the Council. During Term 1 the following grant claims were certified:
- Home to School Grant
 - Travel Demand Grant
 - Trading Standards Grants &
 - COVID Management Grant

Internal Audit Performance

13. **Appendix 1** provides an update on the Section’s performance in Term 1 against its key indicators. It includes the following charts to depict progress against the Term 1 Plan, expressed in terms of the following:
- Inputs – the number of audit days delivered against the Term 1 plan. Each segment in the chart represents ¼ of the Termly Plan.

- Outputs – the number of jobs completed against the plan. Each segment in the chart represents ¼ of the Termly Plan.
- Productivity indicator – the target score is 1.

14. A good level of performance has been achieved and members' attention is drawn particularly to the following:

- Staffing resources – the team resources were hit hard by the impact of staff moving to interim roles to provide interim cover and will continue to impact in Term 3. The two Internal Audit Apprentices have enrolled on their next level of professional training with the Institute of Internal Auditor. The time contingency required for the apprentices' training and development continues to be a limiting factor in the extent of audit coverage that may be planned for but increases in productivity are being seen. Staffing productive days continue to be lower following the retirement of the Audit Supervisor and current staff providing interim cover on a temporary basis until permanent recruitments have been completed. The Term 3 plan has been flexed to accommodate these changes.
- Assurance and Advisory activities – the completion of internal audit activity reflects the impact of staffing changes and is reflected in the agile approach adopted. Term 1 again demonstrates that the Team have continued to flex plans and provide advisory activities to support the immediate risks facing the Council. This has an impact on delivery of the planned assurance reviews, but these are kept under review for ongoing priority in subsequent plans, as identified in the Term 3 plan for 2022-23.
- Implementation rates for actions arising from audits has improved, and on average has now achieved the target of 75%, most notably with the Priority 1 actions from 2021/22 having the highest ever implementation rate of 87%. This is highlighted in the report to Committee in November 2022. The next update on this is scheduled for June 2023.

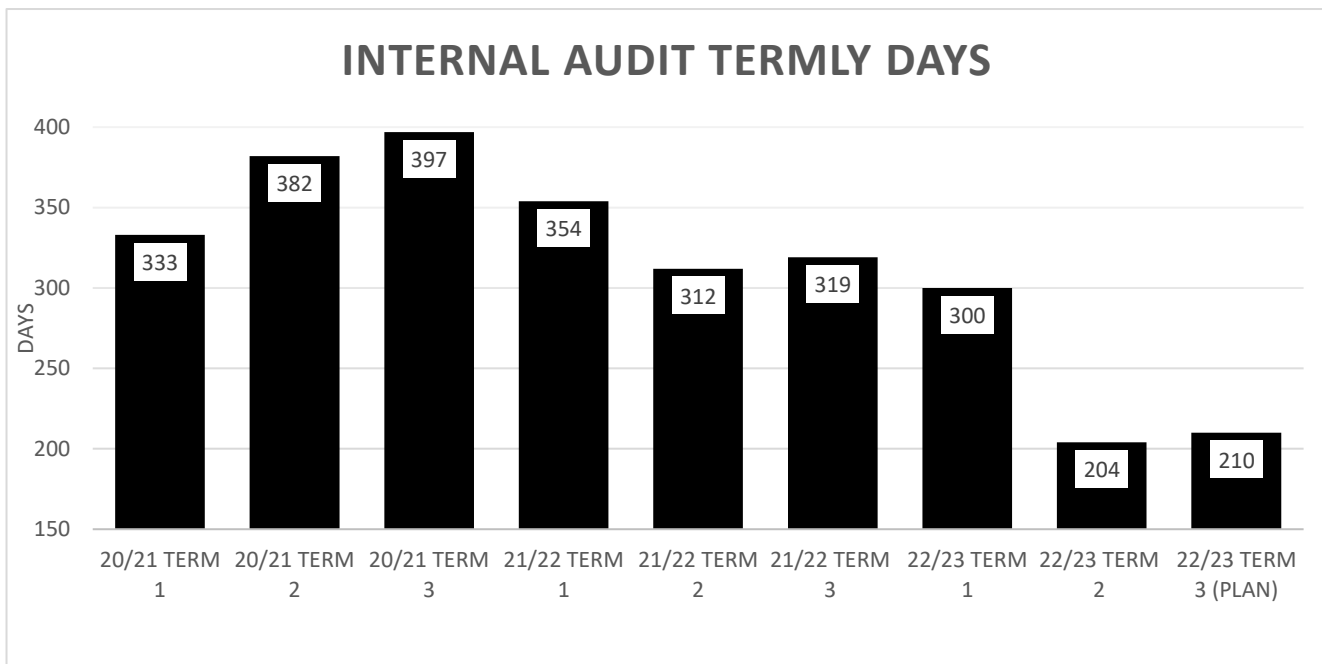
Proposed Internal Audit Plan for Term 3 2022-2023

15. Internal Audit termly plans continue to be determined on a risk basis, as required by the Public Sector Internal Audit Standards, and using the methodology previously reported to Members.
16. Termly planning continues to be developed in an agile way allowing the precise scope and objectives for each audit assignment to be agreed at the time the audit is to commence. Detailed discussions prior to an audit commencing should identify other sources of assurance already available for the area in question, thereby clarifying the risks on which Internal Audit's focus should most impactfully be applied. At this planning stage, therefore, proposed topics for audit are expressed in terms of the broad rationale for their inclusion.
17. The Term 3 plan represents the Section's assessment of the key areas that need to be audited in order to satisfy the Authority's statutory responsibility to undertake an adequate and effective internal audit of its system of internal control. The Section's aim is to complete enough work to express an overall, annual opinion on the adequacy and effectiveness of the Authority's internal control arrangements.

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

Assurance from Audit Coverage	Days	Outputs
Second Line Assurance work	60	3
Opinion Assurance	90	5
Advice / Consultancy Assurance	46	1
Counter Fraud Assurance	14	4
Certification Assurance	0	0
Total	210	13
External Clients (Notts Fire & Rescue Service)	45	
Grand Total	255	

19. The chart below shows the trend in the number of actual days delivered in recent terms, excluding the external clients.



20. The next Internal Audit update to Committee will cover details of the outcome of Internal Audit’s work in Term 2 (August 2022 – November 2022).

Other Options Considered

21. The Internal Audit Team is working to the Public Sector Internal Audit Standards during 2022/23. This report meets the requirement of the Standards to produce a risk-based plan and to report the outcomes of Internal Audit’s work. No other option was considered.

Reason/s for Recommendation/s

22. To set out the report of the Interim Chief Internal Auditor to propose the planned coverage of Internal Audit's work in Term 3 of 2022/23, providing Members with the opportunity to make suggestions for its content.

Statutory and Policy Implications

23. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required. Individual audits completed and in the proposed Termly Plan may potentially have a positive impact on many of the above considerations.

Financial Implications

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

RECOMMENDATION

1) That the Committee notes the outcome of the Internal Audit work carried out in Term 1 and the planned coverage of Internal Audit's work in Term 3 of 2022/23 be progressed to help deliver assurance to the Committee in priority areas.

Nigel Stevenson

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

For any enquiries about this report please contact:

Simon Lacey

Interim Chief Internal Auditor

Constitutional Comments (GR – 11/11/2022)

25. Pursuant to the Nottinghamshire County Council Constitution, this Committee has the delegated authority to receive and consider the recommendations contained within this report.

Financial Comments (SES - 01/11/2022)

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

Background Papers and Published Documents

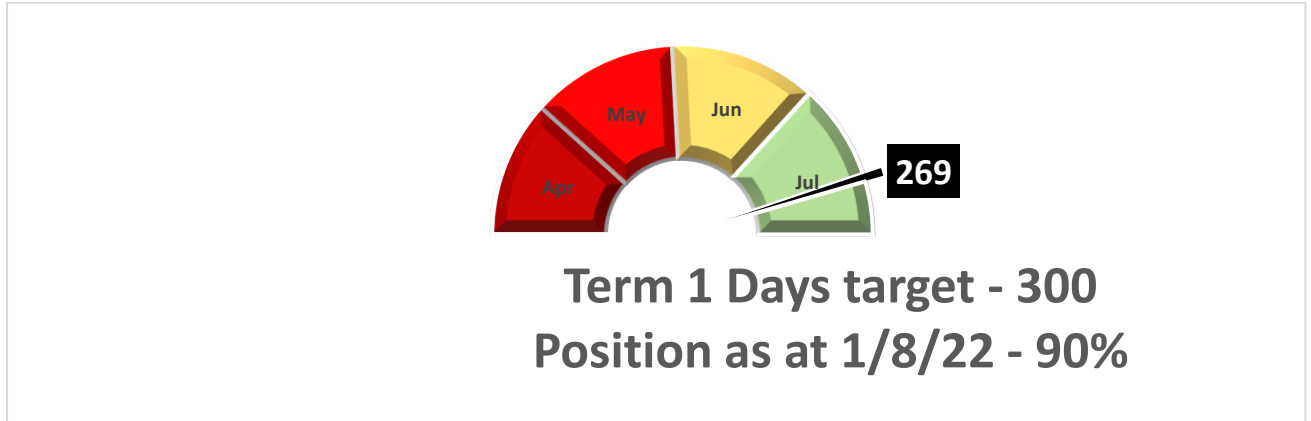
Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

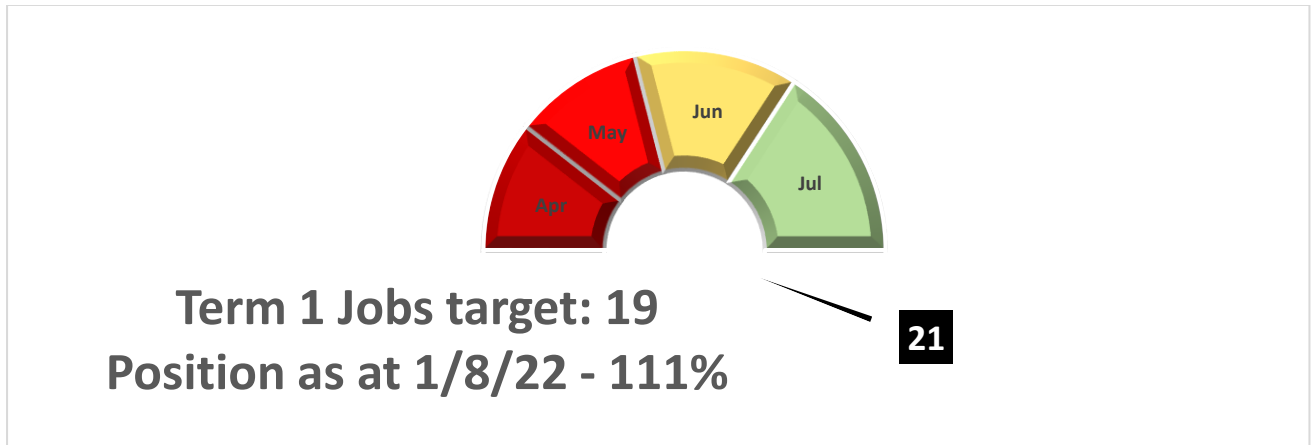
Electoral Division(s) and Member(s) Affected

- All

Term 1 – Inputs – Days Delivered



Term 1 – Outputs – Jobs Completed



Term 1 – Productivity Indicator



Key Performance Indicators

Performance Measure/Criteria	Target	Outcome in Term 1
1. Risk-aware Council		
Completion of Termly Plan – Days	90%	✓ 90%
- Jobs	90%	✓ 111%
Regular progress reports to: <ul style="list-style-type: none"> - Departmental Leadership Teams - Corporate Leadership Team - Governance & Ethics Committee 	1 per term 1 per term 1 per term	✓ Completed ✓ Completed ✓ Completed
Publication of periodic fraud/control awareness updates	2 per annum	✓ Annual Fraud Report – July 2022
2. Influential Audit Section		
Recommendations agreed	95%	✓ 100%
3. Improved internal control & VFM		
Percentage of Priority 1 & Priority 2 recommendations implemented (Position as of 30 November 2022 for 2021/22 actions)	75%	✓ 87% Priority 1 ✗ 72% Priority 2
4. Quality measures		
Compliance with the Public Sector Internal Audit Standards (PSIAS)	Compliance achieved	✓ Interim Chief Internal Auditor's self-assessment against PSIAS for 2021/22
Positive customer feedback through Quality Control Questionnaire (QCQ) scores	Feedback good or excellent (where a score of 4 is excellent and a score of 3 is good)	✓ 3.75

Area of Assurance Coverage	Priority Level (if risk assessed)	Job count	Other 3rd Line Assurance	Assurance from audit coverage and planned days					Potential scope or area of assurance coverage
				2nd Line Assurance Role	Opinion Assurance	Advice/ Consultancy Assurance	Counter-Fraud Assurance	Certification Assurance	
Audit Risk Assessment - Assurance Requirements for Term 3				Rationale for Assurance Requirement					
Governance Framework									
Continuous Audit Assurance	H	1		25					Core process based: continued reporting to Statutory Officers of routine assurance that core processes are operating as intended, or to identify areas for management/audit attention.
Assurance Mapping	H	1		30					Core process based: Completion of the annual assurance mapping exercise to capture assurance from across the Council to inform the Annual Governance Statement.
Annual Governance Statement	H	1		5					Core process based: Co-ordinate evidence gathering for the Annual Governance Statement and to draft the statement for 22/23
Transformation and Change programme	H	0			10				Intelligence based: contingency of days to engage with the corporate, transformation and change programmes, and with departmental service development approaches - to provide timely assurance on their implications for governance, risk management and control
Counter-Fraud									
Counter Fraud - Pro- Active Counter Fraud - Progress Report	H	1					5		Counter fraud: Continuation of the counter fraud activity and report on progress with the implementation of actions and activity through the progress report.
Pro-active counter-fraud – NFI 2020-22 - Review of Matches and 2022-24 submissions	H	1					5		Counter fraud: Review and report on the completion of recommended matches by the key contacts within departments for Cabinet Office.
Counter Fraud Alerts - network dissemination & review of training materials	H	1					3		Counter fraud: Review and dissemination of fraud alerts from national counter-fraud agencies. Review and update the Counter Fraud Training Material for dissemination across the Council to support International Fraud Week.
ACFS - Counter Fraud Case Reviews - financial irregularities	H	1					1		Counter fraud: Regular liaison to address concerns of misuse of direct payments, and other possible financial abuse involving service users
Assurance									
Adults - Ombudsman Complaints	H	1			5				Intelligence based: Continue with the review of the approach to communications and application on lessons learnt from cases and outcomes from Ombudsman reporting.
Property Sales	H	1			15				Intelligence based: Review of changes to procedures recommended within the previous audit to provide assurance over the operation of new controls.
Cabinet and Scrutiny Compliance	H	1			15				Intelligence based: Undertake a review of compliance with the new governance arrangement under the Cabinet and Scrutiny model to provide assurance and inform the AGS.
ICT Risk Plan - Asset Controls	H	1			10				ICT Risk Based: Undertake a review of asset control especially in relation to mobile devices and remote working environments based on the current ICT risk assessment.
Use of Financial Waivers	H	1			12				Intelligence based: Undertake a review of the use and application of waivers following reports from procurement and alerts in relation to financial control from the continuous audit reporting.
Procurement to Pay	H	1			15				Core process based: Review of controls in relation to the process of payments from initiation to payment using data analytical techniques.
Value for Money - Expenditure Reviews (Adults Day Services)	H	0			8				Intelligence based: National financial pressures and changing external audit focus bring a renewed importance to ensure that Value for Money (VFM) is obtained across the Council through expenditure reviews.
Sub-totals				60	90	0	14	0	
Planning, reporting, client management									
Governance & Ethics Committee		0				16			Core Activity: Preparation of reports in accordance with the Governance and Ethics Committee annual work plan and attendance at meetings.
Client management		0				20			Core Activity: Planning and termly progress reports to Corporate Leadership Team.
Advice		0				10			Core Activity: Advice to client on financial and other controls, on request.
Sub-totals				0	0	46	0	0	
Grand Totals		13		60	90	46	14	0	
				210					

Area of Assurance Coverage	Priority Level (if risk assessed)	Job count	Other 3rd Line Assurance	Assurance from audit coverage and planned days					Potential scope or area of assurance coverage
				2nd Line Assurance Role	Opinion Assurance	Advice/ Consultancy Assurance	Counter-Fraud Assurance	Certification Assurance	
Forward Plan for assurance in subsequent Terms									
PFI - arrangements for the exit	H								<i>Intelligence based:</i> Arrangements in place for the completion, exit and hand back of arrangements under PFI schemes
Culture	H								<i>Core process based:</i> follow-on from previous review of procedures, guidance and protocols - potentially to link in with other 3rd line assurance.
Thematic Review of Schools Finances - NAO Sustainability	H								<i>Intelligence based:</i> Undertake a review of processes within schools based on risks emerging from the NAO guidance and sustainability.
Contract Management	H								<i>Intelligence based:</i> Undertake a review of newly implemented processes to drive and support the VFM Agenda.
Budget Setting & MTFS	H								<i>Intelligence based:</i> Undertake a review of robustness and consistency of budget setting processes and assumptions.
Social Care - Future Needs & Impact	H								<i>Intelligence based:</i> Undertake a review of intelligence and data analytics used to form a view of future needs with comparison of practices nationally within Adults and Children's.
Asset Management	H								<i>Intelligence based:</i> Undertake a review as part of smarter working the management of assets and the realisation of capital receipts.
ICT Networks	H								<i>ICT Risk Based:</i> Undertake a review of the processes for establishing and the robustness of networks WAN/LAN.
Use of Agency Staffing	H								<i>Intelligence based:</i> Undertake a review of the use of agency staffing contracts across the Council and especially in high use areas.
Regeneration Relationships	H								<i>Intelligence based:</i> Undertake a review of relationships with developers and economic developments at a Local and national Level.

30 November 2022

Agenda Item: 8

**REPORT OF SERVICE DIRECTOR, FINANCE, INFRASTRUCTURE &
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

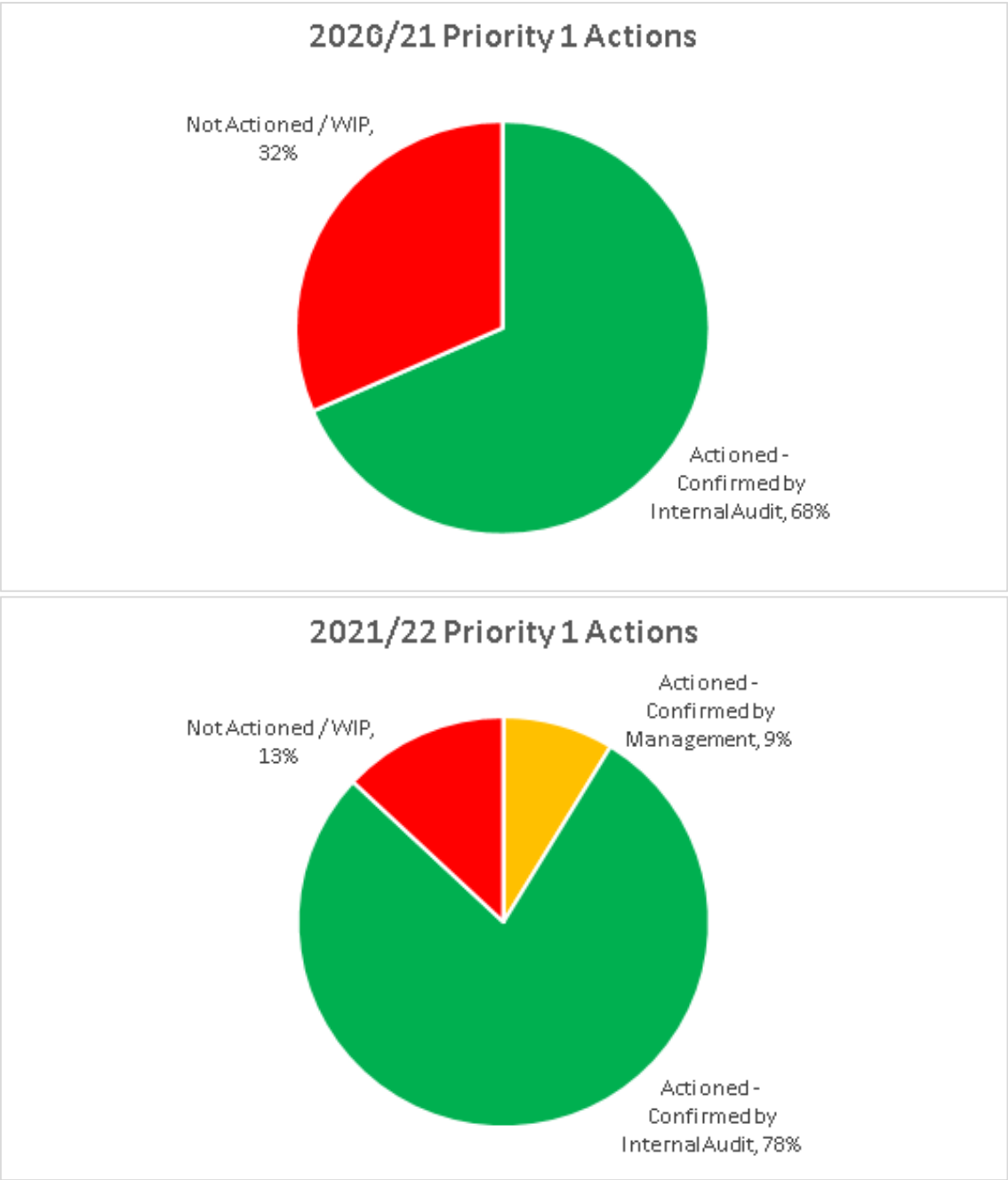
2. Internal Audit carries out follow-up work every six months, as follows:

Priority rating of recommendation	Management assurance	Internal Audit assurance
Priority 1	Updates sought from action owners about implementation	Testing to confirm management assurances about implementation
Priority 2		Sense-checking of updates, but no testing required

3. The charts, tables and text in this report, and its appendix, describe the progress made by action owners in implementation, and the outcomes of testing for Priority 1 actions.

Priority 1 Actions

4. The degree of progress made with implementing and testing the more recent Priority 1 actions are summarised in the pie charts below, which cover the latest two financial years:



5. Taken together, the green and amber segments of the pie charts confirm that the majority of Priority 1 recommendations from both years have been actioned. The amber segment is actions that will be tested in a future Internal Audit engagement which is in our proposed audit plan for term 3 of this year (see paragraph 8 below). We have successfully tested the other confirmed actions, as shown in the table in paragraph 6 below. Action owners have commented in the past that the pandemic has been the key factor in delaying implementation, evidence of which is shown by the red segments.
6. Our testing has confirmed satisfactory implementation for the following Priority 1 actions, many of which pre-date the start of the pandemic:

Priority 1 Actions – Cleared by Internal Audit following recent testing	
Audit – Agreed Action	Cleared following enquiry and testing
Pre-2020/21	
Sickness Absence Management – mandatory training	The position has improved significantly. The number of line managers completing mandatory training within the 3-year refresher cycle has increased from 150 to 1,167 since the audit.
Health & Safety – mandatory fire awareness training	New mandatory Fire Awareness training is now live on e-learning. Take up of training is monitored through by H&S and through the EPDR process. In addition, new fire and emergency evacuation procedures have been publicised along with revised signage.
Vacant Property Management	Actions to manage vacant properties have been substantially addressed, with checks on the handover of the property for management as a vacant property, regular inspections and monitoring of the properties, management of the risks, and liaison with the insurance team. The only outstanding action is a lesser issue to have a policy for the temporary use of the properties whilst they are not required by the Council.
Continuing Healthcare	The number of Care Package Review forms (ACM33s) awaiting completion by health partners has reduced significantly, from 1,300 in May to 408 in October, of which 202 are from the previous year. This area continues to receive the required attention by the department and no longer needs to be tracked by Internal Audit.
Information Governance	We no longer need to track these actions as sufficient controls are in place to address them. For retention of records and the information asset register progress is monitored on the Information Governance Risk Register and reported to the Information Governance & Cyber Security Board. For leavers' personal drives a procedure is in place for their deletion after 90 days, and older h-drives will be deleted when there is a lifting of the non-destruction order imposed by the Independent Enquiry into Child Sexual Abuse (IICSA).
2021/22	
Councillors Divisional Fund	A revised policy and procedures were introduced and approved by the G&E Committee in March 2022, which strengthen the scheme. Further actions are planned for future dates and will continue to be tracked by Internal Audit as they become due.
Adoption & Permanence – financial support	The timeliness of financial reassessments has improved significantly. For example the proportion of reviews more than 4 months overdue has fallen from 34% to 0.7% since the audit (and some delays can be outside the department's control). Also the Payments Team Leader post has been re-evaluated and regraded, and a Kinship Support Service has been created, to bring together decision making within one team.
Response to Covid-19: Data Protection Impact Assessments (DPIAs)	The backlog of DPIAs has been addressed, to ensure that working arrangements, which have changed significantly since Covid-19, remain GDPR compliant. In November 2021 66 DPIAs awaited completion. 60 DPIAs have been completed in the 12 months up to October 2022. New DPIAs are continually required so there will always be some in progress. At October 2022 there were 78 DPIAs awaiting completion, of which the majority, 59, were already in progress.

7. Where management provides assurance that Priority 1 actions have been implemented, Internal Audit tests them before confirming they are implemented (in paragraph 6 above). We have obtained evidence to test all implemented Priority 1 actions, apart from two actions from our audit of the Sale of Land & Buildings which will instead be tested on our next full audit of the area which is included in our proposed audit plan for term 3 of this year (see paragraph 8 below).
8. The following actions have been removed from our tracking process and we have plans to review the areas in future audit engagements:

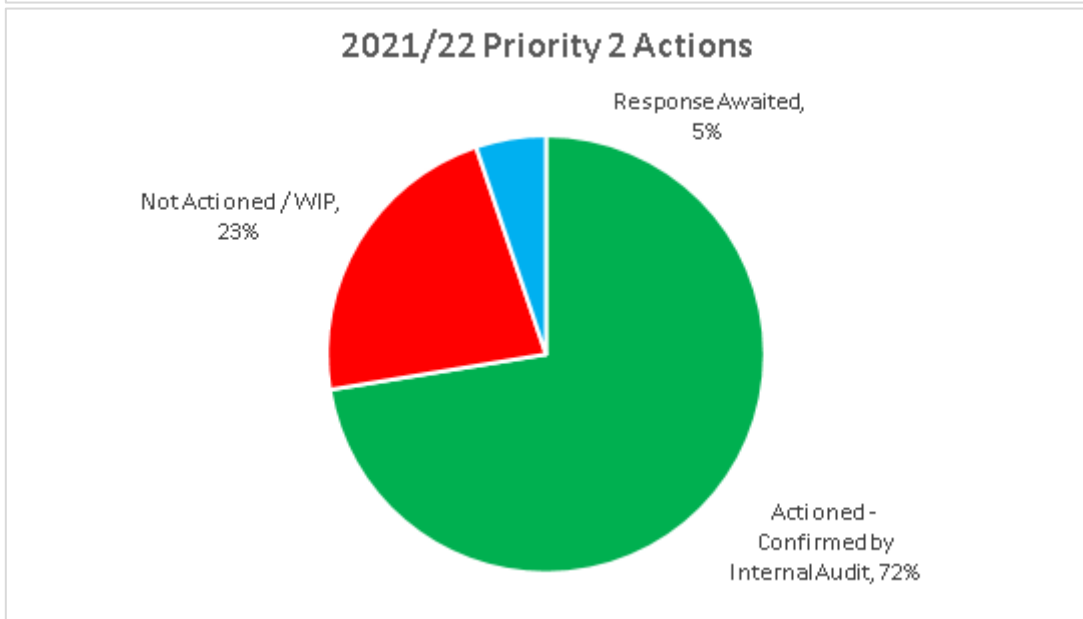
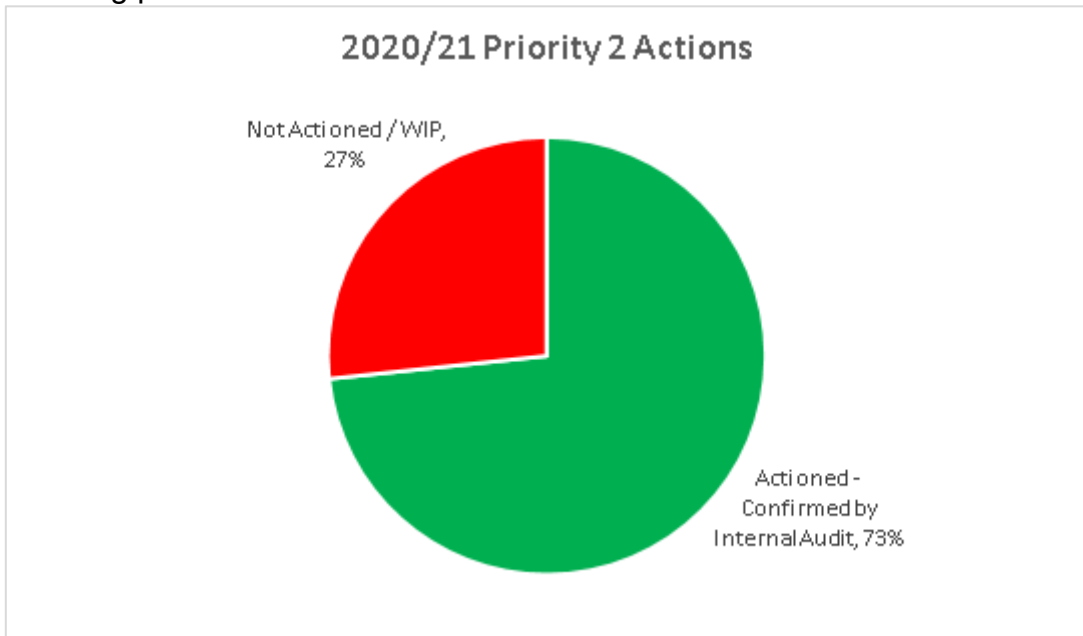
Priority 1 Actions – Actions removed from tracking	
Audit – Agreed Action	Rationale
Pre-2020/21	
Pensions Administration – Reconciliation of the Pensions Payroll with the Pension Administration System	Actions from this audit have been superseded by a more recent full audit of the area, completed this financial year, with revised actions and timescales.
2020/21	
ICT Active Directory – controls over access to the ICT Active Directory	Actions from this audit have been superseded by a more recent full audit of the area, completed this financial year, with revised actions and timescales.
2021/22	
Sale of Land & Buildings – Actions to progress the sale of properties and achieve the capital receipts budget, and to improve the documentation of key decisions during the sale process.	For these actions we have management assurance that they are implemented, and these will be tested on our next full audit of the area, which is included in our proposed audit plan for term 3 of this year.

9. However, despite the positive messages above, our work continues to identify Priority 1 actions where implementation is overdue, including some from just before the pandemic, which were all delayed by the pandemic. These are set out in **Appendix 1**, and summarised by department, by year, below:

Overdue Priority 1 Actions						
Audit report year	Council total	Departmental Analysis				
		ASCPH	C&F	Place	CEx	Cross-cutting
Pre-2020/21	5	2	0	0	0	3
2020/21	6	0	0	0	0	6
2021/22	3	0	0	2	0	1
Total	14	2	0	2	0	10

Priority 2 Actions

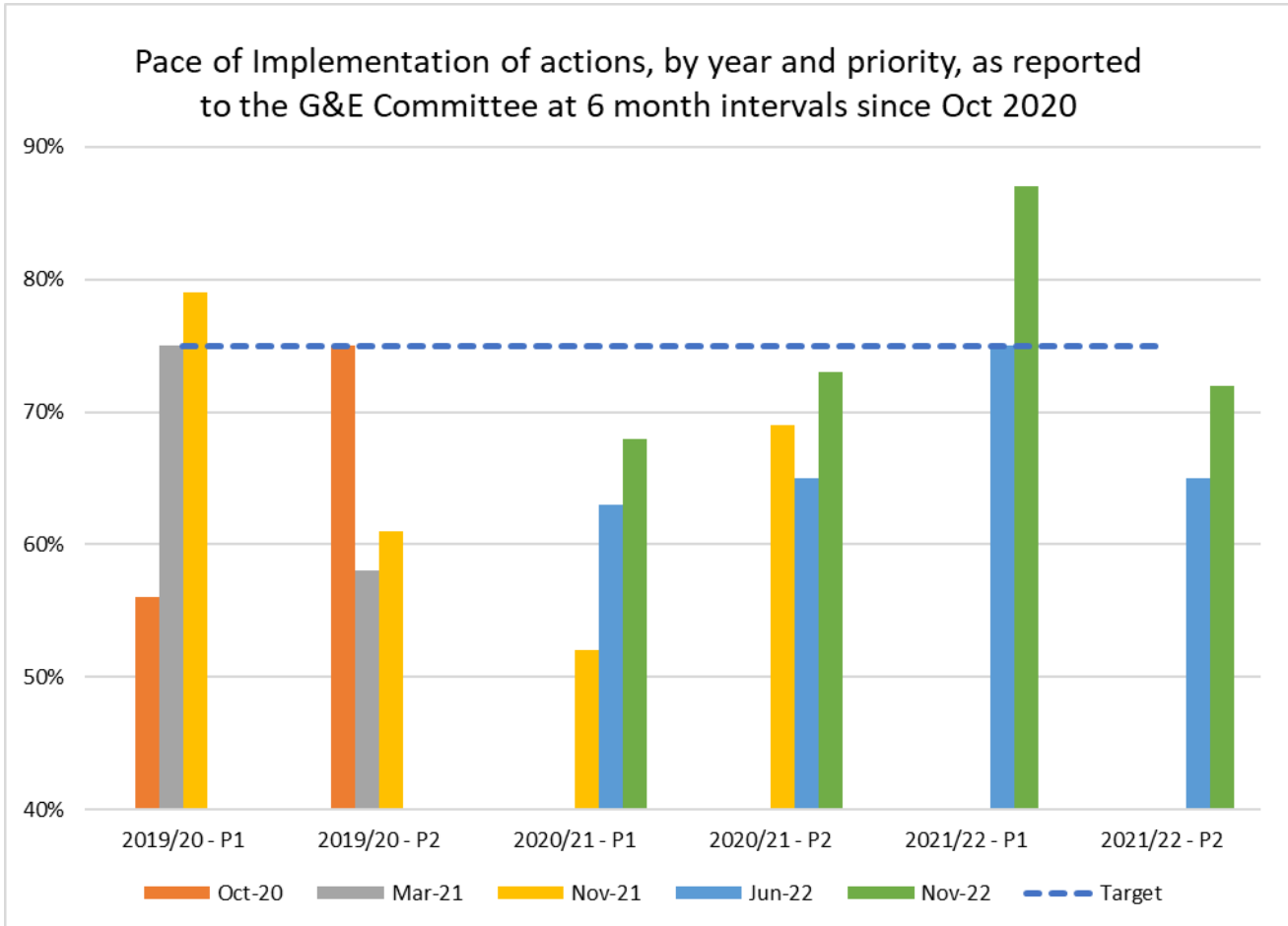
10. Progress with implementing Priority 2 actions over the last two financial years is summarised in the following pie-charts:



11. The green segments confirm that the majority of Priority 2 recommendations from both financial years have been actioned. The red segments indicate there remains more to do.

Pace of implementation

12. For each financial year, a key performance indicator has been agreed for 75% of agreed Priority 1 and Priority 2 actions to be implemented on schedule. The following chart tracks the pace with which actions have been implemented since 2019/20, as reported to successive G&E Committees since January 2020, just before the outbreak of the pandemic:



13. The above chart shows that there was a slowdown in of the pace of implementation of actions during the pandemic, with the lowest figures being 2020/21 actions reported to the November 2021 committee. There has been an improvement since then, towards or exceeding the 75% target, most notably with Priority 1 actions from 2021/22 having the highest ever implementation rate of 87%. The implementation of earlier Priority 1 actions from 2020/21 has improved but remains below the target at 68%. The overall implementation rate on this latest action tracking exercise was 75%. The 2020/21 actions that are still overdue were impacted by the pandemic as described in the progress updates in **Appendix 1**. Throughout, Internal Audit has sustained its requests for management updates, but is now starting to confirm, test, and clear the implementation of more agreed actions than before.

Management updates to the Governance & Ethics Committee

14. The continued drive and support from the Committee will be key in securing improved implementation rates going forward. 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

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

Reason for Recommendation

16.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

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

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

- 1) That the Committee note the contents of the reports and the progress that has been made against the Internal Audit recommendations.
- 2) That a further progress report and an update on those actions outstanding be included in the next 6-monthly review.

Nigel Stevenson

Service Director – Finance, Infrastructure and Improvement

For any enquiries about this report please contact: Simon Lacey, Interim Chief Internal Auditor

Constitutional Comments (KK 04/11/2022)

The report and recommendation fall within the remit of Governance and Ethics Committee for consideration.

Financial Comments (SES 02/11/2022)

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

Agreed action and risk	Original implementation target and position at the previous follow-up in June 2022	Latest progress update	Internal Audit follow-up
Pre-2020/21 audit reports			
Ethical Framework (cross-cutting) – October 2018			
<p>Register of Staff Gifts and Hospitality A consistent form of register for gifts and hospitality to be devised for use by all departments.</p> <p><i>Risk: Staff may be unclear of rules and accept inappropriate gifts and hospitality without the knowledge or authority of management.</i></p>	<p>March 2019</p> <p>June 2022: Progress was hampered by staff changes, the Covid-19 pandemic and then the change in governance arrangements, where officers were focussed on other time critical work. However gradual work has been ongoing throughout and a revised electronic form has been developed for use by staff to record gifts and hospitality. Subject to changes in the Officer Code of Conduct, this will be ready for roll-out by Autumn 2022.</p>	<p>Electronic forms for staff to declare interests and gifts & hospitality have been developed and are ready for implementation. A separate report has been presented to the G&E Committee on 30 November 2022 approving the new approach.</p>	<p>We will confirm whether this has happened in our next action tracking report.</p>
<p>Staff Declaration of Interest A standard template to record notifications of interests to appropriate managers. Staff to be reminded annually of the requirements regarding notifying interests and declaring interests in meetings.</p> <p><i>Risk: There may be inadequate safeguards to prevent inappropriate involvement by staff in decision making or access to documentation.</i></p>	<p>May 2019</p> <p>June 2022: A revised electronic form has been developed for use by staff to notify any relevant interests to managers. Subject to changes in the Officer Code of Conduct, this will be ready for roll-out by Autumn 2022.</p>	<p>Electronic forms for staff to declare interests and gifts & hospitality have been developed and are ready for implementation. A separate report has been presented to the G&E Committee on 30 November 2022 approving the new approach.</p>	<p>We will confirm whether this has happened in our next action tracking report.</p>
External Day Care Providers (ASC&PH Dept) – December 2019			
<p>Service provider tendering and contracting A competitive process to select new external day care providers to be undertaken (instead of ASCH Commissioning annually extending contracts beyond the duration of the framework agreement that expired March 2016).</p>	<p>April 2020</p> <p>June 2022: Covid-19 impacted this area. New contracts were issued to providers in April 2021 for one year under the same specifications as before, but were to be updated following the strategy feedback. The Commissioning Board agreed to extend these until March 2023 to allow for the strategy to be consulted on.</p>	<p>The Day Opportunity Strategy was approved by the ASC&PH Committee in April 2022. Plans are ongoing to prepare the tender to introduce new specifications and contracts from April 2023.</p>	<p>To be followed up in next 6 months.</p>

Overdue Priority 1 Actions

Appendix 1

Agreed action and risk	Original implementation target and position at the previous follow-up in June 2022	Latest progress update	Internal Audit follow-up
<p><i>Risk: Non-accredited providers may offer poor value for money and there may be breaches of procurement regulations.</i></p>			
<p>Contract compliance – performance The relevant key performance indicators (KPIs) and quality standards to be a contractual requirement.</p> <p><i>Risk: Providers may not fulfil their contractual obligations or be in breach of their contracts.</i></p>	<p>April 2020</p> <p>June 2022: KPIs were to be in the new contract – see above regarding the timeline issue. (Audits of compliance with existing contract conditions had started again.)</p>	<p>Work is underway with external providers via a KPI working group to ensure effective monitoring is introduced into the new contracts, aligned to outcomes. The department is currently scoping a VFM audit, which will also enhance the understanding of outcomes and performance within day services.</p>	<p>As above</p>
<p>Budget Forecasting (cross-cutting) – March 2020</p>			
<p>Training A training package is being developed. This will be available as on-line training and will include updated guidance on the expectations of budget holders and approvers.</p> <p><i>Risk: Where staff are not fully aware of their roles and responsibilities or properly trained, inaccurate forecasts may be produced.</i></p>	<p>September 2020</p> <p>June 2022: The proposed change in Governance arrangements has meant that Finance have been reviewing and updating Financial Regulations which has taken priority. The intention is to include updated Financial Regulations in the training and expect to undertake this after year-end activities have been concluded.</p>	<p>Progress was previously delayed by additional work arising from Covid, and then the update to financial regulations which is also to be included in the training. This will be revisited after the year-end accounts activities, after the delayed external audit visit which was due to end in early October.</p>	<p>To be followed up in next 6 months.</p>
<p>2020/21 audit reports</p>			
<p>Commissioning (cross-cutting) – June 2020</p>			
<p>Commissioning Project Management Draft commissioning plans to be circulated between departmental commissioning boards, panels and teams and also a cross-departmental Expert Commissioner group.</p>	<p>October 2020</p> <p>June 2022: This work was paused in early December 2021 due to demand pressures caused by the Omicron variant and pressures on the home care market. This work recommenced in April 2022.</p>	<p>This is now addressed by the Departmental Commissioning Boards established for the Adults and Children’s departments. A Place Department commissioning and contracts group was still to be set up, and so we will continue to track this.</p>	<p>To be followed up in next 6 months</p>

Overdue Priority 1 Actions

Appendix 1

Agreed action and risk	Original implementation target and position at the previous follow-up in June 2022	Latest progress update	Internal Audit follow-up
<p><i>Risk: Opportunities for joint working and commissioning are missed at the operational level.</i></p>			
<p>Training and quality control A framework of commissioning courses ranging from basic to advanced, sourced either internally or externally, to be established and rolled out.</p> <p><i>Risk: The quality of commissioning activity varies across the organisation.</i></p>	<p>October 2020</p> <p>June 2022: This action is now expected to be complete in October 2022.</p>	<p>A cross-departmental task and finish group of commissioners have carried out a skills audit and with the analysis from this activity a training plan will be developed to deliver the organisational development and cultural change required as part of the adoption of the Strategic Commissioning Framework, Toolkit and Training Plan which will now be launched in January 2023</p>	<p>As above</p>
<p>Databases and data analysis Commissioning groups and teams to review the data analytical skills required of staff and consider options for addressing skills gaps.</p> <p><i>Risk: Best practice is not promoted, resulting in sub-optimal outcomes.</i></p>	<p>October 2020</p> <p>June 2022: Learning and recommendations will be identified as part of the first phase of the Strategic Commissioning Programme that is now expected to be completed by end December 2022.</p>	<p>The current Strategic Commissioning Programme is being supported by a Business Analyst from the Strategic Insight Unit. However, this level of support cannot be available for all commissioning activities. It is intended that through the online Toolkit, which is being developed as part of the programme, there will be further information collated for commissioners of useful links and resources for them to use to be able to support and aid their data analysis.</p>	<p>As above</p>
<p>Business Continuity Planning (BCP) (cross-cutting) – August 2020</p>			
<p>Training The Emergency Planning Team to submit a report to the Risk, Safety and Emergency Management Board (RSEMB) on training options and other matters arising from the returned questionnaires.</p> <p><i>Risk: Lack of engagement from BCP managers and ineffective</i></p>	<p>March 2021</p> <p>June 2022: Covid-19 response work has now receded. (debriefing work to follow). Other priority emergency planning work will further delay completion of this specific action, however:</p> <ul style="list-style-type: none"> The RSEMB discussed NCC Critical Service list in March 2022, and agreed this will be updated through departments. 	<p>Consideration has begun to be given to the inclusion of Business Continuity in a suite of new e-Learning modules.</p>	<p>To be followed up in next 6 months.</p>

Overdue Priority 1 Actions

Appendix 1

Agreed action and risk	Original implementation target and position at the previous follow-up in June 2022	Latest progress update	Internal Audit follow-up
<i>actions taken in the event of an emergency.</i>	An ICT Business Continuity exercise is scheduled with RSEMB on 9 th June.		
<p>BCPs on SharePoint Managers of critical services in the ASC&PH and C&F Departments need to produce BCPs for the 10 critical services currently without one. Once completed they need to be uploaded onto SharePoint.</p> <p><i>Risk: Services deemed as critical do not have an action plan in the event of an emergency.</i></p>	As above	Specific Emergency Planning Officers have been assigned to support ASC&H and C&F managers of critical services. We await confirmation that Business Continuity Plans have been produced for the 10 services in these departments that did not have one.	As above
<p>Annual Reviews of BCPs Managers of critical services to ensure that BCPs to be reviewed, updated, and made subject to training exercises.</p> <p><i>Risk: Actions taken in response to an emergency situation are not effective, exposing the Council and its service users to prolonged disruption.</i></p>	As above	The Emergency Planning Team has recommended the re-establishment of the Business Continuity Forum to lead and support the future maintenance of effective business continuity plans.	As above
2021/22 audit reports			
Section 106 Agreements (Place Dept) – May 2021			
<p>Commencement of Developments Formalised process for notification of development commencement.</p> <p><i>Risk: Management are not sighted on developments and trigger points are not activated.</i></p>	<p>April 2021</p> <p>In our previous follow up in June 2022 this was classed as actioned, subject to our testing, as meetings had been arranged. However further enquiries this time found that these meetings have not progressed to a stage that clears this action (see next column).</p>	Meetings with District and Borough Councils have been arranged, to discuss the method by which they monitor the commencement of developments and send formal notification to the County Council.	To be followed up in next 6 months.
Sale of land and building properties (Place Dept) – November 2021			
Asset Management Plans	March 2022	Progress was delayed by Covid-19, after which a restart was made in the	To be followed up in next 6 months.

Overdue Priority 1 Actions

Appendix 1

Agreed action and risk	Original implementation target and position at the previous follow-up in June 2022	Latest progress update	Internal Audit follow-up
<p>To develop the Service Asset Management Plans.</p> <p><i>Risk: The property requirements of the Council may be unclear.</i></p>	<p>June 2022: Some progress was made on Service Asset Management Plans before Covid-19 but these were not completed as services concentrated elsewhere. A restart is planned in part of the Children's department - children's homes and disability homes.</p>	<p>Children's Department. A new Strategic Business Partner is now working with the Children's Department on the Service Asset Management Plan for their area.</p>	
Ethnicity Data (cross-cutting) - July 2021			
<p>Data Usage To develop the use of ethnicity data in service development and commissioning.</p> <p><i>Risk: Inability to target vulnerable groups effectively.</i></p>	<p>No target date given – it was in progress when the audit report was issued in July 2021.</p> <p>The current update (see next column) is the first time that we have followed up this action.</p>	<p>This has been actioned in the Children & Families department. Reports including ethnicity data are now considered business as usual. Ethnic characteristics are available for all cohorts to allow targeted interventions. We will continue to follow this up with the ASC&PH department which has not confirmed the implementation of this action.</p>	<p>To be followed up in next 6 months.</p>

30 November 2022

Agenda Item: 9

REPORT OF SERVICE DIRECTOR FINANCE, INFRASTRUCTURE & IMPROVEMENT

GOVERNANCE UPDATE

Purpose of the Report

1. To inform Committee of the progress being made with the Governance Action Plan for 2022/23.

Information

2. The Accounts and Audit (England) Regulations 2015 require the Authority to publish an Annual Governance Statement (AGS) along with its Statement of Accounts. The focus of the AGS is to assess the extent to which the Council's Local Code of Corporate Governance has been complied with over the course of a financial year, along with an assessment of the most significant governance issues the Council is dealing with. This gives rise to an annual Governance Action Plan.
3. The Council continues to review progress against the action plan on a regular basis throughout the year. This ensures the AGS is used as a live document, contributing towards maintaining an appropriate, strategic focus on the Council's ongoing governance arrangements.
4. This latest update identifies the following as the most significant governance issues for the Council.

Issue	Comment
Cabinet/Scrutiny model of corporate governance	Full Council at its meeting on the 31 st March 2022 approved a revised model of governance which was implemented following the Annual General Meeting on 12 th May 2022. It was agreed that the member working group would remain in place to deal with any issues arising and undertake a review of the operation of the new model after 12 months.
Devolution for Nottingham and Nottinghamshire	On 30 August 2022, Derbyshire County Council, Nottinghamshire County Council, Derby City Council and Nottingham City Council signed a £1.14 billion devolution deal with the Government. The signing of the deal, will, subject to relevant approvals, consultation

Issue	Comment
	<p>and primary and secondary legislation passing through Parliament, establish the first ever Mayoral Combined County Authority in the country. This would mark a significant step forward for the region, addressing years of historical low investment in the area whilst providing a platform for accelerated growth.</p> <p>To progress the area's devolution deal, a consultation is required on the draft East Midlands Combined County Authority (EMCCA) Proposal. Following consultation, the four upper tier councils will need to submit their final proposal to Government, which will take account of the outcome of the consultation, and which, if appropriate, formally proposes the creation of the EMCCA. Full Council agreed on 4 November 2022 to formally consult on the draft proposal with the residents and other stakeholders of Nottinghamshire and the wider EMCCA area, in partnership with Derby City Council, Derbyshire County Council and Nottingham City Council.</p> <p>The consultation launched on 14 November 2022, and will run for eight weeks, closing on 9 January 2023. It is anticipated that a further meeting of Council in or around March 2023 will consider the results of the consultation and agree whether to formally submit the final Proposal to Government. The intention would then be that the first election for a mayor for Derby, Derbyshire, Nottingham and Nottinghamshire, would take place in May 2024.</p> <p>A monitoring officer working group is working thoroughly through the governance and constitutional matters in respect of the combined county authority.</p>
<p>Climate change</p>	<p>At its Annual General Meeting on 27/5/2021, the Council declared a Climate Emergency and tasked its new Transport and Environment Committee to drive measures to achieve the Council's commitment to achieving carbon neutrality in all its activities by 2030. The Committee has considered three formal reports to date, setting out progress against the Council's Corporate Environment Strategy and its alignment with the emergency declaration, and establishing a new Climate Change group to drive forward this work. More reports are scheduled to the Cabinet Member for Transport and Environment following the move to the new Leader and Cabinet system including a review of the Corporate Environmental Policy to reflect the carbon neutrality 2030 target. The additional staffing resources noted above are partly in place, with further recruitment to the Climate Change group due to complete by early autumn, alongside an ongoing commitment of funding for the Green Investment Fund.</p> <p>Furthermore work continues with the development of a carbon reduction plan due to be published in Autumn 2022, input into the Corporate Property Strategy review and design standards and supporting Highways & Transport colleagues to green the internal fleet. Departmental working groups are being established and the Employee Green Initiatives Group has been relaunched and supported since November 2021. A climate change training package</p>

Issue	Comment
	is being developed to reach and engage with all employees, including accredited Carbon Literacy training for Leadership and Management.
The transformation agenda	<p>The Group Manager has been in post since Jan 2022 and the Service Director has been in post since March 2022. The Transformation and Change Group continues to work with operational leads and subject matter experts to develop Cases for Change/Full Business Cases for projects within our four cross-cutting programmes. We have reviewed the scope of our programmes and continue to work to identify opportunities for change to support the Council's ambitions, as outlined in the Nottinghamshire Plan, and in response to policy and legislative changes. We continue to review the transformation operating model to ensure that we have a strong foundation for delivery of our transformation portfolio.</p> <p>We are creating a greater alignment between our transformation portfolio and strategic priorities around financial resilience and sustainability. A series of budget 'impact sprints' over August/September 2022 will identify opportunities to deliver financial benefits to the Medium Term Financial Strategy and will inform the future scope and objectives of our four programmes.</p>
Financial resilience and sustainability	<p>The recent significant increases in inflation and specific increases in external costs for essential services is likely to impact on the Council through additional budget pressure bids. The importance of effective management of the most volatile elements of the annual budget is heightened and remains a key area of focus. The Medium-Term Financial Strategy (MTFS) continues to be updated and reported regularly. Maintaining the flow of transparent, financial data for Councillors remains a key priority.</p> <p>The Council had a funding gap of £29m over the four-year MTFS as at February 2022 and, as savings become increasingly difficult to generate, the four cross-departmental Transformation Programmes are essential to delivering reduced, existing cost pressures and cost avoidance going forward.</p> <p>The Period 6 monitoring report identifies a forecast in-year overspend of £2.9m as the Council, post a number of management actions, begins to show the impacts of inflation upon our services. As fuel and energy costs rise, wage inflation upon our suppliers, as well as our own employees starts to reflect upon the cost of delivering our services. This is a changing picture and the impact into next year and upon our MTFS are being constantly assessed.</p> <p>The Budget Update Report to Cabinet on 17 November 2022 highlights an updated 3-year MTFS funding gap of £74m, with a shortfall of £35m in 2023/24, following a review of pressures over the summer. The report signals the start of the consultation process looking at actions to address this shortfall.</p>
People Strategy and the Nottinghamshire Way	A Workforce Review has been commissioned to identify key risks and issues across the Council in relation to workforce and actions to address these. This work is being progressed through the Member

Issue	Comment
	Budget Panel looking at Workforce. The outcomes will be used to support service redesign and develop a new operating model for the Council. This will be enabled by the development of a new Workforce Strategy to ensure that we have cost effective, sustainable resourcing strategies and are able to recruit and retain staff and develop the skills we need. The next phases of the Nottinghamshire Way programme will support development of the culture and ways of working we require and engage staff and managers to ensure sustainable service delivery and delivery of the priorities set out in the Nottinghamshire Plan.
Adult Social Care and Health reforms	The Government's white paper, 'People at the Heart of Care', was published in December 2021, setting out a 10-year vision to transform support and care in England. In total there are eight pieces of reform that Adult Social Care services are required to implement during 2022 and 2023. These reforms are welcomed but the timetable for implementation, the resource requirements and the estimated cost of the reforms present significant risks for the Council. Charging reform and the Fair Cost of Care reform present very challenging financial risks and these have been set out in detail in a <u>report to Cabinet on 14th July</u> . Compounded by pressures and lack of capacity in the care workforce, the Council is at risk of not being able to meet its statutory duties under the Care Act whilst at the same time dealing with a new Care Quality Commission-led assurance and inspection regime. The department is putting mitigations in place to meet identified risks where possible and is also making representations to the Government about the risks and issues.
Demand for care and support (new risk)	Lack of availability of care and support provision means people are not always receiving the right service at the right time. This is particularly evident in the number of people who are waiting for home care, either in the community or who are waiting to be discharged from hospital. Alongside the reduction in care staff, there is an increase in demand on services which means the Council has a significant waiting-list for care and support. This presents a risk to the individuals concerned and also impacts on wider Council services such as an increase in enquiries and complaints. <u>A report on Adult Social Care Market pressures</u> was also presented to the Cabinet on 14 th July 2022, and all the risks identified are set out in a comprehensive departmental risk register.
Risk management	An action plan has been developed to address the scope for improvement in the Council's risk management arrangements, following the external 'health check' review in 2021. A clearer distinction is being drawn between the management of operational and strategic risks, presenting the opportunity to link risk management through to strategic planning and reporting in a more impactful way. Due to operational issues the work on the update was delayed for a short period, however it has now restarted, and the changes will culminate in a revised policy and strategy for risk management, and any implications for the risk management framework will be assessed.

Issue	Comment
<p>Pace of implementing agreed audit recommendations</p>	<p>Six-monthly updates to the Governance & Ethics Committee continue to identify concerns with the pace of implementation for agreed actions. Whilst focused action by the Internal Audit Team has driven improvements to halt the decline of the implementation rate only one target for the implementation of Priority One actions has been achieved. The Committee and the Internal Audit Team continue to focus on driving through agreed improvements to the Council's control framework as quickly as possible.</p>

5. Corporate Leadership Team colleagues have been consulted with in compiling the above list of issues which continue to represent the most significant governance issues on which the Council needs to focus. CLT colleagues have provided insight to these governance issues by considering the following:
- Colleagues' awareness of significant governance issues being dealt with by senior managers in their departments – to identify whether some issues should be added to, or removed from, the list. Alternatively, colleagues may be aware of a more specific or emerging development within one of the areas listed, which should require a refocus of the Council's response.
 - Reference to the Council's [Local Code of Corporate Governance](#), as an aid to considering whether colleagues are aware of any emerging issues within the areas the Code covers.
6. An important part of the AGS is its Action Plan, and this should also be refreshed following each update. The Action Plan for 2022/23 is set out in **Appendix 1**, showing the progress that has been identified through consultation with relevant managers.

Other Options Considered

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

Reason/s for Recommendation/s

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

Statutory and Policy Implications

9. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and

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

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

RECOMMENDATION

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

Nigel Stevenson
Service Director – Finance, Infrastructure & Improvement

For any enquiries about this report please contact:
Simon Lacey, Interim Chief Internal Auditor

Constitutional Comments (EKH – 07/11/2022)

10. This report is appropriate to be considered by Governance and Ethics Committee and they have the power to make any resolution resultant upon the recommendation.

Financial Comments (SES – 01/11/2022)

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




Background Papers and Published Documents



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



- None

Electoral Division(s) and Member(s) Affected

- All

Planned Action	Officer responsible	Target date for completion	Progress status
1. Modelling sustainable savings plans –approval of ‘Options for Change’ cases for implementation.	Service Director - Transformation	Spring/summer 2022	 In progress
<p>With new leadership of the Transformation and Change Group, we are continuing to develop our transformation portfolio, to create greater benefit to the Council’s financial resilience and sustainability. Full Business Cases are being developed for projects within the Whole Family Safeguarding programme (as of August 2022) and Cases for Change have been developed for four key projects within the Portfolio. These were reviewed by Lead Members for Finance and Transformation in July 2022. Further Cases for Change will be developed through a series of budget ‘impact sprints’ over August and September 2022.</p>			
2. Post-pandemic review: formally review the Council’s response to capture and apply learning for the future. This will build on two reports to date to Policy Committee on the impact of COVID-19.	Chief Executive	Now concluded	 Complete
<p>Internal Audits review of the organisational response have been completed and actions have been identified for implementation that will be monitored following the predetermined Internal Audit protocol. The Risk, Safety and Emergency Management Board have received a debrief from the Emergency Planning Team and a subsequent review through the Local Resilience Forum will be reported to the Board as part of the established risk management processes. The actions for the response will now be built into the usual business processes.</p>			
3. Implementation of Cabinet/Scrutiny model of corporate governance: incorporating work to review the constitution and operating model	Service Director – Customers, Governance and Employees	May 2022	 Complete
<p>The Council’s revised governance model was approved by Full Council on 31st March 2022 and implemented following the Annual General Meeting on 12th May 2022. The Member Working Group remains in place to deal with issues arising from the implementation of the new governance model as appropriate. Full Council agreed that a formal review of the Governance Model would be undertaken by the Member Working Group after 12 months in operation.</p>			

Planned Action	Officer responsible	Target date for completion	Progress status
4. Equality Impact Assessments (EIAs) – review the approach with key stakeholders and deliver refresher training workshops for completion of EIAs, along with an online e-learning package.	Service Director – Customers, Governance and Employees	April 2022 for revised version of EIA form	 Complete
<p>The review of EIAs has been completed, led by the Council's Equalities Officer, using a working group drawing members from across the Council. This included developing revised training and guidance for managers. The Council's Equalities Officer remains available to provide support and advice as required.</p>			
5. Register of Interests – completion of the current review by Legal Services, followed by approval of proposed changes and awareness raising.	Group Manager – Legal, Democratic & Complaints	March 2022	 Complete
<p>The review of the Officer Code of Conduct has been completed and reported to the Governance & Ethics Committee in November 2022. The completed review has been recommended to Full Council for approval of the changes. Changes to the processes and methods of data capture will then be made aware to officers and staff. A full report has been presented to the Governance & Ethics Committee on the 30 November 2022.</p>			
6. Planning & Performance Management Framework: review the framework in line with the development of the new Council Plan	Group Manager – Transformation & Change	March 2022	 In progress
<p>The opportunity of the new Council Plan is being taken to refresh the Planning & Performance Management Framework. In May 2022, we published the Council's first Annual Report and Annual Delivery Plan. A new Annual Delivery Plan Assurance report has been developed and will be shared with Corporate Leadership Team quarterly (first report in August 2022) and with Cabinet every six months.</p>			

Planned Action	Officer responsible	Target date for completion	Progress status
7. Risk management: agree and implement a revised approach to risk management for the Council	Group Manager – Assurance	March 2023	 In progress
<p>An update report was provided to Governance & Ethics Committee in March 2022. The report highlighted progress against the risk management approach action plan and provided information on planned work. Unfortunately, due to operational issues, this work has been delayed but it has now restarted, and a further update will be provided to Committee as soon as possible.</p>			
8. Data quality in Mosaic: greater priority given to addressing issues highlighted by routine reporting	Corporate Director – Adults Social Care and Public Health, working with the Group Manager - Assurance	March 2022	 In progress
<p>A data quality strategy and action plan have been developed and the department has agreed to establish a project to implement the reporting action plan and resolve data quality issues identified as part of a reporting and data quality diagnostic. The department recognises that data quality activity must be embedded as business as usual with the activity resourced accordingly. A business case will be developed to ensure the implementation of the data quality strategy and associated resources. This will be monitored through performance board.</p>			

30 November 2022

Agenda Item: 10

**REPORT OF MARJORIE TOWARD, SERVICE DIRECTOR – CUSTOMERS,
GOVERNANCE AND EMPLOYEES**

**REVISED OFFICER CODE OF CONDUCT AND PROCEDURE FOR OFFICER
REPORTING OF INTERESTS, GIFTS AND HOSPITALITY**

Purpose of the Report

1. To update Committee on the work to update the Officer Code of Conduct and Section D35 of the Personnel Handbook relation to officer interests, gifts and hospitality, and the introduction of a new Council wide form for staff to report any interests they have or gifts and/or hospitality they are offered.
2. For Committee to recommend to Full Council the amended Officer Code of Conduct and Section D35 of the Personnel Handbook, as this is Part 1 of Section Eleven of the Constitution.

Information

3. In 2019 Internal Audit evaluated the Council's ethical framework. The objective of the Council's ethical framework is to ensure that appropriate policies, procedures and processes are in place to provide robust governance, transparency and ethical values within the organisation.
4. Internal Audit's findings were that controls were effective in the Ethical Framework and Ethical Principles.
5. However, some risks were identified, and recommendations were made to address these. Work on the recommendations has been ongoing since the Internal Audit findings but finalising and developing a recording system and the revision of the Officer Code of Conduct has been slower and drawn out due to work pressures due to covid, and the work undertaken at pace to bring in the new executive arrangements from May 2022.
6. Colleagues across departments have been involved in the actions and work needed to address the recommendations made. The previous Group Manager for HR has been involved in developing the process and refreshing the Officer Code of Conduct.
7. The following table sets out the recommendations and actions taken:

Risk	Recommendation	Action/implementation
The Gifts and Hospitality Registers for staff are not maintained in accordance with the Policy and not all staff are consulting their Service Director concerning the acceptance of gifts or hospitality	There should be effective provision for all staff to record gifts and hospitality Staff should be reminded of the requirements of the policy	An Officer Interests, Gifts and Hospitality Form has been developed internally on the Council's Firmstep platform To be part of the annual EPDR discussion
Declarations of staff interests are not consistently made or recorded throughout the organisation. In some cases, safeguards against such interests are not put into place	A standard template should be devised to ensure the nature of the interest and action taken to address this can be recorded and monitored. This template should be accessible to all staff electronically. All directors, managers and staff should be reminded of the requirements to notify interests. Where notifications have been made, appropriate safeguards should be put into place where necessary and recorded and monitored to prevent inappropriate involvement in these matters.	An Officer Interests, Gifts and Hospitality Form has been developed internally on the Council's Firmstep platform Staff will be informed of the process through a news article on the Intranet (annual reminder) To be part of the annual EPDR discussion Discussions will take place with the line manager and appropriate safeguards will be put in place and recorded on the form
The Officers' Code of Conduct has not been updated since 2012	The Employees' Code of Conduct should be refreshed to take account of changes in legislation, policies and procedure	Employees' Code of Conduct has been refreshed

Gifts and Hospitality Register for Staff

8. The Officer Interests, Gifts and Hospitality Form is an online form that all staff across all departments will use to register any interests they have, and any gifts and/or hospitality they

are offered. Once the form is completed by the staff member the response is sent to their Line Manager so that a discussion can be had regarding the responses and whether any/what suitable actions or safeguards need to be put in place as a result. A record of the disclosures and Line Manager discussion is retained on the staff member's HR record. It is intended that temporary staff and consultants will also need to complete the form where they have interests or are offered gifts/hospitality that is relevant to the role they are carrying out with or for the Council.

9. For any officers that do not have access to the online form, the need to consider whether they have any interests or have been offered any gifts or hospitality that they need to declare will be discussed with their Line Manager as part of the annual EPDR process and a declaration completed.
10. Communications will be sent out to staff on the Intranet regarding the launch of the form and the requirement for all staff to complete it and declare any interests they have or gifts and/or hospitality they may be offered. A reminder of the requirement to consider and declare any interests, gifts and/or hospitality will also become part of the annual EPDR review.

Updated Officers Code of Conduct

11. The changes to the process for staff to declare any interests, gifts or hospitality has meant a review of the Officer Code of Conduct, in Section Eleven of the Constitution and Section D35 of the Personnel Handbook. Changes have also been made to reflect changes in legislation, and updated wording and references as required. A copy of the revised Officer Code of Conduct is attached at the Appendix.
12. The key changes/amendments made to D35 of the Personnel Handbook and the Officer Code of Conduct are briefly:
 - a. Updated reference to The Nottinghamshire Plan;
 - b. Clarity that discussions and guidance for staff will be through their Line Manager;
 - c. Examples of what a personal interest may be;
 - d. The increase on the gift amount from £25 to £50 (match the value of gifts to Members);
 - e. Advice on legacies;
 - f. Updated wording on equality legislation and health and safety;
 - g. Updated reference to the UK GDPR and data protection legislation; and
 - h. That any interests, gifts or hospitality are to be reported on the online form.

Other Options Considered

13. None, as the review and changes were required to address the recommendations from the Internal Audit report.

Reason/s for Recommendation/s

14. To address the recommendations made by Internal Audit and for Governance and Ethics Committee to recommend the revised Officer Code of Conduct and new reporting procedure to Full Council so that the Constitution can be amended and updated accordingly.

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.

Financial Implications

16. There are no financial implications for the Council arising from this report.

Data Protection and Information Governance

17. Information declared in the Interests, Gifts and Hospitality form will be recorded on staff members HR records in accordance with the existing procedures for the holding and retention of staff records.

Human Resources Implications

18. The revised Officer Code of Conduct and the form have been developed with the previous Group Manager HR.

19. Consultation with the Trade Unions has taken place. No comments have been received following consultation.

RECOMMENDATION/S

- 1) That Committee notes the amended Officer Code of Conduct and online form procedure for staff to declare any interests, gifts and/or hospitality.
- 2) That Committee recommends to Full Council the amended Officer Code of Conduct and the amendment of Section Eleven of the Constitution

MARJORIE TOWARD, Service Director – Customers, Governance and Employees

For any enquiries about this report please contact: Catherine Haywood, Senior Solicitor, Tel: 0115 977 2915, email: catherine.haywood@nottsc.gov.uk

Constitutional Comments (EP 14/11/2022)

20. The recommendations fall within the remit of the Governance and Ethics Committee by virtue of its terms of reference.

Financial Comments (KRP 14/11/2022)

21. There are no financial implications arising from the contents of the report.

HR Comments (HG 15/11/2022) HR will support the roll out of this action by implementing a reminder as part of the EDPR. Recommend that there are other means of proactively cascading the information through line managers following the intranet article and ahead of annual EDPR cycle.

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

D35: Code of Conduct - Summary

1. Introduction

1.1 The County Council's Code of Conduct applies to all County Council employees and stipulates that all employees carry out their duties to the highest standards of conduct and behaviour i.e. with integrity, fairness, probity and honesty.

1.2 The Code reflects the practices, demands and expectations which County Council employees are required to meet in order to maintain public confidence in the performance of their official duties.

1.3 It is important for all County Council employees to ensure that they are fully aware of their position as regards standards of conduct in relation to various aspects of their work. There will be an expectation that all employees will conduct themselves in a manner commensurate with the highest standard.

1.4 The County Council operates a Whistleblowing Policy (Confidential Reporting), which gives individuals the right to raise an issue regarding wrong-doing at work and have it investigated without fear of reprisal.

1.5 Guidance for representatives on outside bodies (including elected members, officers and co-opted members) who serve on bodies outside of the County Council will need to comply with the guidance in the Constitution (Responsibilities for County Council Representatives on Outside Bodies).

2. Expectations of Nottinghamshire County Council employees

2.1 County Council employees will be expected to give the highest possible standard of service to the public.

2.2 Not to use information gained in the course of their work for personal gain or benefit.

2.3 Not to allow personal or political opinions to interfere in the lawful execution of their duties, or in the provision of impartial advice.

2.4 To ensure the proper, effective and efficient use of public money within their control.

2.5 To ensure courteous, efficient and impartial service delivery to all sections of the community.

2.6 To assist in the creation of a safe work environment where unacceptable/discriminatory behaviour is not tolerated.

2.7 Not to take outside employment which conflicts with the County Council interests. See below regarding consents and declaration of interests.

2.8 To declare any interest that could bring about conflict with the County Council's interests. See below regarding the process to be followed.

2.9 To ensure that equality policies in relation to employment and service delivery are adhered to.

2.10 To maintain confidentiality as appropriate in the performance of their duties, including compliance with UK GDPR requirements and all data protection legislation.

2.11 To decline all inappropriate or excessive offers of hospitality, gifts, etc. and comply with the requirements to register small gifts and hospitality. See below regarding the process to be followed.

2.12 To not show special favour to any person(s) or organisation(s) in the performance of their duties (recruitment, contractual relationships, service delivery).

3. Code of conduct policy

3.1 See the detailed Code of Conduct at Appendix 1.

4. The Nottinghamshire Plan – Healthy, Prosperous, Green

4.1 Further expectations regarding employee behaviour can be found in the Nottinghamshire Plan which can be found on the intranet by searching “The Nottinghamshire Plan”. The Plan sets out the ambitions we are working to – a stronger, more prosperous Nottinghamshire for everyone.

Appendix 1

Officer code of conduct

Introduction

1. The public is entitled to expect the highest standards of conduct from all Officers of the County Council.

2. The Code sets out the standards of service that are expected from officers of the Council. In particular, officers should act in an open and transparent manner and should not do anything which would prejudice the reputation of the Council.

3. The term ‘Officer’ includes all employees, consultants, contractors and agency workers.

4. The Code should be read and operated in conjunction with the Council’s Constitution and the Personnel Handbook. It is important Officers understand their position as regards standards of

conduct, and if in any doubt should seek guidance from their line manager.

Underlying principles

- 5.** All Officers of the Council must at all times observe this Code. Failure to comply with the Code and the standards of service expected could result in disciplinary action.
 - 6.** All Officers must act within the law whilst undertaking their official duties. Where an Officer is a member of a professional body, the Officer must also comply with any standards of conduct which are set by that body.
 - 7.** Officers are expected to:
 - a.** Provide the highest possible standard of service to the public. Where Officers are aware of any contraventions of this Code, illegality, misconduct or breach of procedure they should notify their line manager; and
 - b.** Provide appropriate advice to Councillors and other officers with impartiality.
 - 8.** Officers must consult the Monitoring Officer and the Chief Finance Officer if they have doubts about the legality of a decision, proposed course of action, or suspect maladministration or financial impropriety.
 - 9.** The Code does not seek to address every possible circumstance, and simply because a particular action may not be addressed within the Code, this does not condone that action by omission. Officers must consult their line manager if they have any queries about any of the provisions of this Code or how to comply with them.
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Personal interests

- 10.** Officers must declare on the [name of the form] to their line manager any personal, or close personal contact, financial interests or non-financial interests (including in a business, contracts, property or land ownership) which could or could be perceived to conflict with their role with the Council ('Personal Interests'). A close personal contact could include a partner, spouse, relative or close friend.
- 11.** Any Personal Interests must be discussed with your line manager and may result in certain actions/controls being put in place i.e that Officer cannot have any dealings with that contract or property.
- 12.** Any outside employment, either paid or unpaid, requires the written agreement of your line manager. Any such employment must be declared on the "Officer interests, gifts and hospitality declaration".
- 13.** If an Officer is not sure about whether they have a Personal Interest, they should seek guidance from their line manager.
- 14.** Examples of such interests include:
 - Being a school governor
 - Being involved in a voluntary organisation

- Being an elected councillor (NB employees at this Council can't be a county councillor)
- Receiving fees for outside events
- Being involved in any lobbying, protect or pressure group
- Being involved in any business that does or may contract with the Council
- Being involved in a business or organisation which may apply for or receive grants or funding from the Council
- Having interests in land or property which might affect the Council

15. A record of any Personal Interests will be maintained on your HR record.

Bribery and corruption

16. Officers must be aware that it is a serious criminal offence for them to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity as a result of any such gift, etc.

17. It should be stressed that this covers all aspects of an Officer's responsibilities. For example, showing favouritism to a client in the provision of a service in return for a favour or gift would be corrupt. As would awarding a contract to a contractor as a direct result of receiving a gift.

18. In particular:

- Officers should not accept a gift or hospitality from a contractor or other person outside the Council if they know or suspect that it is offered or provided with the expectation that a commercial or contractual advantage will be provided in return;
 - Officers should not accept a payment from a contractor or other person outside the Council if they know or suspect that it is offered or provided with the expectation that they will obtain a commercial or contractual advantage in return;
 - Officers should not give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a commercial or contractual advantage will be received, or to reward a commercial or contractual advantage already given.
-

What to do if you are offered a gift

19. It is reasonable to accept a modest gift of a promotional character given to a wide range of people, and not uniquely to the officer, such as calendars, diaries, pens and other articles of use in the office or job. Modest gifts at the conclusion of any courtesy visit to an outside organisation, of the sort normally given by that organisation, may also be accepted.

20. From time to time, Officers may be offered other higher value or personal gifts. You need to consider why you have been offered the gift. If you are in doubt as to the motive behind the gift, e.g. could it be considered as a payment, bribe or other favour, you should seek advice from your line manager as to whether it is appropriate to accept it. No gift worth over £50 should be accepted under any circumstances. You should not accept money. Any gift offered, whether accepted or refused, should be recorded on the "Officer interests, gifts and hospitality declaration".

What to do if you are offered hospitality

21. Officers of the Council should only accept offers of hospitality if they are invited in their role as a Council representative. Offers to attend purely social or sporting functions should be accepted only when these are significant for Nottinghamshire, or where the Council should be seen to be represented. Acceptance of such invitations should be approved in advance with your line manager and must be recorded on the “Officer interests, gifts and hospitality declaration”.

22. When hospitality has to be declined, the third party offering the hospitality should be courteously informed of the procedures and standards operating within the Council. When receiving hospitality, Officers should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality.

23. There may be circumstances where it will not always be possible, or even desirable, to reject offers of hospitality on a modest scale. Acceptable examples would include official hospitality at a function organised by a public authority; refreshments following a site visit; or a working lunch of a modest standard to enable the parties to continue to discuss business. The decision whether to accept or not must depend on the circumstances in each case. These circumstances will also determine whether the hospitality should be discussed with your line manager and recorded on the “Officer interest, gifts and hospitality declaration”.

Legacies

24. You should not accept any legacy related to or arising out of work as an employee; you should politely refuse the gift; in which case it would be treated as part of the residue of the deceased’s estate. People should be discouraged from leaving gifts in their wills to employees. Should a small gift/token be left or be given by the family please follow the procedures regarding gifts set out at paragraph 20. People should not name employees (arising out of their role as a Council employee) as executors in wills. Please speak to your line manager/HR for advice if needed.

Receiving sponsorship or grant aid

25. Officers must provide details to their line manager of any benefit they (or their partner, spouse or relative) may be likely to receive as a result of any proposed Council sponsorship or grant aid. These should be recorded on the “Officer interests, gifts and hospitality declaration”.

Use of public funds

26. Officers must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

Political neutrality

27. Officers serve the Council as a whole. It follows they must serve all Councillors and not just those of the majority or any group and must ensure that the individual rights of all Councillors are respected.

28. Officers may be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

29. Officers must follow Council policies and must not allow their own personal or political opinions to interfere with their work.

30. A number of posts are designated as “Politically Restricted”. If your post is designated as such you will be notified of this in writing.

Equality issues

31. The Council believes in equality and will not tolerate any harassment, intimidation, unfair discrimination or victimisation, by Officers.

32. The Council has a statutory duty to promote equality. All Officers have a duty to comply with equalities legislation.

33. Each Officer has a duty to ensure that the appropriate standards of conduct are upheld both by themselves and by colleagues at all times.

The Relationship between officers and councillors

34. Officers should refer to the Protocol for Councillor and Officer Relationships in Section Ten of this Constitution.

The Relationship between officers and the public

35. Officers should always remember their responsibilities to the community of Nottinghamshire and ensure courteous, efficient and impartial service delivery to all groups and individuals they have dealings with.

36. Officers should be cautious when blogging or using social networking sites outside of work and avoid publishing, or allowing to be published, any material, including comments or images, which could damage their professional reputation and/or bring the Council into disrepute. Further guidance can be obtained from the Council's Social Media Policy and your line manager.

The Relationship between officers and contractors

37. All relationships of a business, private or personal nature with external contractors, or potential contractors, should be made known to your line manager.

38. Officers must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

39. Officers who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

40. Further guidance on the procedures to follow during the tendering process is contained in the Financial Regulations in Section Nine of this Constitution.

Appointment and other employment matters

41. Officers involved in appointments should ensure that these are made on the basis of merit.

42. In order to avoid any possible accusation of bias, Officers wherever possible should not be involved in an appointment where they are related to an applicant or have a close personal relationship outside work with them. If they must be involved, then the relationship must be disclosed to all the parties and be approved by the recruiting manager before proceeding.

43. Similarly, Officers should not be involved in decisions relating to discipline, promotion or pay adjustments for any officer who is a relative, partner etc.

Working for outside organisations

44. Officers working for outside organisations should refer to section c.6 of the Personnel Handbook and the Protocol for Involvement in Outside Bodies.

Use of council premises or facilities for work not connected with the council

45. Officers must not use the Council's premises or facilities for activities which are not connected with their employment with the Council, for instance the use of email, telephones, computers, photocopiers etc. A small amount of personal use may be acceptable – please discuss this with your line manager.

Public speaking

46. Where Officers are invited to address public meetings, undertake radio or television interviews etc, they will be acting as the representative of the Council, and as such should communicate the policies and procedures of the County Council in a factual and unbiased way. Officers must not express personal views in such situations. If invited to speak publicly Officers should take advice from the Communications Team in advance where possible.

47. If in a private capacity an officer is invited to comment publicly on Council policies, they should reflect upon the impact of this on the County Council's reputation and consider whether it is appropriate to comment.

Officers facing criminal charges

48. Any Officer facing criminal charges must inform their line manager without delay and keep them informed of the matter.

Health and safety

49. The Council has committed to ensure that employees understand their roles, responsibilities and accountabilities. Officers are required to actively support the Council's efforts by working with due regard for the safety of themselves and others who may be affected by their actions. Officers must comply with health and safety rules.

Disclosure of information

50. Officers must not disclose information given to them in confidence or information that is private or personal without consent, unless in specific circumstances (for example the safeguarding duty). In this situation, advice should be sought from the Information Governance Team and the Officer's line manager.

51. Officers disclosing personal information must comply with UK GDPR and all relevant Data Protection legislation. Officers must act in accordance with the Council's Information Governance Framework (which is available on the Intranet).

52. Officers should not use confidential information obtained in the course of their employment with the Council for personal use, nor should they pass it on to others who might use it for unauthorised purposes.

53. Guidance about the information which Councillors and the public are entitled to is contained in Section 2 of this Constitution.

Last updated [date]

30 November 2022

Agenda Item: 11

REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND EMPLOYEES

WORK PROGRAMME

Purpose of the Report

1. To review the Committee's work programme for 2022-23.

Information

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

Other Options Considered

4. None

Reason/s for Recommendation/s

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

Statutory and Policy Implications

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

RECOMMENDATION

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

Marjorie Toward

Service Director, Customers, Governance and Employees

For any enquiries about this report please contact:

Jo Toomey, Advanced Democratic Services Officer

Tel. 0115 9774506

E-mail: jo.toomey@nottsc.gov.uk

Constitutional Comments (EH)

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

Financial Comments (NS)

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

Background Papers and Published Documents

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

- None

Electoral Division(s) and Member(s) Affected

- All

GOVERNANCE & ETHICS COMMITTEE – WORK PROGRAMME (as at 9 November 2022)

<u>Report Title</u>	<u>Brief Summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
30 November 2022			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Statement of Accounts 2021/22	To seek approval for the 2021/22 Statement of Accounts and present the External Auditor's Audit Findings Report	Nigel Stevenson	Glen Bicknell
Internal Audit Progress Term 1 2022-23 and Term 3 Plan 2022-23	To review the outcomes of Internal Audit's recent work and consider proposals for planned coverage in the next term	Nigel Stevenson	Simon Lacey
Follow-up of Internal Audit recommendations – 6-monthly update	To consider an update on progress with implementing agreed actions from Internal Audit reports	Nigel Stevenson	Simon Lacey
Governance Update	To consider progress against the Governance Action Plan for 2022/23	Nigel Stevenson	Simon Lacey
Officer Code of Conduct and Officer Interests, Gifts and Hospitality register	To update the committee following Trade Union consultation	Marjorie Toward	Heather Dickenson / Catherin Haywood
4 January 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Corporate Risk Management Update	To consider the updated corporate risk register and the Council's arrangements for corporate risk management	Nigel Stevenson	Keith Palframan
Internal Audit Charter	To review the Charter for the operation of internal audit in the Council	Nigel Stevenson	Simon Lacey
Counter Fraud Progress Report	To consider progress against the counter-fraud and counter-corruption action plan	Nigel Stevenson	Simon Lacey
Regulation of Investigatory Powers Annual Report	To consider the annual report	Marjorie Toward	Heather Dickinson

Councillor Code of Conduct Review	To consider the findings of the working group	Marjorie Toward	Heather Dickinson
22 February 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Whistleblowing update	To update the committee on whistleblowing activity during 2022	Marjorie Toward	Heather Dickinson
Whistleblowing Policy Review	To consider the outcome of the review	Marjorie Toward	Heather Dickinson / Catherine Haywood
22 March 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Annual Audit Report 2021/22	To consider the external auditor's annual audit report for 2021/22	Nigel Stevenson	Glen Bicknell
Corporate Governance Update	To receive an update on progress against the Annual Governance Statement action plan for 2022/23	Nigel Stevenson	Simon Lacey
Internal Audit Term 2 (2022-23) Report and Term 1 Plan 2023-24	To review the outcomes of Internal Audit's recent work and consider proposals for planned coverage in the next term	Nigel Stevenson	Simon Lacey
3 May 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Governance and Ethics Committee Annual Report	To consider the draft annual report	Nigel Stevenson	Simon Lacey
Statement of Accounts 2022-23 – Accounting Policies	To consider the draft annual report and recommend to full council for consideration	Nigel Stevenson	Glen Bicknell
Informing the risk assessment – 2022-23 Statement of Accounts	To consider the risk assessment	Nigel Stevenson	Glen Bicknell
Corporate Risk Management 6-monthly update	To consider the updated corporate risk register and developments in the Council's approach to risk management	Nigel Stevenson	Simon Lacey

Follow-up of Internal Audit recommendations – 6-monthly update	To consider an update on progress with implementing agreed actions from Internal Audit reports	Nigel Stevenson	Simon Lacey
14 June 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
External Audit Plan 2022-23	To consider the External Audit Plan for the forthcoming audit	Nigel Stevenson	Glen Bicknell
Assurance Mapping Annual Report 2022-23	To review the assurance provided from the map in 2022/23 and consider coverage for 2023/24	Nigel Stevenson	Simon Lacey
Internal Auditor's Annual Report	To consider the Head of Internal Audit's annual opinion of the arrangements for governance, risk management and control	Nigel Stevenson	Simon Lacey
Update on the use of the Councillor's Divisional Fund	To consider the annual update	Marjorie Toward	Keith Ford
19 July 2023			
Update on Local Government and Social Care Ombudsman Decisions	To consider any recent findings of the Local Government Ombudsman in complaints made against the County Council	Marie Rowney	Richard Elston
Annual Fraud Report 2020-21	To review the incidence of fraud over the year and an update on risks and mitigations	Nigel Stevenson	Simon Lacey
Internal Audit Term 3 progress 2022/23 and Term 2 plan 2023/24	To consider proposed audit coverage for Term 2	Nigel Stevenson	Simon Lacey

